Bombay Chartered Accountants' Society

28th year of Publication

THE UNION BUDGET 2021-22

- An Analysis

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About the Cover

The Government of India has slowly and steadily changed the way taxes are administered in the country over the past decade or so. In particular, the past few years have seen a paradigm shift in terms of e-assessments followed by faceless assessments and appeals. Now, the Finance Ministry has taken this to another level by presenting a "paperless" budget with the help of her "tablet". A mobile app "Union Budget" was also released a few days before the presentation of the budget. The tablet is reportedly manufactured in India. By taking this step, the FM has highlighted the "Atmanirbhar Bharat Abhiyan" as well as the "Make in India" initiative. The tablet and the app feature on our cover page as a token of our support to the government which is making every effort to bring in greater transparency, efficiency and accountability in the tax administration.

The BCAS team is pleased to present this publication to the readers and is proud to inform that we too have embraced technology to a great extent and the compilation of this publication was almost fully done through a virtual platform instead of a physical meeting which was the practice in the past. We hope and pray that all of us emerge stronger from the pandemic that has gripped the entire world and that India and its citizens are able to stand firmly on their feet and face the uncertain future with grit and determination. We also hope that the economy once again shows the resilient growth that we were expecting before the Covid-19 induced lockdown began.

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The Union Budget
2021-22

– Analysis of Important Amendments

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DIRECT TAXES

In this booklet, the proposals of the Finance Bill, 2021 are referred to as if the amendments have been actually made, except in a few cases, where the effective dates are mentioned.

Unless otherwise specified, the reference to the words "the Act" used is to the Income-tax Act, 1961 and all sections referred to are of the Income-tax Act, 1961.

1. TAX RATES

Tax Rates for Individuals/HUF

Resident individual aged above 60 years but less than 80 years

Total Income	Tax Rate A.Y. 2021-22	Tax Rate A.Y. 2022-23
Up to ₹ 3,00,000	Nil	There are no changes to the slab rates.
₹ 3,00,001 to ₹ 5,00,000	5%	
₹ 5,00,001 to ₹ 10,00,000	20%	
Above ₹ 10,00,000	30%	

Resident individual aged above 80 years

Total Income	Tax Rate A.Y. 2021-22	Tax Rate A.Y. 2022-23
Up to ₹ 5,00,000	Nil	There are no changes to the slab rates.
₹ 5,00,001 to ₹ 10,00,000	20%	
Above ₹ 10,00,000	30%	

Other individuals and HUF/AOP/BOI

Total Income	Tax Rate A.Y. 2021-22	Tax Rate A.Y. 2022-23
Up to ₹ 2,50,000	Nil	There are no changes to the slab rates.
₹ 2,50,001 to ₹ 5,00,000	5%	
₹ 5,00,001 to ₹ 10,00,000	20%	
Above ₹ 10,00,000	30%	

Surcharge applicable to Individual / HUF

Total Income	Surcharge A.Y. 2021-22	Surcharge A.Y. 2022-23
Exceeding ₹ 50 Lakh but not exceeding ₹ 1crore (Effective tax rate – 34.32%)	10%	There are no changes to the rates.
Exceeding ₹ 1 crore but not exceeding ₹ 2crore (Effective tax rate – 35.88%)	15%	
Exceeding ₹ 2 crore but not exceeding ₹ 5 crore * (Effective tax rate – 39%)	25%	
Exceeding ₹ 5 crore * (Effective tax rate – 42.744%)	37%	

* surcharge on income taxable under sections 111A and 112A and dividend income would be restricted to 15%.

Optional tax regime – Section 115BAC

Government had introduced a new scheme for Individuals and HUFs in the Finance Act 2020 with lower rates for those foregoing certain exemptions / deductions:

Total Income	Tax Rate (under the new regime)	Tax Rate (under the old regime)
Up to ₹ 2,50,000	Nil	Nil
₹ 2,50,001 to ₹ 5,00,000	5%	5%
₹ 5,00,001 to ₹ 7,50,000	10%	20%
₹ 7,50,001 to ₹ 10,00,000	15%	20%
₹ 10,00,001 to ₹ 12,50,000	20%	30%
₹ 12,50,001 to ₹ 15,00,000	25%	30%
Above ₹ 15,00,000	30%	30%

Note: There are no changes in relation to the optional tax regime in the Finance Bill 2021, however for the purpose of convenience, the criteria / eligibility are listed herein below -

1) The new scheme is optional and the assessees will have to opt for being covered by the new scheme in the prescribed manner:

   i) Where such individual or HUF does not have business income, the option is to be exercised for every year along with the filing of the return of income under section 139(1) for the year.

ii) Where such individual or HUF has business income, the option is to be exercised on or before the due date of filing the return of income and such option once exercised shall apply for that previous year and to all subsequent years.

2) If the assessee having business income has opted to be governed by the new scheme, then, subsequently, he can opt out only once and thereafter, he will never be eligible to opt for the new scheme again except when he ceases to have any business income.

3) The above concessional tax rates can be opted after foregoing certain exemptions / deductions such as:

i) Leave Travel Concession – section 10(5)

ii) House Rent Allowance – section 10(13A)

iii) Specified allowances exempt under section 10(14) (allowances granted to employees other than transport allowance, conveyance allowance, per-diems and travel and transfer allowance as mentioned in the Explanatory Memorandum)

iv) Allowances to MPs/MLAs – section 10(17)

v) Clubbed income of minor upto ₹ 1,500 – section 10(32)

vi) Exemption for unit in SEZ – section 10AA

vii) Standard and other deductions (including profession tax) from salary – section 16

viii) Interest in respect of Self Occupied Property – section 24(b)

ix) Set off of loss under the head income from house property against other heads – section 71

x) Additional depreciation – section 32(1)(iia)

xi) Deduction under sections 32AD, 33AB and 33ABA

xii) Specified deduction for donations or for expenditure on scientific research – section 35(1)(ii)/(iia)/(iii) or section 35(2AA)

xiii) Weighted deduction for expenditure on specified business / agricultural extension project – sections 35AD and 35CCC

xiv) Standard deduction for family pension – section 57(iia)

xv) Deductions under Chapter VI-A (such as sections 80C, 80D, 80 TTA, 80TTB, 80G etc.) other than the following:-

- 80CCD(2) – employer's contribution in notified pension scheme
- 80JJAA –employment of new employees
- 80LA – IFSC centre

xvi) Exemption in respect of voucher granted for free food and beverages to employees, as mentioned in Explanatory Memorandum

xvii) Any exemption or deduction for allowances or perquisites provided under any other law

4) There is no separate higher threshold for senior and very senior citizens in the optional scheme.

5) Surcharge and Cess remain unchanged.

6) Once this option is exercised, provisions relating to Alternate Minimum Tax and Credit relating to the same will not be applicable. For this, amendments have been made in sections 115JC /115JD.

If an assessee does not opt for the new scheme, he will continue to be governed by the existing regime.

Tax rates for Firms, LLPs

Total Income	Effective Tax Rate A.Y. 2021-22	Effective Tax Rate A.Y. 2022-23
Upto ₹ 1 crore	31.2%	There are no changes to the rates.
Above ₹ 1 Crore	34.944%	

Tax rates for Co-operative Societies

Particulars	Effective Tax Rate A.Y. 2021-22	Effective Tax Rate A.Y. 2022-23
Co-operative societies opting for taxation under section 115BAD — Income upto ₹ 1 crore — Income above ₹ 1 crore	 25.168% 25.168%	There are no changes to the rates.
Other Co-operative Society — Income upto ₹ 1 crore — Income above ₹ 1 crore	 31.20% 34.944%	There are no changes to the rates.

Tax Rates for Companies

Effective tax rates (including surcharge and cess) for AY 2022-23 will be as under:

Types of Companies	Income not exceeding ₹ 1 crore		Income exceeding ₹ 1 crore and upto ₹ 10 crore		Income above ₹ 10 crore	
	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)	Effective tax rate (normal)	Effective tax rate (MAT)
Domestic Company with turnover upto ₹ 400 crore in FY 2019-20 and avails any tax incentives or exemptions or tax holiday	26%	15.60%	27.82%*	16.69%*	29.12%*	17.47%*
Other domestic company	31.20%	15.60%	33.384%*	16.69%*	34.944%*	17.47%*
Domestic Company exercising option to pay tax as per section 115BAA	25.168% **	Nil	25.168% **	Nil	25.168% **	Nil
New domestic manufacturing companies exercising option to pay tax as per section 115BAB	17.16%**	Nil	17.16%**	Nil	17.16%**	Nil
Foreign Company	41.60%^	15.60% ^#	42.43% ^	15.912% ^#	43.68% ^	16.38% ^#

* Includes surcharge at the rate of 7% in case of income from ₹ 1 crore upto ₹ 10 crore and 12% in case of income above ₹ 10crore

** Includes surcharge at the rate of 10%. It is assumed that other provisions of Chapter XII are not attracted in these cases.

^ Includes surcharge at the rate of 2% in case of income from ₹ 1 crore upto ₹ 10 crore and 5% in case of income above ₹ 10crore

\# If MAT is applicable to the foreign company

2. DEFINITIONS

Issue of Zero Coupon Bonds by Infrastructure Debt Fund – Section 2(48)

Presently, section 2(48) specifies infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank as the permitted issuer of zero coupon bonds. Income from redemption of such zero coupon bonds is chargeable to tax as capital gain and not as interest income.

Now, section 2(48) is amended to include infrastructure debt fund in its permitted list for issue, and accordingly infrastructure debt fund is also eligible to issue zero coupon bonds

This amendment is applicable with effect from Assessment Year 2022-23.

Liable to tax - Section 2(29A)

The term 'liable to tax' is presently not defined in the Act, though it is used in section 6(1A), section 10(23FE) and various DTAAs. The lack of clarity of its meaning had raised certain issues, in the context of applying such provisions.

It is now provided that the term 'liable to tax' in relation to a person means that there is a liability of tax on that person under any law in force in any country and shall include a case where subsequent to imposition of tax liability, an exemption has been provided.

Thus, liable to tax in relation to a person shall include liability of tax under any law in any country including cases where an exemption has been provided later on.

This amendment is applicable with effect from Assessment Year 2021-22.

Expansion of definition of slump sale - Section 2(42C)

The existing provision defines slump sale as transfer of one or more undertakings as a result of sale for lumpsum consideration without values being assigned to the individual assets and liabilities in such sale. It was held by various courts in the past that slump sale through exchange was not covered by the definition of slum sale and therefore the provisions of section 50B and thus gains on such such slump exchange were not charged to tax [CIT v/s. Bharat Bijlee Ltd. (365 ITR 258 BOM HC)] etc.

The scope of the section is expanded to include transfer of one or more undertakings by any means and not only through sale within the definition of a slump sale. Further, an explanation is added

to provide that the term 'transfer' shall have the same meaning as assigned under section 2(47).

This amendment is applicable with effect from Assessment Year 2021-22.

3. EXEMPTIONS

Exemption for cash allowance in lieu of Leave Travel Concession (LTC) – Section 10(5)

Section 10(5) exempts value of travel concession or assistance received or due to an employee from his employer or former employer for himself or his family in connection with his proceeding on leave to any place in India subject to certain conditions. However, cash allowance, if any, granted in lieu of any travel concession or assistance received by or due to any employee, is presently not exempt. In view of the situation arising out of outbreak of COVID-19 pandemic, the Government had announced tax exemption on cash allowance in lieu of LTC subject to certain conditions. The provision is now amended to give effect to the same.

The tax exemption is now provided even in respect of value (cash allowance) in lieu of Leave Travel Concession (LTC) or assistance subject to the conditions to be prescribed in the Rules. Explanatory Memorandum to the Finance Bill has indicated that such conditions will include-

i) The employee to exercise an option for the deemed LTC fare in lieu of the applicable LTC in the Block Year 2018-21;

ii) Cash Allowance should be spent by an individual or a member of his family during the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021 on goods or services which are -

   a) liable to GST at 12% or above;

   b) procured from GST registered vendors/service providers and;

   c) for which payment is made by an account payee cheque/ bank draft/electronic clearing system or any other mode prescribed under Rule 6ABBA and;

   d) for which tax invoice is obtained.

iii) The amount of exemption is capped at ₹ 36,000/- per person or one third of specified expenditure, whichever is less;

iv) Any amount received in excess of what is allowable as per above conditions shall not be exempt from tax.

This amendment is applicable with effect from Assessment Year 2021-22.

Amount received from unit linked insurance policy (ULIP) - Sections 2(14), 10(10D), 45 (1B) and 112A

Section 10(10D) exempts any sum received under a life insurance policy (including bonus) in respect of which the premium payable for any of the years during the term of the policy does not exceed ten percent of the actual capital sum assured.

With a view to curb the unintended advantage of this exemption being taken by some high networth individuals by claiming exemption under this section by investing in ULIPs with huge premium, certain conditions are provided by way of inserting fourth and fifth provisos whereby an exemption under section 10(10D) will be available for ULIPs only if following conditions are fulfilled:

i) For ULIPs issued on or after 1st February, 2021 the amount of premium payable for any of the previous year during the term of the policy does not exceed ₹ 2,50,000.

ii) Where premium is payable by a person for more than one such ULIP, the cap of ₹ 2,50,000 will be applicable to aggregate amount of premium payable for all such policies,

iii) Provisions of fourth and fifth provisos shall not apply to any sum received on the death of a person and amount received shall continue to be exempt.

ULIPs issued prior to 1st February, 2021 are not governed by this amendment and will continue to enjoy exemption without any cap of premium.

ULIPs to which exemption under section 10(10D) does not apply due to applicability of fourth and fifth provisos, are included within the definition of 'capital asset' as provided under section 2(14).

Any profits or gains arising from amount received under ULIP, including the amount of allocated bonus, which is not exempt under section 10(10D) due to applicability of fourth and fifth provisos will be taxed as under:

a) Receipt of any amount under such ULIP shall be deemed to be capital gains under newly inserted sub- section (1B) of section 45.

b) Further, if such ULIPs are covered by the definition of 'equity oriented fund' given in section 112A, then the provisions of 111A and 112A would apply to such capital gains and will be taxed accordingly.

c) If the ULIP does not satisfy the conditions prescribed in the definition of 'equity oriented fund', then the sale/redemption proceeds will be taxed under section 112.

d) Just like equity oriented mutual funds, now ULIPs would also be subject to STT.

Restriction on exemption of interest on Provident Fund in certain cases – Sections 10(11) and 10(12)

Presently, section 10(11) exempts payments from a provident fund to which the Provident Funds Act, 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. Further, section 10(12) exempts accumulated balance due and becoming payable to an employee participating in a recognised provident fund.

Now, a new proviso is inserted to sections 10(11) and 10(12) to provide that the aforesaid exemption would not apply to the accrued interest to the extent it relates to the contribution of an amount exceeding ₹ 2,50,000 in any previous year in that fund, on or after 1 April 2021, and and the amount of such taxable interest shall be computed in the manner to be prescribed under the Rules.

This amendment is applicable with effect from Assessment Year 2022-23.

[Note: Section 17(1)(vi) defines salary to include annual accretion (includes interest) to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under rule 6 of Part A of the Fourth Schedule. No amendments have been made to these provisions.]

4. CHARITABLE TRUSTS

Increase in threshold for availing exemption for certain institutions – Section 10(23C)(iiiad)/(iiiae)

Presently, income received by any person on behalf of any not-for-profit university or educational institution existing solely for educational purposes referred to in section 10(23C)(iiiad) or any philanthropic not-for-profit hospital or similar institution referred to in section 10(23C)(iiiae) is not taxable if the aggregate annual receipts of such university / educational institution / hospital / institution do not

exceed the prescribed limit of ₹ 1 crore. If it exceeds the limit, then approval is required under clause (vi) and (via) of section 10(23C).

The provisions are now amended to increase the threshold limit for availing the exemption to ₹ 5 crore. Further, this threshold limit is now to be applied to the aggregate receipts of any person from such universities / educational institutions or hospitals / other institutions, as against the receipts of each university / educational institution or hospital / other institution earlier. Further, where a person has receipts from such university / educational institution as also from such hospital / other institution, the threshold limit of ₹ 5 Crore would apply to the aggregate of such receipts from both the category of institutions of the person.

This amendment is applicable with effect from Assessment Year 2022-23.

Restrictions on exemption claimed by charitable trusts / certain funds / institutions – Sections 10(23C) and 11

Presently, voluntary contributions received by charitable trusts and certain funds / institutions, with the specific direction that they shall form part of their corpus, are not taxable without any further conditions. Further, charitable trusts and certain funds / institutions can avail exemption of their income based on application of 85% of its income towards charitable or religious purposes, irrespective of whether such application of income was made using funds received as corpus donations or from loans or borrowings.

The exemption in respect of corpus donations shall now be subject to the condition that such donations are invested or deposited in the specified modes of investments as per section 11(5), maintained specifically for such corpus. Further, application towards charitable or religious purposes made from corpus donations or from any loans or borrowings shall not be treated as application of income for the purpose of determining amount of application (i.e. 85%) u/s. 11(1)(a)/(b). However, the amount which is not treated as application of income, shall be treated as application towards charitable or religious purposes in the previous year in which such loans or borrowings or part thereof is repaid, or the amount of corpus donation or part thereof is invested or deposited back into the specified mode of investment maintained specifically for such corpus, from the income of that year and to the extent of the amount repaid / invested / deposited.

In view of the above amendment the trust/institutions will have to now keep and maintain separate records of such corpus, its investments, use/application and re-investments. Similarly, records for

track of use/ application and repayment of loans/borrowings will also needto be kept and maintained. This will now make administrative burden of such NGO's in this respect further onerous/ complex for carrying out charitable activities

Presently based on judicial precedents, deficit resulting from excess application of income for charitable or religious purposes in a particular year can be set off against the requirement of application of 85% of income in subsequent years as upheld in various judicial precedents.

It is now provided in name of clarification that no deduction or set off or allowance or any excess application of earlier years shall be allowed in determining the income required to be applied or accumulated during the previous year.

These amendments are applicable with effect from Assessment Year 2022-23.

5. PROFITS AND GAINS FROM BUSINESS OR PROFESSION

Depreciation on goodwill - Sections 2(11), 32, 50 and 55

The Supreme Court in the case of Smifs Securities Ltd. 348 ITR 302 (2012) had held that the goodwill of a business or profession is a depreciable asset and depreciation on goodwill is allowable under section 32.

Now it is provided that goodwill of a business or profession will not be considered as a depreciable asset.

Section 2(11) is amended to exclude goodwill of a business or profession from the definition of 'block of assets'.

Section 32(1)(ii) and Explanation 3 to section 32 are amended to provide that goodwill of a business or profession shall not be considered as an asset and shall not be eligible for deprecation.

Proviso is added to section 50(2) to provide that where goodwill of a business or profession formed part of a block of assets and depreciation has been claimed by the assessee thereon under the Act till Assessment year 2020-21, the written down value of that block of assets and short-term capital gain, if any, shall be determined in the prescribed manner.

Section 55(2)(a) is substituted to provide that where goodwill is purchased by an assessee, the purchase price of the goodwill will be considered as cost of acquisition for the purpose of computation of Capital gains under section 48. If the assessee has claimed and

has been allowed depreciation in relation to such goodwill prior to assessment year 2021-22, then the depreciation so claimed by the assessee shall be reduced from the amount of purchase price of the goodwill.

Note: Since these amendments would apply with effect from Assessment Year 2021-22, there may be instances where the advance tax payments will fall short of the amounts payable and consequently, interest under sections 234B and 234C would get attracted. Care may be taken to pay the same at the earliest in order to reduce the impact.

Payment of employee's contribution to a fund after due date - Sections 36(1) and 43B

Section 2(24)(x) states that any sum received by the employer from his employees as contributions to any provident fund or superannuation fund or any such fund set up under the ESI Act shall be considered as income of the employer. At the same time, section 36(1)(va) provides that such sum so received from employee if deposited to the employee's account in such funds on or before due date as specified in the respective Acts shall be allowed as an expenditure while computing business income.

Section 43B provides for allowance of certain categories of expenditure only upon their actual payment. One such expenditure covered under clause (b) is employer's contribution to any provident fund, gratuity fund or superannuation fund or any other welfare fund for employees. If such employer's contribution is paid on or before due date of filing of return of income as specified under section 139(1), assessee would be entitled to claim expenditure.

There were several judgments which have held that the above provisions of section 43B shall equally apply to the employee's contribution made by the employer on or before due date of filing of return of income. (CIT v/s. Ghatge Patil Transports Ltd. 368 ITR 749 Bom HC etc.). The Explanatory Memorandum to the Finance Bill clarifies that there is a striking difference between employer's contribution and employee's contribution as the latter is amount held in fiduciary capacity and both cannot be treated in the same way. In order to emphasize the same, an explanation is introduced in sections 36(1)(va) and 43B to provide that the provisions of section 43B would not apply and deemed to never have been applied for the purposes of determining the due date of payment of employee's contribution. As an effect to the explanations so added, now employee's contribution deposited by the employer shall be allowed only if the same is paid on or before the due date as specified in respective acts.

These amendments are applicable with effect from Assessment Year 2021-22.

Presumptive taxation for professionals – Section 44ADA

Section 44ADA is a special provision for computing profits and gains of specified profession on presumptive basis for assessees resident in India. The current income-tax return utility (ITR – 4 and 5) does not provide an option to LLP to claim benefit of presumptive taxation under section 44ADA.

On the other hand section 44AD specifically provides that it applies to a resident individual / HUF / partnership firm but not LLP.

Section 44ADA has now been amended to provide that section 44ADA will be applicable only to a resident individual, HUF or a partnership firm other than LLP.

This amendment is applicable with effect from Assessment Year 2021-22.

Tax neutral conversion of Urban Co-operative Bank (UCB) to Banking Company – Sections 44DB and 47

Section 47 has been amended to provide that transfer of a capital asset by a primary co-operative bank (UCB) to a banking company as a result of conversion shall not be treated as transfer.

Further, 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.

Consequential amendments have been made under section 44DB (special provision for computing deductions in the case of business reorganization of co-operative banks) so as to make these provisions applicable to such conversion.

This amendment is applicable with effect from Assessment Year 2021-22.

6. CAPITAL GAINS

Increase in safe harbour limits in certain cases - Sections 43CA and 56(2)(x)

Section 43CA provides that where consideration received or accruing to an assessee as a result of transfer of property being land or building or both, held as stock-in-trade, is less than its stamp duty value then the stamp duty value of the property transferred shall be deemed to be the full value of consideration.

The section also provides that where the difference between the stamp duty value of the property so transferred and the full value of consideration thereof is less than 10 per cent of the full value of

consideration received or accruing as a result of the transfer thereof, then for the purposes of computing the profits or gains from transfer of such asset, the consideration received or accruing shall be deemed to be the full value of consideration.

To give effect to what was stated in the Press Conference held on 12th November, 2020, section 43CA has now been amended to increase the aforementioned threshold of 10 per cent to 20 per cent in case of a residential unit. While the Press Release dated 13th November, 2020 did not define the term `residential unit'. The amendment defines the term `residential unit' and higher safe harbor limit of 20% applies if the following conditions are cumulatively satisfied –

i) the property is a residential unit as defined in an Explanation introduced in section 43CA;

ii) transfer of such residential unit takes place during the period from 12th November, 2020 to 30th June, 2021;

iii) the transfer is by way of first-time allotment of the residential unit to any person;

iv) the consideration received or accruing as a result of such transfer does not exceed ₹ 2 crore.

Explanation to section 43CA(4) has been inserted to define the term "residential unit" as 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.

Section 56(2)(x) has also been amended to provide consequential relief to buyers of such residential units by increasing the safe harbour from 10% to 20% in certain cases.

These amendments are effective from Assessment Year 2021-22.

Transfer of capital asset to partner on dissolution or reconstitution of Firm etc. – Sections 45(4), 45(4A) and 48

Hitherto, section 45(4) provided that profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of specified entity or otherwise, shall be chargeable to tax as the income of such specified entity of the previous year in which the said transfer takes place.

Section 45(4) was hitherto applicable in case of distribution of capital asset on the dissolution of a firm or other association of persons or body of individuals or otherwise. The amended section now specifically covers receipt of a capital asset by a specified person on reconstitution of specified entity. Further, the section did not apply to payment of sum of money to specified person. Newly introduced sub-section (4A) now covers this.

Existing sub-section 4 is now substituted to cover receipt of capital asset by a specified person at the time of dissolution or reconstitution of a specified entity. Hence, the section would now also apply to receipt of a capital asset by a specified person on retirement. Where a capital asset is received by the specified person representing the balance in his capital account in the books of the specified entity, the profits or gains arising from receipt of such capital asset by the specified person shall be chargeable to tax under the head 'capital gains' in the hands of the specified entity in the year in which the capital asset is received by the specified person. Fair market value of the capital asset, on the date of receipt, shall be deemed to be the full value of the consideration accruing as a result of transfer and the cost of acquisition shall be computed as per the provisions of the Act.

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

Subsection (4A) is introduced to cover a case where a specified person receives money or asset in excess of his capital balance in the books of account of the specified entity at the time of dissolution or reconstitution of the specified entity. The profits or gains arising from receipt of such money or other asset by the specified person shall be chargeable to tax under the head 'capital gains' in the hands of the specified entity in the year in which money or other asset is received by the specified person.

The value of money or the fair market value of other asset on the date of receipt shall be deemed to be the full value of the consideration accruing as a result of transfer and the balance in the capital account of the specified person in the books of account of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition for the purpose of section 48.

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

Terms 'specified person' which includes partners etc, specified entity' which includes firm etc, 'self-generated goodwill' and self-generated assets' are also defined in the section.

Section 48 is consequently amended to provide that in case of specified entity the amount included in total income of such specified entity under section 45(4A), which is attributable to the capital asset being transferred shall be deducted while computing 'capital gains'. The manner to compute this amount shall be prescribed.

These amendments are applicable with effect from Assessment Year 2021-22.

Extension of sunset clause and extension of date of incorporation for start-ups to avail tax incentives - Sections 54GB and 80-IAC

The existing provisions of section 54GB provide exemption of capital gain to individuals and HUFs from transfer of a long-term capital asset, being a residential property (a house or a plot of land), before 31st March, 2021, where such persons utilise the consideration for subscription in the equity shares of an eligible start-up which in turns utilizes the subscription amount for purchase of new asset. Such tax exemption is now extended for transfers made up to 31st March, 2022.

Currently, start-ups incorporated between 1st April 2016 and 31st March 2021, having turnover less than or equal to ₹ 100 crore are eligible to claim deduction in 3 consecutive years out of 10 years. This deduction is now extended to start-ups incorporated up to 31st March 2022.

7. DEDUCTIONS UNDER CHAPTER VI-A

Extension of date of sanction of loan for afforable residential house property in case of first time home buyers - Section 80EEA

The existing provision of the section 80EEA, provide a deduction up to ₹ 150,000 in respect of interest on loan taken for a affordable residential house property by first time home buyers from any financial institution subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021.

The date for sanction of such loan has now been extended to 31st March, 2022.

Incentives for Affordable Rental Housing Projects – Section 80-IBA

Profits and Gains derived from the business of developing and building Affordable Housing Projects are presently deductible under section 80-IBA subject to certain conditions. One of the conditions is that the project is approved by the competent authority after 1st June 2016 but on or before 31st March, 2021.

The scope of this section is expanded to allow deduction even to such Affordable Rental Housing Projects which are notified by the Central Government in the Official Gazette fulfilling the conditions to be specified in the notification. Further, the outer time limit of 31st March, 2021 for getting the affordable housing project and affordable rental housing project approved is extended to 31st March, 2022.

8. SPECIAL CASES

Amendments in relation to International Financial Services Centre (IFSC)

Government has presently provided certain tax concessions for units located in IFSC. The IFSC is regulated under the International Financial Services Centre Authority Act, 2019.

The Government has now introduced following further incentives for units located in IFSC-

— New sub-section (8A) is introduced under section 9A to relax or modify the conditions specified in section 9A(3) and 9A(4), and thereby giving benefit to a fund manager located in IFSC.

— New sub-clause (viiac) is introduced under section 47 to provide that the transfer of capital asset from a non-resident original fund to an Indian resulting fund located in IFSC, would not be regarded as a taxable transfer. Similar exemption is provided to the unit holder of the original fund that receives similar rights in resulting fund. Consequential amendments are made in sections 49, 56 and 79.

— The exemption of income from transfer of a capital asset on a recognized stock exchange located in IFSC under section 10(4D) shall be available to the investment division of an offshore banking unit to the extent income is attributable to it. Corresponding amendments are made in section 115AD.

— New sub-section (4E) is introduced in section 10 to grant exemption to income arising from transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC, subject to conditions as may be subsequently prescribed.

— New sub-section (4F) is introduced in section 10 to grant exemption to royalty income derived by a non-resident on account of lease of an aircraft by a unit in IFSC, subject to conditions prescribed therein. Similarly, section 80LA(2)(d) is amended to provide for 100% deduction of income arising from transfer of an aircraft or aircraft engine which was leased by a unit in IFSC to a domestic company engaged in the business of operation of aircraft before such transfer, subject to conditions prescribed therein.

These amendments are applicable with effect from Assessment Year 2022-23.

Facilitating strategic disinvestment of public sector company - Section 72A(1)

Section 72A(1)(c) provides for relaxation of provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in cases pertaining to amalgamation of the public sector companies engaged in the business of operation of aircraft.

Section 72A(1)(c) has now been amended to cover amalgamation of public sector company(ies) with other public sector company(ies) irrespective of the nature of business carried on by the said companies.

Further, section 72A(1) is also made applicable by insertion of clause (d) 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.

This amendment is applicable with effect from Assessment Year 2021-22.

Relief from Taxation on income from retirement benefit account maintained in a notified country – Section 89A

Presently, there is a mismatch in the year of taxability of withdrawal from retirement funds, opened in foreign countries by residents when they were non-residents, as such withdrawal may be taxed on receipt basis in such foreign countries, and on accrual basis in India. This creates problem of claiming tax credit in India as the tax would be deducted at the time withdrawal whereas income is taxable on accrual basis in an earlier year.

It is now provided that the income of a specified person from specified account shall be taxed in the manner and in the year as maybe prescribed. Specified person has been defined to mean a person resident in India who has opened a specified account in a notified country while being a non-resident in India and resident of that notified country.

Specified Account for this purpose means an account maintained in a notified country for retirement benefits and income from such account is not taxable on accrual basis but is taxed at the time of withdrawal or redemption by such country. The intention seems to be to cover retirement plans like 401K Plan or Individual Retirement Account Plan of the USA.

This amendment is applicable with effect from Assessment Year 2022-23.

Amendments in MAT – Section 115JB

Dividend income is now taxable in the hands of shareholders and in case of a foreign company, dividend received on its investment in India could be taxable at concessional tax rate provided in the applicable DTAA, which is less than MAT liability under section 115JB.

To exclude dividend received and expenses claimed in respect thereof for the purposes of calculation of book profit, it is now provided that such dividend income will be reduced and the expenses claimed in respect there of shall be added back while computing book profit in case of a foreign company, where such income is taxed at lower rate than MAT rate due to application of DTAA.

Presently, the computation of book profit does not have any provision for adjustment on account of inclusion of income of past year(s) in the books of account during the previous year on account of advance pricing agreement under section 92CC or a secondary adjustment under section 92CE.

It is now provided that on an application, the Assessing Officer shall recompute the book profit of the past year(s) and tax payable during the previous year, in the prescribed manner and the provision of section 154 shall, so far as may be, apply and the period of 4 years under section 154(7) shall be reckoned from the end of financial year in which the said application is received by the Assessing Officer. The manner of recomputation would be notified in the rules to be prescribed.

These amendments are applicable with effect from Assessment year 2021-22.

9. TAX DEDUCTED AT SOURCE AND TAX COLLECTED AT SOURCE

Exemption of TDS on payment of dividend to a Business Trust – Section 194

Section 194 providing for TDS on payment of dividends to a resident, now provides that this section shall not apply to dividends credited or paid to (a) a business trust i.e. Infrastructure Investment Trust or Real Estate Investment Trust by a Special Purpose Vehicle, apparently due to pass through status of a business trust or (b) to any other notified person.

This amendment is applicable retrospectively from 1st April 2020.

Relaxation from filing return of income for certain category of resident senior citizens - Section 194P

Certain category of resident senior citizens of the age of 75 or more have been exempted from filing of return of income subject to fulfilment of below conditions:

1) Such senior citizen should have only pension income. Additionally, such senior citizen may also have interest income from the same specified bank in which he/ she is receiving the pension; and

2) Such senior citizen will be required to furnish a declaration to the specified bank.

Specified bank has been defined as a banking company which will be notified by the Central Government in Official Gazette.

In case of a specified senior citizen, the specified bank shall, after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A, compute the total income of such specified senior citizen for the relevant assessment year and deduct income-tax on such total income on the basis of the rates in force.

However, it may be noted that if a senior citizen has any other income such as capital gains, income from house property etc., then the exemption from filing return of income will not apply.

This amendment is applicable with effect from 1st April, 2021. However, since the provision is made for TDS, and also provides for relaxation from filing Return of Income, it appears that actual relaxation for filing return of Income will be available from Assessment Year 2022-23.

TDS on payment made to FIIs – Section 196D

Section 196D provides for TDS at the rate of 20% on income of FIIs from securities referred to in section 115AD(1)(a), other than interest under section 194LD. Due to specific rate of 20%, the benefit of lower rate under the DTAAs cannot be given at the time of TDS.

It is now provided that in case of an FII to whom a DTAA applies, TDS shall be deducted at the rate of 20% or the rate as per the applicable DTAA, whichever is lower upon furnishing of a tax residency certificate.

This newly inserted proviso will be applicable for dividends declared and paid on or after 1st April, 2021.

Withholding tax on purchase of goods - Sections 194Q and 206AA

A new section 194Q has been inserted which provides for 0.1% TDS on purchase of any goods in excess of ₹ 50 lakh by a buyer whose total sales/ turnover/ gross receipts from business exceeds ₹ 10 crore during the financial year immediately preceding the current financial year.

In case the seller does not have a PAN, the applicable rate of TDS will be 5%.

Such provisions will not be applicable where the transaction is subject to TDS/ TCS under any other provisions of the Act, other than TCS on sale of goods as provided in section 206C(1H).

In case the buyer has deducted tax on purchase of goods then the seller will not be required to collect taxes as provided in section 206C(1H) i.e. if TDS and TCS as per section 206C(1H) are applicable on a transaction, then only TDS will apply on such transaction.

The above amendment is effective from 1st July 2021.

Higher rate of TDS/TCS prescribed for non-filers of Income-tax Returns (ITR) – Sections 206AB, 206CCA and 194-IB

The existing provisions of the Act prescribe a higher rate of TDS/TCS for non-furnishing of PAN under sections 206AA and 206CC respectively.

New sections 206AB and 206CCA have been introduced as a measure to ensure filing of income tax returns by persons who have suffered TDS / TCS.

These provisions would apply notwithstanding anything contained in any other provisions of the Act where tax is required to be

deducted/collected under Chapter XVII-B except to sections 192, 192A, 194B, 194BB, 194LBC or 194N.

The above provisions shall put the additional unavoidable burden on the deductor (payer) to withhold such higher TDS/TCS in case of specified persons as under:

Particulars	TDS rates – Section 206AB	TCS rates – Section 206CCA
A. twice the rate specified in the relevant provision of the Act; or	Higher of A or B or C	Higher of A or C
B. twice the rate rates in force;or		
C. the rate of percent		

Specified person being:

— Person who has not filed ROI for two immediate years preceding the year in which tax is required to be deducted/collected;

— Time limit to file ROI under section 139(1) for the aforementioned period has expired;

— Aggregate of TDS and TCS exceeds ₹ 50,000 in each of two preceding years; and

— Excludes non-resident not having a PE in India.

If the specified person does not furnish PAN, aforementioned rate or rate prescribed for non-furnishing of PAN under section 206AA or 206CC, whichever is higher, shall apply.

Certain clarification/notification is required to deal with the following practical challenges/additional responsibilities on deductor (payer) laid down while undertaking the transactions with deductee (not exhaustive list):

— To identify such deductees (payees) who have defaulted in filing income tax returns in the absence of readily available data;

— To obtain declaration/proof from deductees (payees);

— Deductees (payee) may or may not provide such data;

— Difficult to create a trail for the purpose of tax deduction/ collection

Further, a consequential amendment has been made in sub-section (4) of section 194-IB, relating to payment of rent by certain individuals or HUF, where tax is required to be deducted as per the provisions of section 206AA or section 206AB, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

These amendments are applicable with effect from 1st July, 2021.

Interest on shortfall in payment of advance tax on Dividend income - Section 234C(1)

Currently as per proviso to section 234C(1), no interest is payable on shortfall in payment of advance tax on dividend income, as specified under section 115BBDA, other than dividend specified in section 2(22)(e), declared, distributed or paid on or before 31st March, 2020.

Now, it is amended to provide that no interest under section 234C(1) would be payable in respect of short fall in advance tax on any dividend income, other than dividend specified in section 2(22)(e), earned by any assessee, if the whole of advance tax payable on such dividend is paid as a part of remaining instalments of advance tax or before 31st March of the financial year, as the case may be.

This amendment is applicable with effect from Assessment Year 2021-22.

10. FILING OF RETURNS, ASSESSMENTS, APPEALS AND PENALTIES

Increase in threshold for tax audit in specified cases - Section 44AB

Currently as per proviso to section 44AB(a), a person carrying on business and having total sales, turnover or gross receipts, as the case may be, in business up to ₹ 5 crore is not required get to his accounts audited under section 44AB(a), if aggregate of all his receipts in cash do not exceed 5% of total receipts and aggregate of all his payments in cash do not exceed 5% of total payments. Now the upper limit of total sales, turnover or gross receipts in the said proviso has been raised to ₹ 10 crore.

It may be noted that there is no change in basic threshold limit of ₹ 1 crore under section 44AB.

This amendment is applicable with effect from Assessment Year 2021-22.

Due date for furnishing return of income by a partner of a firm which is subject to a transfer pricing audit – Section 139

The due date for furnishing the return of income in case of an assessee who is required to furnish a transfer pricing audit report referred to in section 92E is 30th November of the relevant assessment year. Such an extended period to furnish the return of income on or before 30th November is now made available to the partner of the firm which is required to furnish the transfer pricing audit report.

This amendment is applicable with effect from Assessment Year 2021-22.

Due date for furnishing return of income by spouses governed by Portuguese Civil Code – Sections 5A and 139

Section 5A provides for taxation of spouses governed by Portuguese Civil Code and on account of this provision, any income earned by a partner of a firm whose accounts are required to be audited is to be apportioned between the partner and the spouse and included in their respective total income, if section 5A applies to them.

Since the total income of a partner can be determined after the books of accounts of such firm have been audited, the due date of partners i.e. 31st October are already aligned with the due date of the firm. However, this relaxation was not there for spouse of such partner to whom section 5A applies.

Therefore, it is now provided that the due date for the filing of original return of income be extended to 31st October in case of spouse of a partner of a firm whose accounts are required to be audited, if the provisions of section 5A applies to them.

This amendment is applicable with effect from Assessment Year 2021-22.

Time limit to furnish the belated return and revised return – Section 139

Presently, section 139(4) provides for filing of the belated return at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. Similarly, section 139(5) provides for filing of the revised return at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

This time limit to furnish the belated return as well as the revised return is now reduced by three months. Thus, the belated return or revised return cannot be filed after 31st December of the

relevant assessment year or after the completion of the assessment, whichever is earlier.

However, the amendment is worded in such a manner that it means that the belated return and the revised return can be filed only within three months before the end of the relevant assessment year i.e. during the period from 1st January to 31st March of the relevant assessment year or before the completion of the assessment, whichever is earlier.

This amendment is applicable with effect from Assessment Year 2021-22.

Relaxation from the return being regarded as a defective return in certain cases – Section 139

Explanation to section 139(9) provides for several conditions that are required to be satisfied so that the return of income may not be regarded as a defective return. In order to relax these conditions in genuine cases, a proviso is inserted to the said Explanation empowering the Board to specify by a notification that any of the conditions shall not apply to such class of assessees or shall apply with such modifications, as may be specified.

This amendment is applicable with effect from Assessment Year 2021-22.

Issuance of notice to non-filers of return – Section 142

Section 142(1)(i) authorizes the Assessing Officer to issue notice to any person who has not filed his return of income within the time allowed under section 139(1) requiring him to submit his return of income. Recently, the assessment, as well as several other processes under the Act, have been made completely faceless, and the physical interface with the assessee has been eliminated. In line with this policy, and in order to enable centralized issuance of notices in an automated manner, the income-tax authority to be prescribed for this purpose is also allowed to issue the notice under this provision requiring the person to furnish his return of income, if he has not submitted it on or before the due date.

This amendment is effective from 1st April, 2021.

Processing of return – Section 143(1)

The provisions of section 143(1) relating to the processing of return are amended as follows:

1) The present scope of adjustments to be made while processing the return includes disallowance of expenditure which is

indicated in the audit report but not taken into account while computing the total income in the return filed by the assessee. It does not allow the adjustment for any increase in income as reported in the audit report. Therefore, the scope is now expanded to provide for the adjustment of increase in income which is indicated in the audit report but not taken into account while computing the total income in the return filed by the assessee.

2) Section 80AC provides that certain deductions shall not be allowed to the assessee unless the return of income is filed by the assessee on or before the specified due date. The Finance Act, 2018 had amended the provisions of section 80AC to expand its scope to all types of deductions admissible under Part C of Chapter VI-A. However, the scope of adjustments as provided in section 143(1) was restricted to the disallowance of certain deductions, which were specified therein in case of non-filing of return on or before the specified due date. Section 143(1) is now amended so as to align it with the provisions of section 80AC to disallow all types of deductions which are otherwise admissible under Part C of Chapter VI-A in such a case.

3) The time limit for sending intimation is reduced from one year from the end of the financial year in which the return is filed, to nine months from the end of such financial year.

These amendments are effective from 1st April, 2021.

Time limit for service of notice – Section 143(2)

For the purpose of making an assessment under section 143(3), the notice is required to be served on the assessee under section 143(2). The time limit for service of such notice under section 143(2) is reduced from six months from the end of the financial year in which the return is furnished to three months from the end of such financial year in which the return is furnished.

This amendment is effective from 1st April, 2021.

Time limit for completion of assessments under sections 143 and 144-Section 153

Section 153 is amended to provide that, for completion of assessments of AY 2021-22 and onwards, the time limit for completion

shall be 9 months from the end of the assessment year. The amended time limits are as under:

Assessment Year	Time limit to complete assessments	Due date
2018-19	18 months from the end of the assessment year	30.09.2020 - now extended to 31.03.2021 by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.
2019-20	12 months from the end of the assessment year	31.03.2021
2020-21	12 months from the end of the assessment year	31.03.2022
2021-22 and Onwards	9 months from the end of the assessment year	31.12.2022

This amendment is effective from 1st April, 2021.

Assessment or reassessment of income escaping assessment and assessment in case of search or requisition – Sections 147, 148, 148A, 149, 151, 151A, 153A and 153C

Presently, the assessment or reassessment in cases where income chargeable to tax has escaped assessment is required to be made in accordance with the provisions of sections 148 to 153 and the assessment of search or requisition related cases is required to be made in accordance with the provisions of sections 153A to 153D. A completely new procedure of assessment in both these cases is provided as under –

1) Section 153A and 153C have been made inapplicable to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after 1st April, 2021. Therefore, there will not be any special provisions in the Act dealing with the assessment related to cases of search or requisition. The assessment in such cases now will have to be made in accordance with the general provisions for making the assessment or new provisions for making the assessment or reassessment of income escaping the assessment as the case may be.

2) The provisions of section 147 have been substituted by new provisions whereby the Assessing Officer may assess or reassess any income chargeable to tax which has escaped assessment for any assessment year or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year. This is now not subject to any conditions like recording of reasons to believe etc. as were provided under the erstwhile provisions of section 148 except that it is subject to the provisions of sections 148 to 153 which are discussed below.

3) It is further provided in section 147 by way of an Explanation that the Assessing Officer may assess or reassess the income in respect of any other issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under section 147, irrespective of the fact that the provisions of new section 148A have not been complied with.

4) The provisions of section 148 have also been substituted by new provisions whereunder the Assessing Officer is required to serve a notice on the assessee requiring him to furnish within such period, as may be specified in such notice, a return of his income. The other provisions of the Act have been made applicable to the return to be filed in response to this notice, so far as may be, as if such return were a return required to be furnished under section 139.

5) The prerequisites for issuing the notice under section 148 are as follows:

   a) 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,

   b) The Assessing Officer has obtained prior approval of the specified authority to issue such notice, and

   c) The provisions of section 148A are complied with to the extent they are applicable.

6) For this purpose, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means –

   a) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

b) any 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 made in accordance with the provisions of this Act.

7) In the following cases, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years as specified –

Type of a case	***Period of three assessment years***
Search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st April, 2021, in the case of the assessee.	Three assessment years immediately preceding the assessment year relevant to the previous year in which the search was initiated or requisition was made.
Survey is conducted under section 133A in the case of the assessee on or after the 1st April, 2021.	Three assessment years immediately preceding the assessment year relevant to the previous year in which the survey was conducted.
Type of a case	***Period of three assessment years***
Assessing Officer is **satisfied**, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st April, 2021, belongs to the assessee.	Three assessment years immediately preceding the assessment year relevant to the previous year in which money, bullion, jewellery or other valuable article or thing seized or requisitioned in case of that other person.
Assessing Officer is **satisfied**, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.	Three assessment years immediately preceding the assessment year relevant to the previous year in which books of account or documents, seized or requisitioned in case of that other person.

8) New section 148A is inserted which provides for the procedure which the Assessing Officer needs to follow before issuing any notice under section 148. This procedure is as follows:

   a) The Assessing Officer may conduct any enquiry, if required, with respect to the information which suggests that the income chargeable to tax has escaped assessment.

   b) The Assessing Officer shall provide an opportunity of being heard to the assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any. The assessee is required to respond within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended on the basis of an application in this behalf.

   c) The Assessing Officer needs to consider the reply furnished by the assessee, if any, in response to such show-cause notice.

   d) Then, the Assessing Officer shall decide whether or not it is a fit case to issue a notice under section 148, by passing an order. This order needs to be passed within the specified time which is one month from the end of the month in which the reply to notice was received by him, or where no such reply was furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply expired.

9) The copy of the order passed as aforesaid under clause (d) of section 148A is required to be served on the assessee along with the notice issued under section 148.

10) Section 151A as inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 providing for faceless assessment of income escaping assessment has also been amended suitably to refer the procedure to be completed under section 148A.

11) The aforesaid procedure as provided in section 148A is not applicable in the following cases where –

   a) Search is initiated under section 132 or books of account, other documents or any assets are requisitioned under

section 132A in the case of the assessee on or after 1st April, 2021;

b) Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after 1st April, 2021, belongs to the assessee;

c) Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after 1st April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

12) Section 149 provides time limit for issuing notice under section 148 which is as follows:

Type of a case	***Time limit for issuing notice under section 148***
If the Assessing Officer 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 ₹ 50,00,000 or more for that year	Ten years from the end of the relevant assessment year
Any other case	Three years from the end of the relevant assessment year

13) It is provided that the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court shall be excluded for the purpose of computing the aforesaid period of limitation. If, after excluding this period, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and also the aforesaid period of limitation shall be deemed to be extended accordingly.

14) In relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before 31st March, 2021, the assessment needs to be made in accordance with the erstwhile provisions of section 153A or section 153C read with section 153A. Therefore, in such cases, the aforesaid (newly enacted) time limit shall not be applicable for issuing the notice under the erstwhile provisions of section 153A.

15) Further, it is provided that notice under the provisions of section 148 as now substituted shall not be issued for any assessment years beginning on or before 1st April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of the erstwhile section 148(1), as they stood immediately before the commencement of the Finance Act, 2021.

16) The Assessing Officer is required to obtain prior approval of the specified authority for –

- conducting any enquiry, if required as provided in clause (a) of section 148A, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- providing an opportunity of being heard to the assessee as provided in clause (b) of section 148A by serving a notice to show cause as to why a notice under section 148 should not be issued;
- passing an order as provided in clause (d) of section 148A deciding whether or not it is a fit case to issue a notice under section 148;
- issuing a notice under section 148 requiring the assessee to furnish his return of income.

17) Section 151 provides that the 'specified authority' for this purpose shall be as follows:

Type of a case	***Specified Authority***
If three years or less than three years have elapsed from the end of the relevant assessment year	Principal Commissioner or Principal Director or Commissioner or Director
If more than three years have elapsed from the end of the relevant assessment year	Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General

These amendments are applicable with effect from 1st April, 2021.

Provisional attachment in the case of pending penalty proceedings for false entry or omission of any entry under section 271AAD - Section 281B

Hitherto provisions of provisional attachment under section 281B applied during pendency of any proceedings for assessment of any income or assessment or reassessment of escaped income.

Now provisional attachment can be made even in the case of pendency of penalty proceedings, where the amount or aggregate amount of penalty likely to be imposed exceeds ₹ 2 crore in respect of any false entry or omission from making any entry in the books of accounts as referred to in section 271AAD.

Penalty provisions of section 271AAD were inserted by the Finance Act, 2020 providing for levy of penalty for making any false entry or omission from making any entry in the books of accounts to evade tax liability with effect from Assessment Year 2021-22.

The above amendment is effective from 1st April, 2021.

Faceless ITAT – Section 255

A faceless scheme for Income Tax Appellate Tribunal (ITAT) proceedings has been introduced. New sub section is added under section 255 to provide that Central Government may notify a scheme for purposes of disposal of appeals by ITAT so as to impart greater efficiency, transparency and accountability by introducing an appellate system with dynamic jurisdiction on similar lines of faceless assessment and appeals scheme.

It is also provided that such directions to amend and relax provisions of other sections of the Act shall be issued on or before 31st March, 2023.

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

Discontinuation of Settlement Commission and transfer of pending cases to Interim Board - Sections 245A, 245AA, 245B, 245BC, 245BD, 245C, 245D, 245DD, 245F, 245G, 245H, 245M

Income-tax Settlement Commission shall cease operations w.e.f. 1st February 2021 and pending applications will be dealt with by an Interim Board to be constituted by the Central Government. On or after 1.2.2021 –

i) the powers and functions of ITSC under sections 245DD, 245F, 245G, 245H shall be exercised by the Interim Board and the

provisions of these sections shall mutatis mutandis apply to the Interim Board as they apply to the ITSC; and

ii) no application shall be made under section 245C for settlement of cases.

An application made under section 245C shall be treated as a pending application if such an application has not been declared to be invalid and, on or before 31st January, 2021, no order has been issued under section 245D(4). Applications made before 1st February 2021 in respect of which no order has been passed before 1st February 2021 declaring them to be invalid, shall be treated as valid pending applications. In respect of pending applications, the assessee has an option to withdraw such an application within a period of three months from the date of commencement of the Finance Act, 2021. Upon withdrawal of the application, the Assessing Officer has to be intimated in a prescribed form and the proceedings qua the application shall abate and the income-tax authority before whom the proceedings were pending, at the time when the application was made, shall dispose of the case in accordance with the provisions of the Act as if no application was made under section 245C.

For making the assessment or reassessment, the period from the date of making the application under section 245C till the date of withdrawal of the application shall be excluded for the purpose of time limit under sections 149, 153, 153B, 154 and 155 and for the purpose of payment of interest under section 243 or 244 or, as the case may be, section 244A. Income-tax authority shall not be entitled to use the material and other information produced by the assessee before ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceedings before it. However, this restriction shall not be applicable in relation to the material and other information collected, or results of inquiry held or evidence recorded by the income-tax authority during the course of any other proceeding under the Act, irrespective of whether such material or other information or results of the inquiry or evidence was also produced before the ITSC.

Where an application is not withdrawn by the assessee, the pending application shall be deemed to be received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board. Upon allotment / transfer of an application to an Interim Board, all the records, documents and evidence with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes;

The Central Government may, by notification, make a scheme for the faceless settlement in respect of pending applications by the Interim Board.

The above amendments are effective from 1st February, 2021.

11. INCOME DECLARATION SCHEME

No interest on refund of excess tax etc. under Income Declaration Scheme, 2016

The Income Declaration Scheme, 2016 contained in Chapter IX of the Finance Act, 2016, was amended vide Finance (No. 2) Act, 2019 by inserting a proviso to section 191 of the Finance Act, 2016, empowering the CDBT to specify a class of persons to whom tax paid in excess, under the Scheme shall be refundable.

The said proviso is amended to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration shall be refundable to the specified class of persons without any interest.

This amendment is applicable retrospectively from 1st June 2016.

12. DISPUTE RESOLUTION SCHEME – CHAPTER XIX-AA – SECTION 245MA

In order to provide early tax certainty to small and medium taxpayers, provisions have been made to introduce a new scheme aimed at preventing new disputes and settling the issue at the initial stage. The new scheme is facilitated in the Act by inserting a new section 245MA. It provides as follows –

- The Central Government has been empowered to constitute one or more Dispute Resolution Committee (DRC) in accordance with the Rules to be made for this purpose.
- The DRC shall resolve disputes of such persons or class of persons which shall be specified by the Board. Such specified person may opt for dispute resolution in respect of dispute arising from any variation in the 'specified order' in his case.
- The 'specified order' is defined for this purpose as the order, including draft order, as may be specified by the Board, and subject to further conditions as specified below –
    - o aggregate sum of variations proposed or made in such order does not exceed ₹ 10,00,000;
    - o such order is not based on search initiated under section 132 or requisition under section 132A in the case of assessee or any other person or survey under section 133A or information received under an agreement referred to in section 90 or section 90A;
    - o where return has been filed by the assessee for the assessment year relevant to such order, total income as per such return does not exceed ₹ 50,00,000.

- Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified for this purpose.
- The Board has been also authorized to prescribe some other conditions which would also need to be satisfied for being eligible under this provision.
- The DRC, subject to such conditions, as may be prescribed, shall have the powers to reduce or waive any penalty imposable under the Act or grant immunity from prosecution for any offence punishable under the Act in case of a person whose dispute is resolved.
- The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution under this provision so as to impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes 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 31st March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- There is no clarity with respect to several aspects of the scheme like whether the option to resolve the dispute is in addition to the right of filing the appeal as per the provisions of the Act, whether the interest chargeable on the additional tax liability shall be waived, whether the assessee is required to make any payment against the notice of demand for opting under the scheme, the time limit within which the final liability determined by the committee is payable etc.

This amendment is effective from 1st April, 2021.

13. ADVANCE RULINGS

Creation of Board for Advance Rulings in place of Authority for Advance Rulings - Sections 245N to 245W

The Authority for Advance Rulings (AAR) shall cease to operate from a date to be notified by the Central Government. In its place, one or more Boards of Advance Rulings (BAR) shall be constituted by Central Government from the notified date for giving advance rulings.

BAR shall consist of two members, each being an officer not below the rank of Chief Commissioner of Income-tax, as may be nominated by CBDT. Accordingly, consequential amendments to sections 245N to 245V have been made. Some of the important amendments are as under-

a) The definition of the term 'applicant' has been amended to exclude applicants defined under indirect tax laws viz. Customs, Central Excise and Service Tax from the notified date.

b) It has now been provided that orders of the BAR shall not be binding on either party and if aggrieved, the ruling can be appealed before the High Court by either of the parties.

c) Further, Central Government has been empowered to frame necessary scheme for the purpose of giving advance rulings and for the purpose of filing of appeal to the High Court, so as to impart greater efficiency, transparency and accountability by optimising utilisation of resources through economies of scale and functional specialisation; and introducing team based mechanism with dynamic jurisdiction. To give effect to the scheme, the Government has time up to 31st March 2023 to notify certain provisions of the Act that will not apply, conditionally or otherwise for the purpose of giving effect to the scheme for advance rulings and for appeals arising from the advance rulings. Such scheme shall be laid before each House of Parliament.

d) It has also been provided that in case where application has been made before AAR and no order has been passed in respect of such application as of the notified date, the pending application will be transferred to BAR.

14. AMENDMENT TO EQUALISATION LEVY - SECTIONS 163 OF FINANCE ACT, 2016

Section 163(3) deals with application of Equalisation Levy on consideration received or receivable for specified services and for e-commerce supply or services. A proviso has been inserted in 163(3) to provide that consideration received or receivable for specified services and for e-commerce supply or services shall not include the consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the double tax avoidance agreements notified under section 90 or section 90A.

Clause (cb) of the section 164 defined the term "e-commerce supply or services". An explanation has been inserted to provide that for the purpose of the said definition, the term "online sale of goods"

and "online provision of services" shall include one or more of the following online activities, namely:

a) acceptance of offer for sale; or

b) placing of purchase order; or

c) accepting of the purchase order; or

d) payment of consideration; or

e) supply of goods or provision of services partly or wholly.

Section 165A(3) defined the term "specified circumstances" for the purpose of section 165A(1)(ii). Now, the said definition of the term "specified circumstances" is modified and brought under clause (a) and a new clause (b) has been inserted.

The newly inserted clause (b) provides that consideration received or receivable from e-commerce supply or services shall include consideration for sale of goods, irrespective of whether the e-commerce operator owns the goods, and consideration for provision of services, irrespective of whether service is provided or facilitated by the e-commerce operator.

Further, section 10(50) of the Income-tax Act, 1961 has been amended to exclude from the scope of total income, any income arising from e-commerce supply or services made or provided or facilitated, on or after the 1st April, 2020 and chargeable to Equalisation Levy. Earlier, the exemption was applicable only in respect of e-commerce supply or services provided or facilitated on or after 1st April 2021.

15. CLARIFICATION ON VIVAD SE VISHWAS (VSV) SCHEME

The Vivad se Vishwas Act, 2020 was enacted on 17th March 2020, with the objective of reducing pending income tax litigation before any appellate forum.

With retrospective effect from 17th March 2020, it is clarified that a person in whose case a writ or SLP or any other proceeding has been filed either by the taxpayer or by a tax authority or by both before an appellate forum, arising out of an order of ITSC, and such petition or appeal is either pending or is disposed of, shall not be eligible to be covered under the VsV Scheme.

The same was earlier clarified in Q. No. 63 of Circular No. 21/2020 dated 4th December 2020 and it is now incorporated by amending Vivad se Vishwas Act, 2020.

INDIRECT TAXES

Amendments to The GST Law Proposed By Budget 2021-22

The following amendments will come into force on such date as the Central Government may by notification in the Official Gazette appoint after the enactment of Finance Bill 2021.

1) The scope of supply under Section 7(1) is proposed to be enlarged to also include the activities or transactions by a person (other than individuals) to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. The said amendment seeks to overcome the Supreme Court verdict in the case of State of West Bengal vs. Calcutta Club Limited 2019-TIOL-449-SC-ST-LB wherein the principle of mutuality was held applicable to VAT and service tax proceedings. A consequential amendment is also sought to be carried out in Schedule II. The amendments are proposed to be given retrospective effect from 01.07.2017 and would have far-reaching implications in the case of clubs and co-operative societies which were until now not paying GST claiming principle of mutuality.

2) An additional condition is sought to be introduced in Section 16(2) whereby the availing of input tax credit by recipient is made conditional upon the supplier furnishing the details of the invoice/debit note in GSTR-1 and communication thereof to the recipient in a manner specified in section 37. Once this amendment is notified, the tolerance limit of 5% provided for unmatched credits under Rule 36(4) may become redundant.

3) The requirement to get the annual accounts audited under section 35 and to submit a certified reconciliation statement in Form GSTR 9C is proposed to be done away with. Instead, section 44 is proposed to be amended to include an optional self-certified reconciliation statement as a part of Form GSTR 9 itself. It may therefore appear that the requirement to submit the certified reconciliation statement in GSTR 9C for period ended 31 March 2020 continues and the due date for the same is currently stated to be 28 February 2021. Besides, Central Government, State Government or a local authority, whose books of accounts are subject to audit by C&AG or an auditor appointed for auditing the accounts of local authorities under any law are exempted from the requirement of filing of Annual return u/s 44.

4) The proviso to Section 50(1) requiring the payment of interest on account of a delayed payment of tax only on the net amount of tax (i.e. portion of the tax that is paid by debiting electronic cash ledger) is sought to be given retrospective effect from 1 July 2017.

5) Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit separate from the proceeding for determination of tax under section 74. Accordingly, the closure of proceedings under section 74 would not amount to the automatic closure of proceedings under sections 129 and 130.

6) Section 75(12) provides for automatic recovery of taxes or interest that are self-assessed but unpaid. The said provision is sought to be amended to also include the tax payable in respect of outward supplies declared in the return under section 37 (GSTR1) but not included in the return under section 39 (GSTR3B).

7) The scope of Section 83 relating to the provisional attachment of property including bank accounts is sought to be widened to include all cases where proceedings have been initiated under Chapter XII, Chapter XIV or Chapter XV if the Commissioner believes that the provisional attachment is required to protest the interests of the Revenue.

8) Section 107 of the Act is proposed to be amended to require a pre-deposit of 25% of the penalty due in case of an appeal filed against an order passed under section 129 dealing with Eway bill violations..

9) The provisions relating to interception of goods in transit and the consequences of violation of the e-way bill provisions have been thoroughly revamped. The earlier provisions sought to recover tax, interest, and penalties resulting in duplication of tax demands. The amended provisions now seek to recover only penalties (although the quantum of penalties has been substantially increased). The following table summarises the current provisions and the proposed amendments in this regard:

Scenario	Reference	Current Provisions	Proposed Amendments
Taxable Goods where owner comes forward	129(1)(a)	Tax and Penalty equal to 100% of Tax	Penalty equal to 200% of the Tax

Scenario	Reference	Current Provisions	Proposed Amendments
Exempted Goods where owner comes forward	129(1)(a)	2% of Value of Goods or ₹ 25000 whichever is less	2% of Value of Goods or ₹ 25000 whichever is less
Taxable Goods where owner comes forward	129(1)(b)	Tax and Penalty equal to 50% of Value of Goods	Penalty equal to 200% of the Tax or 50% of the Value of Goods whichever is higher
Exempted Goods where owner comes forward	129(1)(b)	5% of Value of Goods or ₹ 25000 whichever is less	5% of Value of Goods or ₹ 25000 whichever is less

Consequential amendments to effectuate the above change are proposed in other provisions of Section 129. Further, Section 129(6) is proposed to be amended to permit the sale of goods or conveyance on failure to pay the penalty demanded under the above provisions within 15 days of the date of receipt of order.

10) The scope of the power to call for information under Section 151 has been enhanced.

11) Section 16 of the IGST Act is proposed to be amended to restrict the benefit of zero rating in case of supplies to SEZ Units only in scenarios where the said goods or services are used for authorised operations. Accordingly, any goods or services supplied to such SEZ Units and not used for authorised operations shall not be regarded as zero-rated supply and hence become liable for payment of IGST. The said amendment will be effective from a date to be notified after the enactment of the Bill.

12) Section 16(3) is further amended to fundamentally change the tax treatment of zero rated supplies. Prior to the proposed amendment, suppliers of zero rated supplies (exports & supplies to SEZ Units) had two options – (a) export against LUT without payment of tax and claim refund of accumulated input tax credit or (b) export on payment of tax and claim subsequent refund

of output tax so paid (hereinafter referred to as 'rebate'). As per the proposed amendment, the suppliers are left with only the default option of export against LUT without payment of tax and refund of an accumulated input tax credit. The rebate option would not be generally available to all taxpayers but only to a class of persons and goods or services as may be notified separately under section 16(4).

13) Section 16(3) also requires the re-payment of refund of the accumulated input tax credit in case the sale proceeds of goods exported are not realised within the time limits prescribed under FEMA.

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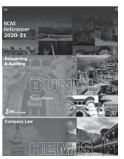

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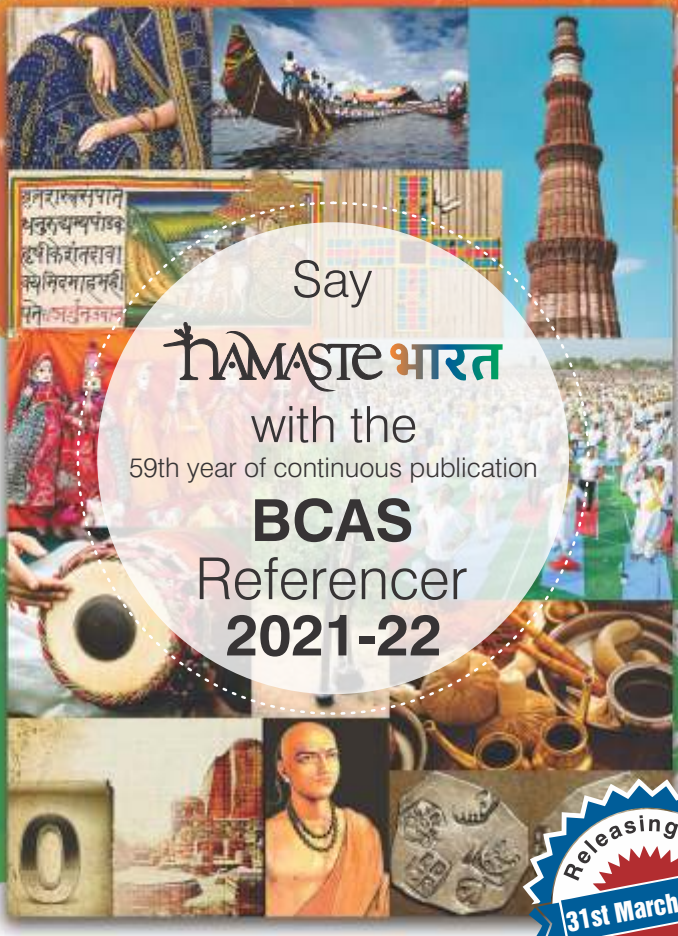

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