The Union Budget
2022-23

– Analysis of Important Amendments

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DIRECT TAXES

In this booklet, the proposals of the Finance Bill, 2022 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.

1. TAX RATES

Tax Rates for Individuals/HUF

Resident individuals aged above 60 years but not more than 80 years

Total Income	Tax Rate A.Y. 2022-23	Tax Rate A.Y. 2023-24
Up to ₹ 3,00,000	Nil	There are no changes in the slabs and the rates.
₹ 3,00,001 to ₹ 5,00,000	5%	
₹ 5,00,001 to ₹ 10,00,000	20%	
Above ₹ 10,00,000	30%	

Resident individuals aged above 80 years

Total Income	Tax Rate A.Y. 2022-23	Tax Rate A.Y. 2023-24
Up to ₹ 5,00,000	Nil	There are no changes in the slabs and the rates.
₹ 5,00,001 to ₹ 10,00,000	20%	
Above ₹ 10,00,000	30%	

Other individuals and HUF

Total Income	Tax Rate A.Y. 2022-23	Tax Rate A.Y. 2023-24
Up to ₹ 2,50,000	Nil	There are no changes in the slabs and the 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. 2022-23	Surcharge A.Y. 2023-24**
Exceeding ₹ 50 Lakh but not exceeding ₹ 1 crore	10%	There are no changes in the rates.
Exceeding ₹ 1 crore but not exceeding ₹ 2 crore	15%	
Exceeding ₹ 2 crore but not exceeding ₹ 5 crore*	25%	
Exceeding ₹ 5 crore*	37%	
Effective tax rate (above 5 crore)	42.744%	

*Surcharge on income taxable under sections 111A and income from long term capital gains from all assets and dividend income would be restricted to 15%. Earlier, in case of long-term capital gains, reduced surcharge was restricted only for long term capital gains from transfer of listed shares and equity oriented mutual funds u/s. 112A.

** There is no change in rate of surcharge in other cases

Optional tax regime - Section 115BAC

Government had introduced a new scheme with effect from A.Y. 2021-22 for Individuals and HUFs in the Finance Act 2020 with lower rates for those foregoing certain exemptions/deductions:

Total Income	Tax Rate (Section 115BAC)	Tax Rate (Normal Provision)
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%

The option granted by section 115BAC continues for AY 2023-24 if, conditions mentioned therein are fulfilled.

If an assessee does not opt for the new scheme, he will continue to be governed by the normal provisions. The slabs, tax rates and surcharge as applicable to individuals and HUFs have remained unchanged except on Long Term Capital Gains, as mentioned above.

Tax Rates for AOP/BOI

Particulars	Total Income	Tax Rate A.Y. 2022-23	Tax Rate A.Y. 2023-24
For AOP, BOI, etc.	Up to ₹ 2,50,000	Nil	There are no changes in the slabs and the rates.
	₹ 2,50,001 to ₹ 5,00,000	5%	
	₹ 5,00,001 to ₹ 10,00,000	20%	
	Above ₹ 10,00,000	30%	

There is no change in the rates of surcharge for AOPs/BOIs and the rates mentioned in the table for Individuals / HUFs will apply to AOPs/BOIs having non-corporate members. In case of AOP having only corporate members, surcharge of 7% applies where income exceeds ₹ 1 crore but not exceeding ₹ 10 crore and surcharge of 12% applies where income exceeds ₹ 10 crore.

For AOP / BOI covered by section 167B, rate of tax will continue to be at maximum marginal rate as provided therein.

Tax Rates for Firms, LLPs

The effective tax rates (including surcharge and cess) for AY 2023-24 will be as under:

Person	Total Income (₹)	
	Upto ₹ 1 crore	Above ₹ 1 Crore
Firms, LLP etc.	31.2%	34.944%

Tax Rates for Co-operative Society

Effective tax rates (including surcharge and cess) for AY 2023-24 will be as under:

For Co-operative societies opting for taxation under section 115BAD, the effective rate is 25.168%

For other Co-operative societies#:

Income above ₹ 30,000 upto ₹ 1 crore	**Income Above ₹ 1 crore but less than ₹ 10 crores**	**Income Above ₹ 10 crore**
31.20%	33.384%	34.944%

#Rates remain unchanged at (10% up to ₹ 10,000; 20% between ₹ 10,000 to ₹ 20,000; and 30% in excess of ₹ 30,000).

#Surcharge is reduced to 7% in case of income from ₹ 1 crore upto ₹ 10 crore and remains unchanged at 12% where income exceeds ₹ 10 crore.

AMT as per section 115JC is currently charged at 18.5% (plus surcharge & cess) on adjusted total income if the same exceeds ₹ 20 lakh. The same is now reduced to 15% with effect from Assessment 2023-24.

Tax Rates for Companies

Effective tax rates (including surcharge and cess) for AY 2023-24 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 up to ₹ 400 crore In FY 2020-21 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 ₹ 10 crore

** 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 ₹ 10 crore

\# If MAT is applicable to the foreign company (MAT applies if the foreign company has a PE or business connection in India)

2. DEFINITION OF "SLUMP SALE" – SECTION 2(42C)

Finance Act, 2021 widened the definition of the term "slump sale" to cover a case of transfer of an undertaking 'by any means' which was till then restricted to a case of transfer 'as a result of the sale'. Though the definition of "slump sale" was expanded to cover transfer by any means and not merely by sale, it continued to provide that the transfer of the undertaking in such 'sales' should be for a lump sum consideration without assigning values to the individual assets and liabilities. The word 'sales' which is appearing at certain places is substituted by the word 'transfer' and the definition now covers a case of transfer of any undertaking by any means for a lump sum consideration without assigning individual values to assets and liabilities in such 'transfer'.

This amendment is applicable retrospectively from Assessment Year 2021-22.

3. CHARITABLE TRUSTS

Option to treat certain normal donations to religious trust as corpus – Sections 10(23C) and 11

Explanation 1A is inserted in the third proviso to section 10(23C) and Explanation 3A is inserted after sub section (1) of section 11. The amendments provide that a trust or institution which has received a voluntary contribution for renovation or repair of a temple mosque, gurudwara, church or other place and notified under section 80G(2)(b) will have an option to treat such contribution as forming part of the corpus of the trust, subject to the following conditions.

i. The amounts so treated are applied only for the purpose for which such contribution was received;

ii. The trust does not apply the same for making a donation or contribution to any other person;

iii. Such corpus is maintained as separately identifiable; and

iv. Such corpus is invested or deposited in forms or modes specified in section 11(5).

Explanation 1B inserted below section 10(23C) and Explanation 3B inserted below section 11 to provide that in the event of any violation of any of the conditions mentioned above, the amount so treated as forming part of corpus shall be treated as the income of the trust in the year in which such violation takes place.

These amendments are applicable retrospectively from Assessment Year 2021-22.

Amendments to make section 10 (23C), para materia with provisions of section 11

1. Explanation 3 has been inserted in section 10(23C) to provide that in the event a trust claiming exemption under section 10(23C) does not utilise 85% of its income during the previous year, but the same is accumulated, then such accumulated income shall not be taxed in the year of receipt of the same, provided the trust submits a statement to the Assessing Officer in such form and in such manner as may be prescribed stating the purpose for which it is accumulated, and the maximum period of such accumulation is five years. The statement needs to be submitted on or before the due date of furnishing the return of income under section 139(1) for the relevant previous year. The accumulation shall be invested or deposited in such forms or modes as are specified in section 11(5). In case the application of the accumulated income within the period of accumulation is not possible due to any order or injunction of any court, then such period will need to be excluded from the maximum period of five years of accumulation.

   In the event of any of the conditions discussed above are violated during the period of accumulation, then Explanation 4 provides that such income will be treated as the income of the year in which the condition is violated. Further, in the event of the amount not being utilised for the purpose for which it was accumulated, then it will be treated as the income of the last year for which the income was sought to be accumulated. Explanation 5 provides that in case a trust cannot apply due to circumstances beyond its control, the income accumulated in accordance with Explanation 3, then the trust may apply to the Assessing Officer for utilisation for any other permitted purpose in India in accordance with the objects of the trust and if permitted by the Assessing Officer, it can be utilised so.

2. Trusts entitled to exemption under section 11 are required to furnish a return of income under section 139(4A) within the time specified in that section. A similar provision has now been inserted by the inclusion of 20th proviso to section 10(23C).

These amendments are applicable with effect from Assessment Year 2023-24.

3. Both the above amendments are applicable to trusts / institutions referred to in section 10(23C)(iv)/(v)/(vi)/(via). In these cases, the authority for approval is now specified (instead of prescribed) as Principal Commissioner of Income Tax ('PCIT') / Commissioner of Income Tax ('CIT') with effect from 1st April 2022.

Amendments imposing further conditions on charitable trusts

1. Section 12A(1)(b) provides that where the total income of the trust without giving effect to provisions of sections 11 and 12 is more than the maximum amount not liable to tax then such a trust shall get its accounts audited and furnish a report before the specified date referred to in section 44AB.

   The amendment now provides that such a trust or institution shall keep and maintain books of account at such place and in such form and manner as may be prescribed.

   This amendment is applicable with effect from Assessment Year 2023-24.

2. The Finance Act, 2021 provided for a procedure of obtaining registration / re registration of charitable trusts under section 12AB. Under section 12AB(4), cancellation of registration was possible only in cases where the PCIT / CIT was satisfied that (a) the activities of the trust are not genuine, or (b) the activities are not being carried out in accordance with the objects of the trust. Similarly, section 12AB(5) provides for cancellation of registration under other circumstances provided therein. Both sections 12AB(4) and 12AB(5) are now substituted by insertion of new sections 12AB(4) and 12AB(5).

   Substituted section 12AB(4) now further widens the powers of PCIT / CIT to cancel the registration if an occurrence of one or more of specified violations during any year is noticed; or the PCIT / CIT has received a reference under the second proviso to section 143(3) from the Assessing Officer; or such case is selected in accordance with the risk management strategy formulated by the CBDT. On occurrence of any of the above events, the PCIT / CIT shall proceed to do the following:

   i. Call for documents and information from the trust to satisfy himself about the occurrence of the violation.

   ii. If he is satisfied about the occurrence of such violation, then to pass an order in writing cancelling the registration for the relevant previous year and all subsequent years. Before passing such an order he shall afford a reasonable opportunity of being heard to the trust. It is noteworthy that the cancellation of registration shall be not only for the previous year of occurrence of the violation, but also for all subsequent years. Hence, even if there is no such occurrence of violation in subsequent years, the trust shall lose benefit of the registration and would be taxed on that basis.

iii. If he is not satisfied about the occurrence of such violation, he shall pass an order in writing refusing to cancel the registration.

iv. In either case, he shall forward a copy of his order cancelling or refusing to cancel the registration to the Assessing Officer and the trust.

3. The term "specified violation" is defined in Explanation to section 12AB(4), violations to mean –

i. where the income of the trust is applied other than for the objects for which the trust was established; or

ii. the trust has income from business not incidental to the attainment of its objects, or separate books of account are not maintained for business incidental to the attainment of its objects, or

iii. any part of the income of the trust is applied for private religious purposes which do not enure for the benefit of the public; or

iv. any part of the income of the trust is applied for the benefit of any particular religious community or caste, (in case of trust established on or after 1-4-1962) or

v. any of its activities are not genuine, or are not carried out in accordance with the conditions under which it was registered, or

vi. the trust has not complied with requirement of any other law for the time being in force as are material for the purpose of achieving its object.

4. New section 12AB(5) provides a time limit for passing orders by PCIT / CIT as 6 months from the end of the quarter in which the first notice is issued on or after 1st April 2022 calling for documents or information under new section 12AB(4).

5. Identical amendments have been made relating to trusts claiming exemption under section 10(23C) by way of substitution of 15th proviso to that section.

The amendments mentioned above at serial nos. 2 to 5 are effective from 1st April 2022.

6. Section 143(3) is amended to include a proviso under which the Assessing Officer, if he is satisfied in case trust / institution referred to in section 10(23C)(iv)/(v)/(vi)/(via) or section 11

about any specified violation, shall send a reference to the PCIT / CIT Tax to withdraw the registration and in such a case he shall not pass any order making the assessment of the trust without giving effect to the order passed by the PCIT / CIT in this regard. As a consequence, the time between the date of making a reference to the PCIT / CIT and the date on which he receives the order from the PCIT / CIT shall be excluded in computing the period of limitation under section 153.

7. Amendments to section 11(3), section 13(1)(c)/(d) have been made to provide that only income which is applied for grant of benefit to a person specified under section 13(3) or income which is invested in investments not specified under section 11(5) shall be taxable and the invocation of these provisions shall not result in the entire income being taxed.

   Section 11(3) has been amended to provide that if income accumulated under section 11(2)-

   i. Is applied for purposes other than for which it was accumulated or

   ii. Ceases to remain invested in the modes specified under section 11(5) or

   iii. In the last year of the period for which it was accumulated, it remains unutilised or

   iv. Is credited or paid to another institution or trust

   then the same shall be taxed as income of the year in which such cessation occurs, the period for which it is accumulated expires, or is paid to another trust or institution.

8. Section 115BBI provides that specified income shall be taxed at 30% of such specified income being:

   i. Income accumulated or set apart in excess of 15%, where such accumulation is not allowed.

   ii. Income which is applied for purposes other than the objects of the trust by an institution recognised under clauses (iv) (v) (vi) or (via) of section 10(23C) or section 11 or ceases to accumulated for application thereto.

   iii. Income which is invested in modes other than those specified in clause 11(5) by a trust recognised under the above mentioned clauses of 10(23C) or a trust claiming section under section 11.

iv. Income applied for the benefit for a person specified under section 13(1)(c) or deemed to be income under 21st proviso to section 10(23C).

v. income of a trust created after 1st April 1952 which tends to promote international welfare to the extent it is applied for such purposes outside India and income of a charitable or religious trust created before 1st April 1952 to the extent to which such income is applied for such purposes outside India.

9. Section 13 provides for a denial of exemption if any income is applied for the benefit of a specified person. It is provided that apart from this consequence, the trust will also be liable to penalty under section 271AAE, which will be equal to the amount of such income in the case of such benefit being first noticed. If there is a similar violation in any subsequent year, the penalty shall be two times the amount of such income so applied.

This amendment is applicable with effect from Assessment Year 2023-24.

10. Section 10(23C), hitherto did not contain any specific provision in regard to application of income for the benefit of any person referred to in section 13(3). The 21st proviso to the section 10(23C) has been inserted which provides that such income will be deemed to be income of the trust in the year in which such application takes place. Such income will be treated as specified income and charged to tax under section 115BBI.

11. Expansion of the provision of accreted Income - Chapter XXII–EB

Section 115TD which taxes accreted income at the maximum rates has now been expanded to apply to trusts / institutions recognised under clauses (iv)/(v)/(vi)/(via) of section 10(23C). Consequential amendments are also made in other provisions of this Chapter.

This amendment is applicable with effect from Assessement Year 2023-24.

Rationalizing Provisions regarding Computation of Taxable Income

1. A mechanism for computation of income which becomes chargeable to tax in cases where the trusts do not meet with the required compliance for exemption of income, has been introduced by insertion of section 13(10). In absence of specific provisions to compute taxable income in such cases, there

was a possibility of their entire receipts being taxed, with no deductions being allowed for any application of income. Such computation is now provided by section 13(10). The said provisions will apply when

(i) section 13(8) is attracted, or

(ii) the audit report is not furnished within the prescribed time, or

(iii) the return of income is not furnished within the prescribed time.

It is provided that in such cases income chargeable to tax shall be computed after allowing the deduction for expenses (other than capital expenditure) incurred in India for the objects of the trust, provided that –

a. Such expenditure is not incurred from the corpus accumulated till the end of the previous year preceding the previous year for which the income is being computed.

b. Such expenditure is not from any loan or borrowing.

c. In case of claim for depreciation, the cost of the underlying assets should not have been claimed as application of funds in any year.

d. Such claim is not in respect of contribution or donation to any person.

e. Such expenditure would not be allowable if the provisions of sections 40(ia), 40A(3) or 40A(3A) of the Act are attracted.

2. 22nd proviso to section 10(23C) has introduced a provision identical to that of section 13(10), in regard to trusts recognised under section 10(23C)(iv), (v), (vi) and (via) for computation of income in certain circumstances in which exemption under the section is not available. It is also provided similar to the newly inserted section 13(11) that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any other provision of the Act.

3. Section 13(11) has been inserted to provide that in case of any deduction being allowed under section 13(10), no deduction or set off shall be allowed under any other provision of the Act.

These amendments are applicable with effect from Assessment Year 2023-24.

Application of Income only on actual payment basis

By inserting an Explanation to section 11, it is provided that the term "application" of income will mean income which is actually paid, and not just for which liability to pay such sum was incurred by the trust. In other words, for the purpose of determining the amount of income applied for charitable purposes, only such income as is actually paid. It is also clarified that if any sum has been claimed as allowed in a year (on accrual basis), then the same cannot be so claimed again (on payment basis) in any subsequent year. Such trust will still be entitled to prefer an application treating application in a subsequent year as application of income for the year or an application under section 11(2) for accumulation for a period of upto 5 years.

A similar provision has been made by insertion of Explanation 3 to the 23rd proviso to section 10(23C).

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

4. PROFITS AND GAINS FROM BUSINESS OR PROFESSION AND CAPITAL GAINS

Disallowance of expenditure in relation to exempt income – Section 14A

Presently, expenditure incurred in relation to exempt income is not allowed as a deduction. CBDT Circular No. 5/2014 clarifies that the expenditure will be disallowed even when no exempt income is earned in a particular year. However, several courts (including the Punjab & Haryana High Court in the case of *CIT vs. Winsome Textile Industries Ltd.* (2009) 319 ITR 204 and the Honourable Gujarat High Court in the case of *CIT vs. Corrtech Energy (P.) Ltd.* (2014) 223 Taxman 130) have taken a view that no disallowance can be made in a year during which no exempt income was earned.

An explanation is now inserted to clarify that the disallowance under section 14A shall apply even in a case where exempt income has not accrued, arisen or has not been received, but expenditure relating to such exempt income has been incurred during the year.

Further, the provisions of sub-section (1) are now amended to provide a non-obstante clause that section 14A shall apply irrespective of anything to the contrary contained in the Income-tax Act.

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

Disallowance of donation - Section 35(1A)

At present, section 35 allows deduction of expenditure on scientific research and section 35(1A) disallows such deduction if

the research association or university or college or other institution referred to in sub-clause (ii) or (iii); or if company referred to in sub-clause (iia) does not file a statement of donations. The intent was that donor or contributor to the institutions specified in sub–clause (ii) or (iii) or the company specified in sub-clause (iia) would not be entitled to a deduction if there was a non-compliance with the provisions of section 35(1A) by the donee.

Hence, section 35(1A) is amended to provide that the donor shall not be allowed deduction in respect of the donation to research association, university, college or other institution or the company, as the case may be (collectively referred to as 'donee'), unless the donee files the statement of donation before the specified authorities.

This amendment is applicable retrospectively from Assessment Year 2021-22.

Disallowance of expenditure incurred for any purpose which is an offence or prohibited by law – Section 37(1)

At present, section 37(1) provides for allowability of expenditure incurred wholly and exclusively for the purposes of business or profession. However, as per the Explanation 1 to section 37(1), any expenditure incurred for any purpose which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession.

Now, Explanation 3 to section 37(1) is inserted to clarify the expression "expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law" to include and be deemed to have always included the following:

— The expenditure incurred for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

— Any benefit or perquisite provided to a person, whether or not carrying on a business or profession, where its acceptance is in violation of any law or rule or regulation or guidelines governing the conduct of such person; or

— The expenditure incurred to compound an offence under any law, in India or outside India.

This amendment may affect the benefits or perquisites provided by pharmaceutical companies to medical professionals. It has also been provided that the Explanation 1 to section 37(1) would cover offences and prohibition under any law, whether in India or outside India.

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

Disallowance of tax – Section 40(a)(ii)

Presently, tax levied on profits and gains of any business or profession is not allowed as a deduction. Certain courts (including the *Honourable Bombay High Court in the case of Sesa Goa Limited vs. JCIT (2020) 117 taxmann.com 96 and Honourable Rajasthan High Court in the case of Chambal Fertilizers & Chemicals Ltd vs. JCIT: D.B Income-tax Appeal No. 52/2018* decided on 31-07-2018) have held that the term "tax" would not include cess levied on tax and have thus, allowed a deduction in respect of the cess paid.

It is now retrospectively provided that the term "tax" shall include any surcharge or cess on such tax and accordingly, no deduction shall be allowed in respect of the same.

This amendment is applicable retrospectively from Assessment Year 2005-06.

Disallowance on conversion of interest payable into debenture – Section 43B

At present, interest payable on existing loan or borrowing from certain entities is to be allowed as deduction under section 43B in the year of actual payment. However, in recent Supreme Court decision in the case of *M.M. Aqua Technologies Ltd. vs. CIT (Civil Appeal No. 4742-4743 of 2021),* dated 11 August 2021, it was held that the interest payable can be said to have been actually paid where the interest payable was converted into debentures.

Now, the amendment to Explanation 3C, 3CA and 3CD to section 43B has provided that any interest payable which has been converted into debenture or any instrument, by which the liability to pay is deferred to a future date, shall not be deemed to have been actually paid and hence, would be disallowed under section 43B.

This amendment is applicable with effect from Assessment Year 2023-24.

Reduction of goodwill from WDV treated as "transfer" - Section 50

An amendment to section 43 was made by the Finance Act 2021 to provide that in respect of Assessment Year 2021-22, where goodwill of a business or profession was part of the block of assets on which depreciation was obtained by the assessee for the immediately preceding previous year, WDV of the block of assets shall be reduced by an amount of actual cost of goodwill as decreased by the amount

of depreciation as specified. Further, Explanation to section 50 was introduced by the Finance Act 2021 to provide that WDV of such block of asset and short term capital gain, if any, shall be determined in accordance with rule 8AC.

There was no specific provision in the Act for deeming such reduction in WDV as transfer of capital asset.

Now, an amendment to section 50 has been made to specifically provide that such reduction in WDV as referred to under section 43(6)(c)(ii)(B) shall be deemed to be transfer.

This amendment is applicable retrospectively from Assessment Year 2021-22.

5. INCOME FROM OTHER SOURCES

Exemption for COVID-19 compensation – Sections 56(2)(x)(c) and 17(2)

The Finance Ministry had issued a press release dated 25 June 2021 exempting an amount received by a taxpayer for medical treatment from employer or from any other person for treatment of COVID-19 illness during the Financial Year 2019-20 and subsequent years. It was also stated that the necessary legislative amendments shall be proposed in due course of time.

Now, new clauses (XII) and (XIII) are inserted in the proviso to section 56(2)(x)(c), to exempt any sums of money or property from the provisions of section 56(2)(x), as follows:

— Any sums of money received by an individual from any person in respect of his medical treatment or treatment of any member of his family for any illness related to COVID-19, to the extent of his expenditure actually incurred; or

— Any sums of money received by a member of the family of a deceased person from the employer of the deceased person with no limit; or from any other person to the extent of ₹ 10,00,000, where the cause of death of such person is illness related to COVID-19 and the payment is received within 12 months from the date of death and such other conditions as notified in the Official Gazette are satisfied.

For this purpose, the term 'family' shall have the same meaning as defined in Explanation 1 to section 10(5), i.e. "the spouse, children of the individual; and the parents, brothers and sisters of

the individual or any of them, wholly or mainly dependent on the individual".

Further, a new sub-clause (c) is inserted in clause (ii) of the first proviso to section 17(2), whereby any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or on treatment of any family member for any illness relating to COVID-19 shall not be regarded as a taxable perquisite, subject to such conditions as notified in the Official Gazette.

These amendments are applicable retrospectively from Assessment Year 2020-21.

Cash Credits – Section 68

Section 68 provides for treating any sum credited in the books of the assessee as income if the assessee does not offer an explanation about the nature and source of such sum or the Assessing Officer is of the opinion that the explanation offered is not satisfactory. Presently, proviso to section 68 requires a company in which public are not substantially interested to provide explanation not only about its own source in respect of sum credited being share application money, share capital, share premium, etc. but also about the nature and source of the resident person in whose name such credit is recorded in the books of the company.

A proviso is now inserted to provide that where a credited sum received from any person consists of loan or borrowing or any such amount by whatever name called, assessee's explanation about the nature and source of such sum shall not be deemed to be satisfactory unless an explanation is also provided about the nature and source of the person in whose name such credit is recorded in the books of the assessee to the satisfaction of the Assessing Officer.

However, such proviso will not apply if the sum is credited in the name of a venture capital fund or a venture capital company as referred to in section 10(23FB) of the Act.

This amendment is applicable with effect from Assessment Year 2023–24.

Discontinuation of special rate of tax on dividends received from foreign companies - Section 115BBD

Section 115BBD provides for a concessional rate of tax of 15% on the dividend income earned by an Indian company from a foreign company in which the said Indian company holds 26% or more in nominal value of equity shares.

It has now been provided that special rate of tax under section 115BBD shall not be available to Indian companies with effect from assessment year 2023-2024.

In other words, foreign dividends received by Indian company on or before 31st March 2022 shall only be eligible for special rate of tax.

6. SET OFF OF LOSSES

Restriction on set off of a loss against undisclosed income – Section 79A

Presently, there is no restriction on set off of any loss or unabsorbed depreciation against undisclosed income detected during a search under section 132 or requisition under section 132A or survey under section 133A, other than section 133A(2A).

A new section 79A is now inserted to provide that any loss, either of the current period or brought forward, or unabsorbed depreciation cannot be adjusted against undisclosed income detected in the aforesaid cases.

For this purpose, undisclosed income is defined as-

1. any income of the previous year or any entry in the books of accounts or other documents or transactions, detected during a search or requisition or survey, which has not been recorded in the books of accounts or has not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, before the date of the search or requisition or survey, or
2. any expenditure recorded in the books of accounts or other documents, which are found to be false and would not have been detected but for the search or requisition or survey.

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

7. DEDUCTIONS UNDER CHAPTER VI-A

Contribution to National Pension Scheme (NPS) – Section 80CCD(2)

Presently, the deduction for employer's contribution to NPS is allowed to the extent of 14% of the salary in the case of a Central Government employee and 10% of the salary for others. With effect from 1st April 2019, the State Governments have an option to increase their contribution to NPS up to 14% of the employees' salary, but the deduction for the same remains restricted to 10% of the salary.

Section 80CCD(2) is now retrospectively amended to allow a deduction of up to 14% of the salary in respect of the employer's contribution to NPS even to State Government employees.

This amendment is applicable retrospectively from Assessment Year 2020-21.

Taxability of annuity released to a disabled person – Section 80DD

Presently, deduction is allowed in respect of contribution to a prescribed scheme for the maintenance of a dependent person with a disability, if such scheme provides for payment of annuity or lump sum to such dependent in the event of death of the assessee contributing to the scheme, i.e. the parent or the guardian. The Honourable Supreme Court in the case of *Ravi Agrawal vs. Union of India and Another*, (2019) 101 taxmann.com 17 Justice A. K. Sikhri observed that cases where a disabled dependent may need payment of annuity or lump sum even during the lifetime of the parents/guardians should also be considered.

The provision is now amended to allow deduction of the contribution even where the scheme provides for payment of annuity or lump sum to such dependent, on attaining of the age of sixty years or more by the assessee contributing to the scheme, if the deposit to such scheme has been discontinued. It is further provided that such receipt of annuity or lump sum by the disabled dependent, upon attaining of the age of sixty years or more by the assessee contributing to the scheme, shall not result in the contribution made by the assessee to the scheme being treated as taxable.

This amendment is applicable with effect from Assessment Year 2023-24.

Period of incorporation for eligible start-ups – Section 80-IAC

Presently, eligible start-ups incorporated on or after 1st April 2016 but before 1st April 2022 and satisfying other conditions laid down in section 80-IAC are eligible for exemption of profits for three consecutive assessment years out of the ten years from the year of incorporation.

The provision is now amended to extend the benefit of the section to eligible start-ups incorporated up to 31st March 2023.

8. SPECIAL CASES

Extension of period for commencement of activity - new manufacturing domestic companies - Section 115BAB

Section 115BAB provides a concessional rate of taxation at 15% for new manufacturing domestic companies subject to fulfilment of certain conditions if such company is set up and registered after 1st October 2019 but commences the manufacturing activity on or before 31st March 2023. Now section 115BAB has been amended to provide that concessional rate of tax will be available if manufacturing or production is commenced on or before 31st March 2024.

Taxation of Virtual Digital Assets - Sections 2(47A), 56(2)(x), 115BBH and 194S

In the recent past, Virtual Digital Assets (VDAs), popularly known as Cryptos, have gained popularity and volumes of transactions / trading of VDAs have increased exponentially. Currently, there is no specific provision to tax the profits / gains of the transactions in VDAs and these are taxable under the normal provisions of the Income-tax Act. Now a new scheme of taxation of VDAs has been provided to tax such income.

1. New sub-section (47A) is introduced in section 2 which defines virtual digital asset to mean any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically.

   Non-fungible token or any other token of similar nature, as well as any other notified digital asset are included in the definition.

2. New section 115BBH has been inserted to provide that:

   i) Where the total income of an assessee includes any income from transfer of VDAs, income-tax on such income would be payable @ 30%;

   ii) No deduction in respect of any expenditure (other than cost of acquisition), or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act in computing the income from transfer of such VDAs;

iii) No set off of loss from transfer of the VDAs shall be allowed against income computed under any other provision of the Act and such loss shall not be allowed to be carried forward.

This amendment is applicable with effect from Assessment Year 2023-24.

3. In order to tax recipient of the gift of VDAs having aggregate fair market value exceeding ₹ 50,000 or receipt of VDAs for a consideration which is less than the aggregate fair market value by an amount exceeding ₹ 50,000, Explanation to section 56(2)(x) has been amended to provide that for the purpose of said clause (x), the expression 'property' shall include VDAs.

Presently, no rules have been prescribed for the valuation of VDAs.

This amendment is applicable with effect from Assessment Year 2023-24.

4. New section 194S has been inserted to provide that:

i) Any person paying to a resident consideration for transfer of any VDAs shall deduct tax @ 1% of such sum. It is further provided that in a case where the consideration for transfer of VDA is (a) wholly in kind or in exchange of another VDA, where there is no payment in cash; or (b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer, the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax has been paid in respect of such consideration for the transfer of VDA.

ii) For the purpose of section 194S 'specified person' is defined to mean payer (a) being an individual or a HUF, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed ₹ 1 crore in case of business and ₹ 50 Lakh in case of profession, during the financial year immediately preceding the financial year in which such VDA is transferred; (b) being an individual or a HUF, not having any income under the head "Profits and gains of business or profession".

iii) In case of a specified person, the provisions of section 203A relating to Tax Deduction and Collection Account Number and section 206AB relating to special provision

for deduction of tax at source for non-filers of income-tax returns shall not apply;

iv) Where the payer is a specified person and the value or the aggregate value of such consideration does not exceed ₹ 50,000 during the financial year and in any other case, such consideration does not exceed ₹ 10,000 during the financial year, no tax shall be required to be deducted in such a case.

v) In case of a transaction in respect of which TDS has been deducted under section 194S, no tax to be deducted or collected at source in respect of the said transaction under any other provision of Chapter XVII.

vi) In case of a transaction to which section 194-O is also applicable, along with section 194S, then tax shall be deducted under section 194S and not section 194-O.

This amendment is applicable with effect from 1st July 2022.

Amendments in relation to International Financial Services Centre (IFSC)- Sections 10(4E), 10(4F), 10(4G), 56(2)(viib) and 80LA(2)(d)

Continuing with the various tax concessions provided in past few years for units located in IFSC, the government has now introduced following further incentives:

1. Exemption under section 10(4E) in respect of income arising to a non-resident from transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC has been extended to income from transfer of offshore derivative instruments or over-the-counter derivatives.

2. Exemption under section 10(4F) in respect of income of a non-resident by way of royalty or interest on account of lease of an aircraft or engine of an aircraft or any part thereof paid by a unit of IFSC if the unit has commenced its operations on or before 31st March, 2024, has been extended to lease of a ship or ocean vessel, engine of a ship or ocean vessel, or any part thereof also.

   Similarly, section 80LA(2)(d) which currently provides that 100% deduction of income arising from transfer of an aircraft or engine of an aircraft or any part thereof, which was leased by a unit in IFSC to any person before such transfer, subject to condition that the unit has commenced operation on or before 31st March, 2024, is amended and now extended to the income arising from

transfer of a ship or ocean vessel, engine of a ship or ocean vessel, or any part thereof.

3. New sub-section 10(4G) has been introduced to grant exemption to any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Off-shore Banking Unit in IFSC, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

4. Section 56(2)(viib) currently provides that where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares in excess of the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value is considered as income chargeable to income-tax.

Proviso to section 56(2)(viib) provides for exclusion where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund defined in clause (aa) of the Explanation to section 56(2)(viib) i.e. a fund established or incorporated in India in the form of a trust or a company or limited liability partnership or a body corporate registered as a Category I or Category II Alternative Investment Fund and regulated under the SEBI (Alternative Investment Fund) Regulations, 2012.

It is now provided that the exclusion of 'specified fund' shall also include Category I or Category II Alternative Investment Fund regulated under the International Financial Services Centres Authority Act, 2019.

This amendment is applicable with effect from Assessment Year 2023-24.

Bonus Stripping ambit increased - Section 94(8)

Section 94(7) provides that where any person has acquired any securities or units within a period of three months prior to the record date and transferred within a period of three months or nine months after such date as the case may be, any loss arising on account of said purchase or sale of securities or units shall be ignored to the extent such loss does not exceed the dividend or income on such securities or units received or receivable by such person are exempt.

Similarly, section 94(8) hitherto provided that loss arising on account of purchase and sale on any units shall be ignored, where

any units have been acquired within a period of three months prior to the record date, additional units are allotted without any payment on the basis of holding of original units and then original units are transferred within a period of nine months after the record date while additional units are continued to be held. However, the said loss as is ignored shall be deemed to be considered as the cost of purchase or acquisition of such additional units.

It has now been provided that the provisions of section 94(8) which were applicable to "units" shall now also apply to "securities". The term 'securities' include shares.

As a corollary to the application of section 94(8) to securities, the scope of definition of "record date" as referred in sections 94(7) and 94(8) has now been expanded to mean such date as may be fixed by:

(1) a company

(2) a mutual fund

(3) the Administrator of the specified undertaking or the specified company referred to in the Explanation to clause (35) of section 10

(4) a business trust defined in clause (13A) of section 2

(5) an Alternate Investment Fund registered under the specified regulations, for the purpose of the holder of the securities or units, as the case may be, to receive dividend, income, or additional securities or units without any consideration, as the case may be.

Further, the scope of the definition of "unit" as referred in sections 94(7) and 94(8) has been expanded to also include within its ambit:

(1) a unit of a business trust and

(2) beneficial interest of an investor in an Alternate Investment Fund registered under the specified regulations, including shares or partnership interests.

This amendments are applicable with effect from Assessment Year 2023-24.

Alternate Minimum Tax for Co-operative Societies - Sections 115JC and 115JF

Under the existing provisions of section 115JC in case of a co-operative society, if in any previous year, the regular income tax

payable is less than the alternate minimum tax (AMT) then adjusted total income shall be considered as total income for the said year and the tax payable on such income is 18.5%. This rate is now reduced to 15%. This reduced rate of 15% for AMT brings co-operative societies at par with the Minimum Alternate Tax of 15% applicable to companies.

This amendment is applicable with effect from 1st April 2023.

Widening the scope of reporting of certain payments – Section 285B

At present, any person carrying on the production of a cinematographic film shall prepare and furnish a statement containing particulars of all payments made in excess of ₹ 50,000 to any person engaged in such production.

Now, this section has been substituted to include the reporting by persons engaged in specified activities, such as event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may notify in the Official Gazette. Thus, such persons are obliged to furnish a statement containing particulars of all payments in excess of ₹ 50,000 to any persons engaged in such production.

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

9. TAX DEDUCTED AT SOURCE AND TAX COLLECTED AT SOURCE

TDS on sale of immovable property (other than agricultural land) – Section 194-IA

Section 194-IA of the Act requires that buyer of an immovable property shall deduct tax at the rate of 1% of consideration for transfer of immovable property if the transferor is a resident. Further, such tax is to be deducted only if the consideration for the transaction is ₹ 50 lakh or more.

Now, section 194-IA has been amended to apply 1% tax deduction on higher of stamp duty value or the transaction value. Further, no deduction is required to be made where the consideration for transfer and the stamp duty value are both less than ₹ 50 lakhs.

An explanation to the phrase "stamp duty value" has been provided referring to section 56(2)(vii) viz. *the value adopted or assessed or assessable by any authority of the Central Government*

or a State government for the purpose of payment of stamp duty in respect of an immovable property.

This amendment is applicable with effect from 1st April 2022.

It may be noted that the provisions for taxation on transfer of immovable property (sections 43CA or 50C) state that the transaction value itself could be considered as consideration where the variation between the transaction value and stamp duty value is less than 10%. No such leeway is provided in section 194-IA. This could result in a situation where taxation to the seller is on transaction value but TDS under section 194-IA could be on the stamp duty value.

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

Section 206AB and 206CCA which were introduced in the Act through Finance Act, 2021 mandate a higher rate of TDS (as per section 206AB) and TCS (as per section 206CCA) to be deducted/ collected in case of such persons, who have not filed their income tax returns in each of the immediately preceding two previous years and in whose case, aggregate TDS and TCS exceeds ₹ 50,000.

Sections 206AB is not applicable for deduction of tax at source under sections 192, 192A, 194B, 194BB, 194LBC or 194N.

It is now provided that requirement to deduct/collect higher rate of tax is also not applicable to the provisions of sections 194-IA, 194-IB and 194M. These are those TDS provisions, where the payer is not required to obtain TAN. A consequential amendment has also been made in section 194-IB to remove the reference to section 206AB.

Amendment has also been made in sections 206AB and 206CCA, to reduce the test of non-filing of IT returns on payee for applying higher TDS/TCS from existing two years to one previous year immediately preceding the current financial year.

These amendments are applicable with effect from 1st April 2022.

TDS on the value of benefit or perquisite arising from business or profession – Section 194R

A new section 194R has been introduced which provides that tax has to be deducted in case of a resident at the rate of 10% of the value of benefit or perquisite arising from business or profession if value of such benefit or perquisite during the financial year exceeds ₹ 20,000. However, the term benefit or perquisite is not defined.

This TDS shall be deducted by person providing such benefit or perquisite or in case of a company, the company itself including the principal officer.

The section further goes on to state that, if the benefit or perquisite is wholly in kind or partly in kind and partly in cash and cash part is not sufficient to meet the TDS deduction, then the person responsible for providing such benefit or perquisite should ensure that tax has been paid on the benefit or perquisite before releasing such benefit or perquisite. However, no mechanism for ensuring that such liability has been settled has been brought out in the provisions.

This amendment is applicable with effective from 1st April 2022 [However, the memorandum mentions that the amendment is effective from 1st July 2022 and that seems to be an error]

Computation of Interest – Sections 201 and 206C

A second proviso has been inserted in sub-section (1A) of section 201, which provides that where an order has been made by the Assessing officer for default under section 201(1), interest shall be paid in accordance with Assessing Officer's order.

An exactly similar proviso has been inserted as second proviso to sub-section (7) of section 206C.

This amendment is applicable with effect from 1st April 2022.

10. FILING OF RETURNS, ASSESSMENTS, APPEALS, AND PENALTIES

Filing of an updated return – Section 139

Considering the limited time period available for filing of a belated or revised return, a new provision section 139(8A) has been introduced enabling filing of an updated return. An updated return of income can be furnished by a person for any assessment year whether or not the return of income has already been furnished for such assessment year under any other provisions of section 139. Such updated return can be furnished at any time (after the expiry of the time limit for furnishing a belated or revised return of income) within twenty-four months from the end of the relevant assessment year. Further, it is subject to the condition that the person filing such updated return shall pay additional income-tax as applicable depending upon when such return is being filed.

In the following cases, the updated return cannot be filed –

1. It is a loss return.

2. It has the effect of reducing the total tax liability which is determined based on a return already furnished under the other provisions of section 139.

3. It results in a refund or it increases the refund determined based on a return already furnished under the other provisions of section 139.

4. An updated return has already been furnished for the same assessment year.

5. Any proceeding for assessment, reassessment or recomputation, or revision of income is pending or has been completed for the relevant assessment year.

6. The Assessing Officer has information in respect of the assessee for the relevant assessment year in his possession under the certain Acts as listed below and the same has been communicated prior to date of furnishing of the updated return –

   a. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

   b. Prohibition of Benami Property Transactions Act, 1988.

   c. Prevention of Money-laundering Act, 2002.

   d. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

7. Information for the relevant assessment year has been received under an agreement referred to in section 90 or section 90A (i.e. mainly through exchange of information under DTAA) in respect of the assessee and the same has been communicated to the said assessee prior to date of furnishing of the updated return.

8. Any prosecution proceedings under the Chapter XXII have been initiated for the relevant assessment year in respect of the assessee.

9. The assessee is such a person or belongs to such a class of persons, as may be notified by the Board in this regard.

Further, where a search has been initiated under section 132 or a requisition is made under section 132A or a survey has been conducted under section 133A [not being a TDS/TCS survey under sub-section (2A)], the updated return cannot be submitted for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and two

assessment years preceding such assessment year. This restriction upon the filing of updated return applies in the cases of the following persons –

1. A person in whose case such search is initiated or survey is conducted or requisition is made.

2. A person to whom a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or 132A in the case of any other person belongs to such person.

3. A person to whom a notice has been issued to the effect that any books of account or documents seized or requisitioned under section 132 or 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

These amendments are applicable with effect from 1st April 2022.

Tax payments for updated returns – Section 140B

A newly inserted section 140B requires the assessee to make payment of tax together with additional tax, interest, and fee as applicable before furnishing the return. The amount so required to be paid needs to be determined as under –

Particulars	**Where no return of income is furnished under other provisions of section 139**	**Where a return of income is already furnished under other provisions of section 139**
Tax	Tax payable as per the updated return to be filed as reduced by – (i) advance tax; (ii) TDS or TCS; (iii) relief under section 89; (iv) double tax relief under sections 90, 90A or 91;	Tax payable as per the updated return to be filed as reduced by – (i) various reliefs and taxes for which credit has already been taken in the earlier return in accordance with section 140A; (ii) TDS or TCS on any income which is taken into account

Particulars	Where no return of income is furnished under other provisions of section 139	Where a return of income is already furnished under other provisions of section 139
	(v) tax credit under sections 115JAA or 115JD.	in computing total income and which has not been included in the earlier return; (iii) double tax relief under section 90, 90A or 91 on such income which has not been included in the earlier return; (iv) tax credit under sections 115JAA or 115JD, which has not been claimed in the earlier return; Further, this tax amount needs to be increased by the amount of refund, if any, issued in respect of earlier return.
Interest	For delay in filing the return of income or any default or delay in payment of advance tax (as applicable under sections 234A, 234B and 234C)	For any default or delay in payment of advance tax (as applicable under sections 234B and 234C) as reduced by the amount of interest paid in the earlier return. Interest under section 234B shall be computed on the amount of tax as computed above including the amount of refund already issued.

Particulars	Where no return of income is furnished under other provisions of section 139	Where a return of income is already furnished under other provisions of section 139
Fee	For delay in filing the return of income (as applicable under section 234F)	—
Additional income-tax	As applicable	As applicable

The amount of additional income-tax payable shall be determined on the basis of date on which the updated return is furnished.

Date of filing of updated return	Additional income-tax payable
After the expiry of the time available for filing return under sections 139(4) or 139(5) but before completion of a period of twelve months from the end of the relevant assessment year	25% of aggregate of tax (including surcharge and health and education cess) and interest payable as computed above
After the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year	50% of aggregate of tax (including surcharge and health and education cess) and interest payable as computed above

Interest payable shall be computed on the basis of the income as per the updated return. Further, sections 234A and 234B have been amended to provide that the additional income-tax payable as above shall not be included in the amount of tax on the total income determined under section 143(1) or under regular assessment for the purpose of computing the amount of interest.

Further, the Board is empowered to issue guidelines for the purpose of removing the difficulty arising in giving effect to the provisions of section 140B.

Following consequential amendments have also been made to certain other sections –

1. Section 144 – The Assessing Officer can make the best judgment assessment in a case where the assessee has failed to furnish his return of income under section 139. Reference to sub-section (8A) has been included in the relevant clause (a) of section 144(1).

2. Section 153 – The assessment under section 143 or 144 needs to be completed within nine months from the end of the relevant assessment year. However, in a case where the updated return under section 139(8A) is furnished, this time limit is extended to nine months from the end of the financial year in which such updated return was furnished.

3. Section 276CC – No prosecution shall be initiated for failure to furnish return of income under section 139(1) if an updated return has been furnished under section 139(8A).

These amendments are applicable with effect from 1st April 2022.

Assessment or reassessment in the case of search etc. – Sections 132, 132B, 148, 148A, 148B, 149, 153, 153B, 271AAB 144, 153, 234A, 234B and 276CC

A new set of provisions dealing with the reassessment as well as assessment in the case of search or requisition were inserted by the Finance Act, 2021. Sections 147, 148 and 149 were substituted and a new section 148A was inserted with effect from 1st April, 2021. The following changes are now made in these sections as well as the other related provisions.

1. Explanation 1 to section 148 lists down the types of information which shall be considered as information with the Assessing Officer which suggests that the income chargeable to tax has escaped the assessment. The following changes are made in this Explanation 1 –

    a. Clause (i) provides that 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 shall constitute such information. The word 'flagged' has now been omitted from this clause.

    b. Clause (ii) provides that 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 the Act shall constitute such information. The words 'any final objection raised by the Comptroller and Auditor General of India' are replaced by 'any audit objection'.

c. New clauses have been inserted expanding the scope of information to include the followings –

i. any information received under an agreement referred to in sections 90 or 90A;

ii. any information made available to the Assessing Officer under the scheme notified under section 135A providing for collection of information in a faceless manner;

iii. any information which requires action in consequence of the order of a Tribunal or a Court.

2. Explanation 2 to section 148 provides that the Assessing Officer shall be deemed to have information suggesting escapement of income in certain cases where the search is initiated under section 132 or the requisition is made under section 132A or the survey is conducted under section 133A. The following changes are made in this Explanation 2 –

a. Clause (ii) makes this Explanation applicable to a case where a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st April, 2021, in the case of the assessee. The words 'or sub-section (5)' are now omitted from this clause. Therefore, in a case where the action under section 133A(5) is initiated related to expenditure incurred in connection with any function, ceremony or event, this Explanation shall apply.

b. The deeming fiction in Explanation 2 was made applicable to three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or the requisition is made or the survey is conducted. This restriction of making it applicable only to such three assessment years is removed.

3. The requirement of obtaining approval of the specified authority by the Assessing Officer is modified as follows –

   a. Where the Assessing Officer has already passed an order under section 148A(d) to the effect that it is a fit case to issue a notice under section 148, he is not required to obtain any approval of the specified authority again before issuing such notice.

   b. No approval is required to be obtained for serving a notice upon the assessee under section 148A(b) asking him to show cause as to why a notice under section 148 should not be issued.

   c. A new section 148B is inserted providing that the assessing officer below the rank of Joint Commissioner is required to obtain prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director before passing an order of assessment or reassessment or recomputation in respect of an assessment year to which Explanation 2 to section 148 applies.

4. Section 149(1) provides the time limit for issuance of notice under section 148. Its clause (b) provides for the extended time limit for issuance of notice for an assessment year in a case where the Assessing Officer has in his possession books of account 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 fifty lakh rupees or more for that year. This clause is amended so as to provide that income escaping the assessment should have been represented in the form of

   a. an asset;

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

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

Further, the words 'for that year' have been omitted because of which the condition of the threshold of fifty lakh rupees or more need not be satisfied for every assessment year for which notice under section 148 is proposed to be issued. Also, a new sub-section (1A) is inserted in section 149 to provide that in a case where the investment in such asset or expenditure in relation to such an event or occasion has been made or incurred in more than one previous year relevant to assessment years within the period referred to in clause (b), a

notice under section 148 in such a case shall be issued for every such assessment year.

5. Proviso to section 148A provides for the cases in which the procedure as laid down in section 148A does not apply. Non-applicability of section 148A is extended to a case where the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

6. Proviso to section 149(1) prohibits issuance of the notice under section 148 for the assessment year 2021-22 or earlier assessment years, 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 section 149(1), as they stood immediately before the commencement of the Finance Act, 2021. This restriction now includes the cases where the notice under section 153A or 153C could not have been issued on account of being beyond the time limit specified in those sections. This amendment is effective from 1st April, 2021.

7. Explanation 1 to section 153A provides for the period to be excluded while computing the period of limitation. Clause (xii) has been added providing for exclusion of the period (not exceeding 180 days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the concerned assessee i.e. -

   (a) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or

   (b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs; or

   (c) to whom any books of account or documents seized or requisitioned pertain or pertains to, or any information contained therein, relates.

A similar amendment is also made in section 153B. These amendments are effective from 1st April 2021.

8. Section 153B, providing for the time limit for completion of assessment under section 153A, has been made inapplicable

to any search initiated under sections 132 or requisition made under section 132A on or after the 1st April, 2021. In such cases, the assessment is now required to be made under sections 143, 144 or 147.

9. Sections 132 and 132B are amended to include reference to the assessment, reassessment or recomputation under sections 143(3), 144 or 147 in addition to the assessment under section 153A, wherever it was required.

10. Section 271AAB provides for a penalty at a lower rate in search cases where certain specified conditions are satisfied. One of the conditions which is required to be satisfied is that the assessee should have paid tax on undisclosed income and filed his return of income declaring undisclosed income therein on or before the 'specified date'. The definition of a 'specified date' is amended to include the date on which the period specified in the notice issued under section 148 for furnishing of return of income expires. This amendment is effective from 1st April, 2021.

This amendments are applicable with effect from 1st April 2022 unless it is specified otherwise.

Filing of appeals by revenue when an identical question of law is pending before High Court or Supreme Court – Section 158AB

Presently, section 158AA provides that the Commissioner or Principal Commissioner may direct the assessing officer to defer filing of appeal to the Tribunal if, in an assessee's own case, an identical question of law is pending before the Supreme Court for another assessment year and the assessee accepts that the question of law is identical in both the years. It is now provided that no such direction under this section will be given on or after 1st April 2022.

Section 158AB is now inserted to provide for the procedure for deferment of appeals to be filed by the revenue in certain situations. The said section provides that the Principal Commissioner or Commissioner will not file an appeal challenging an order passed by the Commissioner (Appeals) or the Tribunal in favour of an assessee if:

1. a collegium comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners as may be specified by the Board is of the opinion that the question of law in the present case of the assessee is identical to a question of law arising in assessee's own case for any other assessment year or in the case of any other assessee for any assessment year,

2. such identical question of law in the other case is pending before the jurisdictional High Court or the Supreme Court in an appeal or SLP filed by the revenue in that case and

3. the assessee accepts that the question of law arising in that other case is identical to the question arising in the assessee's case for the current year for which filing of an appeal is proposed to be deferred.

If the above conditions are satisfied, the Assessing Officer will make an application to the Tribunal within 60 days or to the High Court within 120 days in a form to be prescribed stating that the appeal in the assessee's case may be filed only after the decision in the identical other case becomes final.

In an event where the order of the Commissioner (Appeals) or the Tribunal in favour of the assessee against which appeal was deferred is not in conformity with the final decision in the other identical case, the Principal Commissioner or Commissioner may direct the Assessing Officer to file an appeal in assessee's case within sixty days from the date on which the order in the other identical case is communicated to the Principal Commissioner or Commissioner.

This amendment is applicable with effect from 1st April 2022.

Relaxation by CBDT in the case of late filing fees - Sections 119 and 234F

CBDT is empowered to provide relaxation of provisions of certain sections such as 139, 143, 144, 147, 148, 154, 155, 201, 234A, 234B, 234C, 234E etc. Section 234F, which provides for levy of late fees, where a person fails to furnish his return of income within the prescribed time was not expressly mentioned in section 119(2)(a). An amendment is made to enable the CBDT to issue such orders or instructions as deemed fit, relaxing the provisions of section 234F so that fees need not be imposed for a default by certain classes of persons filing their return of income due to circumstances beyond their control.

This amendment is applicable with effect from 1st April 2022.

Income-tax authority empowered to exercise the power of survey - Section 133A

The 'income-tax authority' who is empowered to exercise the power of survey is defined in an Explanation to Section 133A. It means the specified income-tax authorities who are subordinate to the Principal Director General of Income-tax (Investigation) or the

Director-General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be. These higher authorities to whom the income-tax authority should be subordinate are changed to the Principal Director General or the Director-General or the Principal Chief Commissioner or the Chief Commissioner, as may be specified by the Board.

This amendment is applicable with effect from 1st April 2022.

Faceless scheme in certain cases - Sections 92CA, 144C, 253 and 255

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) provisions for enabling issue of notifications regarding the faceless schemes for various administrative functions under the Income-tax Act, 1961. Section 92CA and section 144C deal with reference to Transfer Pricing Officer and reference to Dispute Resolution Panel respectively. As per the said provisions, the Central Government can issue directions to bring any modifications, exceptions etc. by way of a notification. The limitation period to issue directions under such notification was 31st March 2022.

Section 253 deals with the procedure of filing appeal before the Income Tax Appellate Tribunal(ITAT) and section 255 deals with the procedure of disposal of appeals by the ITAT. Under both sections, central government has power to direct by issuing notifications that the provisions of the Act shall apply with such exception, modifications and adaptions as may be specified in the notification. Under Section 253 such notification can be issued till 31st March 2022 and under section 255 till 31st March 2023.

The limitation period for issuing notifications under sections 253 and 255 is extended to 31st March 2024.

Faceless Assessments – Section 144B

TOLA introduced Faceless Assessment procedures in the Act with effect from 1st April 2021 which became applicable to all the pending assessments after their introduction. This section has been substantially amended by substituting sub-sections (1) to (8), omitting sub-sections (9) and (10) and certain other amendments.

A comparative table of the effect of the amendments is as under:

Particulars	Existing Provisions	New Provisions
Applicability	Assessments under sections 143(3) and 144.	Assessments, re-assessments, re-computation under sections 143(3), 144 and 147.
The time limit for the reply of notice issued under section 143(2)	15 days from date of receipt of the notice.	As per the time limit specified in the notice
Assignment of the case to Assessment Unit	The case shall be assigned by National Faceless Assessment Centre (NaFAC) to the Assessment Unit (AU) in any one Regional Faceless Assessment Centre (ReFAC)	The case shall be directly assigned to AU. The concept of ReFAC is done away with under the amended provisions.
When can AU seek technical assistance from Technical Unit (TU)	AU can make request to NaFAC to seek technical assistance from TU (situations under which assistance can be sought are listed in Standard Operating Procedures).	AU can seek TU assistance in case of determination of Arm's Length price, valuation of property, withdrawal of registration, approval or exemption or any other technical matter.
Finalisation of assessment by AU.	The AU after obtaining the details from assessee shall prepare a draft assessment order and send it through NaFAC.	The AU shall make in writing an income or loss determination proposal in case no variations are proposed to the returned income. A show-cause notice shall be issued if there are any variations proposed.

Particulars	Existing Provisions	New Provisions
		Note: With this amendment, the provisions remove issue of revised draft assessment order as required by erstwhile section. On receipt of such income/loss determination proposal, the NaFAC shall direct the AU to prepare a draft order based on the said proposal or shall assign the proposal to a Review Unit (RU).
Assignment of case after review	The NaFAC shall assign the case to another AU after receiving suggestion of variations by RU.	The NaFAC shall assign the case to the same AU which had made the income/loss determination proposal. Note: This is a welcome change which will reduce procedural complexities.
Requiring special audit under section 142(2A)	No such provision	Clause (xxxii) of sub section (1) provides that if AU is of the opinion, considering the complexity of a case that it is necessary to invoke provisions of section 142(2A), it shall in writing refer such request to NaFAC. Sub section (7) is introduced to provide the procedure for invoking provisions under section 142(2A).

Particulars	Existing Provisions	New Provisions
Constitution of various units specified under the regime.	No such specifications.	The AU, Verification Unit (VU), TU and RU wherever referred in the amended sections shall mean 'Assessing Officer' assigned powers by the Board.
Authentication of electronic records	— By NaFAC by affixing its digital signature; — By assessee by way of digital signature (DSC) or Electronic Verification Code (EVC)	— By NaFAC by way of electronic communication; — By AU, VU, RU, TU by affixing digital signature; — By assessee through DSC, EVC or by logging into the registered account on the ITD portal.
Request for personal hearing made by the assessee.	Chief Commissioner or Director General in charge of ReFAC may approve the request for personal hearing.	Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through NaFAC. Note: There are various writ petitions filed before several High Courts challenging the constitutional validity of faceless regime on principles of natural justice. Allowing personal hearing to assessee is a welcome move to reduce litigation on this front.

Particulars	Existing Provisions	New Provisions
Non-est assessments	Sub section (9) of secton 144B overrides the other sub-sections being a non obstante clause. It provides that the assessments shall be considered as non-est if the same are not made in accordance with the procedure laid down under this section.	Sub section (9) of secton 144B is now omitted under the amended provisions with retrospective effect from 1st April 2021. Note: Omitting sub-section (9) from the procedures and that too with retrospective effect is a unfair and unjustified amendment. It removes the safeguard for following assessment procedures in the section.

These amendments are applicable with effect from 1st April 2022, except the omission of sub-section (9) of section 144B which is applicable from 1st April 2021.

Deletion, modification or revision of demand notice - Section 156A

A new section has been inserted to provide that where demand notice under section 156 has been issued in respect of any tax, interest, penalty, fine or any other sum and such amount has been reduced as a result of an order of National Company Law Tribunal (NCLT), the Assessing Officer shall modify the demand in conformity with such order and serve a notice specifying the sum payable, if any.

The modified notice of demand as mentioned above shall be revised in the event of modification of the order of the NCLT by National Company Law Appellate Tribunal or Supreme Court.

This amendment is applicable with effect from 1st April, 2022.

Validity of proceedings in business reorganization - Section 170

With the intent to save and validate the proceedings made on the predecessor entity during the course of pendency of business reorganization involving amalgamation or demerger or merger of business of one or more persons, it has now been provided that such proceedings shall be deemed to have been made on the successor and all the provisions of the Act shall apply accordingly. Pendency for this purpose shall mean such period as specified.

This amendment is applicable with effect from 1st April, 2022.

Modified return in case of business organization – Section 170A

A new section has been inserted to provide that in case of business reorganization involving amalgamation or demerger or merger of business of one or more persons, where a return of income has been filed by the successor prior to the order of the tribunal or court as the case may be, for any assessment year relevant to previous year to which the order applies, the successor shall furnish a modified return of income in prescribed form and manner, within six months from the end of the month in which such order was issued, in accordance with and limited to such order.

This amendment is applicable with effect from 1st April, 2022.

Mechanism for seeking refund of tax borne on payments to non-resident in certain case - Sections 239A, 246A and 248

In certain cases where in respect of an agreement or an arrangement, the tax deductible in respect of sums payable to non-residents under section 195 is to be borne by the resident payer and such payer has paid the tax deducted at source but claims that tax was actually not deductible, section 248 provided a mechanism to file an appeal before Commissioner of Income-tax (Appeals) for a declaration that no tax was deductible on such income. Further, section 249 provided that such appeal is to be filed within 30 days from the date of payment of tax.

It is now provided that no appeal under section 248 can be filed where tax is paid on or after the 1st April 2022.

In order to provide an alternative mechanism to claim refund in such cases, a new section 239A has been inserted.

Section 239A provides new mechanism for cases where, in respect of an agreement or an arrangement, the tax deductible in respect of sums payable to non-residents under section 195 is to be borne by the resident payer and such payer has paid the tax deducted at source but claims that tax was actually not deductible. As per the new mechanism, payer can file an application for refund of taxes paid before the Assessing officer within 30 days from the date of payment of such taxes (deducted under section 195 and borne by payer). The Assessing officer shall pass a written order allowing or rejecting the said application after making enquiries, as he may consider necessary, within six months from the end of the month in which the application was received by the assessing officer.

If the deductor is not satisfied with the order of the assessing officer, he may prefer an appeal against such order before the

Commissioner of Income tax (Appeals). Consequential amendment has been made to include order passed under section 239A as an appealable order under section 246A.

These amendments are applicable with effect from 1st April 2022.

Revision of orders prejudicial to revenue – Section 263

Section 92CA provides that an Assessing Officer (AO) can refer the computation of Arm's Length Price to the Transfer Pricing Officer (TPO) if the AO considers it necessary or expedient to do so after seeking approval of the jurisdictional Commissioner. Such order passed by the TPO under section 92CA was not falling under the revisionary powers granted under section 263 to the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner.

Section 263 has now been amended to provide that the jurisdictional Commissioner can exercise power under 263 by passing an order directing the TPO to modify the order passed under section 92CA or cancelling the order under section 92CA and directing making a fresh order under the said section.

Consequently, a new sub section (5A) has been inserted in section 153 to provide that where TPO gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the AO, the AO shall proceed to modify the order of assessment or reassessment or re-computation, in conformity with such order of the TPO within two months from the end of the month in which such order of the TPO is received by him.

These amendments are applicable with effect from 1st April 2022.

11. DISPUTE RESOLUTION SCHEME – SECTION 245MA

Provision for passing an order giving effect to the order or directions of the Dispute Resolution Committee – Section 245MA

Section 245MA constitutes Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfil specified conditions mentioned in the said section.

After the resolution of the dispute by the DRC the assessed income of the person who had applied to DRC has to be determined and demand notice under section 156 of the Act is to be issued.

A new sub-section is inserted to enable the Assessing officer to pass an order giving effect, within a period of one month from the end of the month in which the order of the DRC is received. Previously there was no such provision.

This amendment is applicable with effect from 1st April 2022.

12. PENALTIES AND PROSECUTION PROCEEDINGS

Power to levy penalty: Sections 271AAB, 271AAC and 271AAD

Sections 271AAB, 271AAC and 271AAD empower the Assessing Officer to levy penalty if undisclosed income is found during the search, incomes referred to in sections 68, 69, 69A, 69B, 69C or 69D and for falsification or omission of entries in the books of account. It is now provided that the power to levy penalty under the aforesaid three sections will also be available to the Commissioner of Income-tax (Appeals).

These amendments are applicable with effect from 1st April 2022.

Penalty under Section 272A

Penalty of ₹ 100 for every day for failures listed in section 272A(2) such as non-furnishing of returns, statements or particulars mentioned in sections 133 or 206 or 206C or 285B, non-furnishing or timely furnishing of return of income as required under sections 139(4A) or 139(4C) by a charitable trust, etc., non-furnishing certificate as required by section 203 or 206C, etc. is now increased to ₹ 500 per day.

This amendment is applicable with effect from 1st April 2022.

Punishment for second offence - Sections 276BB and 278A

Section 276BB provides for punishment if a person who fails to pay the tax collected at source to the Central Government with rigorous imprisonment for a term of not less than 3 months but which may extend to 7 years and with fine. Section 278A is now amended to provide that if any person who is convicted under section 276BB is again convicted of such an offence he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term of not less than 6 months but which may extend to seven years and with fine.

This amendment is applicable with effect from 1st April 2022.

No Punishment if for a reasonable cause - Sections 278AA and 276BB

Section 278AA provides that no person shall be punishable for failures referred to in sections 276A, 276AB or 276B if he proves that there was a reasonable cause for such failure.

It is now provided that no person shall be punishable for failure referred to in section 276BB to pay the tax collected at source to the Central Government if he proves that there was a reasonable cause for such failure.

This amendment is applicable with effect from 1st April 2022.

INDIRECT TAXES

CUSTOMS

Key amendments announced in the Customs Act, 1962 announced in Finance Bill 2022 are as under:

1. The term "proper officer" under section 2 (34) of Customs Act, 1962 is amended to specifically state that assignment of functions to an officer of Customs by CBIC or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under section 5 in Customs Act.

2. Section 3 of the Customs Act provides for the class of customs officers. Now, it is amended to include the officers of Director General of Revenue Intelligence (DRI), Audit and Preventive Wing in the class of officers of Customs.

3. Section 5 of the Customs Act empowers the officers of Customs to discharge their duties subject to conditions and limitations imposed by CBIC. Now, CBIC is empowered to issue notification for assigning functions to an officer of customs who shall be the proper officer in relation to such assigned functions by inserting sub-section (1A) to section 5 of Customs Act. A similar amendment is also made empowering Principal Commissioner of Customs and Commissioner of Customs to pass an order within their jurisdiction for assigning functions to an officer of customs who shall be the proper officer in relation to such functions by inserting sub-section (1B) to section 5 of Customs Act.

   Note: On looking at the above amendments and certain other amendments, it seems that an attempt has been made to override the effect of Cannon India Private Limited 2021 (3) TMI 384 (SC) which provided that the officer who has initially assessed the case can only re-assess such case.

4. A new sub-section (4) is inserted in section 5 of the Customs Act which consists of criteria that CBIC may adopt to notify conditions and limitations and assign functions to the proper officer. Such criteria include but are not limited to the following:

   - Territorial jurisdiction
   - Persons or class of persons
   - Goods or class of goods

- Cases or class of cases
- Computer assigned random assignment etc.

5. After sub-section (4) to section 5 of the Customs Act, a new sub-section (5) is inserted. As per sub-section (5), CBIC, under certain circumstances, may require two or more officers of customs whether of the same class or not to have concurrent powers and functions to be performed under Customs Act.

6. To facilitate detection of duty evasion, a new clause (iv) is inserted to second proviso to section 14 (1) of Customs Act to enable CBIC to specify additional obligations to be cast on the importer and the checks in respect of a class of imported goods, to be selected on the basis of specific criteria where CBIC has reason to believe that their value is not being declared truthfully or accurately.

7. In cases of the advance ruling, the definition of "applicant" is amended to remove definitions of "joint venture in India", "non-resident", "Indian company", "foreign company" since these are irrelevant now. This is a cosmetic change in view of amendments made vide Finance Act 2018 because of which advance ruling can be obtained by any person having valid IEC, exporting goods to India, or having a justifiable cause to the satisfaction of AAR (Section 28E of Customs Act).

8. Section 28H of Customs Act is amended to provide that advance ruling application may be withdrawn anytime before such ruling is pronounced as against the present withdrawal time of thirty days from the date of application.

9. The amendment is made to prescribe fees for application of advance ruling and the fees prescribed under section 28H of the Customs Act is omitted.

10. Currently, it is specified that advance ruling pronounced by the authority shall be signed by members. Now, the reference of "members" in section 28-I of the Customs Act is ommitted. Therefore, in effect, section 28-I (7) of Customs Act would read as "advance ruling pronounced by the authority signed and certified in prescribed manner shall be sent to applicant".

11. Validity of advance ruling will be for three years or change in law or facts, whichever is earlier as against present unlimited validity until a change in law or facts (section 28J of Customs Act). For advance rulings obtained till the date of enactment of Finance Bill 2022, three years shall be reckoned from the date of enactment of Finance Bill 2022.

12. A new section viz. section 110A of Customs Act is introduced whereby after inquiry, investigation or audit, a report along with relevant documents would have to be transferred to the proper officer having jurisdiction for further action like reassessment, adjudication, etc. In case of multiple jurisdictions, such transfer shall be made to the officer of customs to whom such matter is assigned by CBIC.

13. A new section 135AA of Customs Act is inserted to protect the confidential data of importers or exporters such as value, classification, quantity, etc. Publishing of any such information unless provided by law or published by or on behalf of Central Government, is made a punishable offense with imprisonment of maximum of six months or with fine of maximum Rupees Fifty Thousand or both.

14. Section 137 of Customs Act is amended to provide that no court shall take cognizance of any offense specified in section 135AA of Customs Act i.e. with respect to the protection of import and export data without the sanction of the Principal Commissioner/ Commissioner of Customs.

15. Clause 96 of the Finance Bill 2022 validates any action taken or functions performed under certain Chapters of the Customs Act by any officer of Customs before the date of commencement of Finance Act 2022. Irrespective of any decisions of any court, tribunal, or other authority, all actions or functions undertaken under certain Chapters of the Customs Act, notifications issued for an appointment or assigning functions to officers until the enactment of Finance Bill 2022 are validated retrospectively vide amended sections 2, 3 and 5 of Customs Act.

GOODS AND SERVICES TAX

Note: Unless otherwise specifically mentioned,

(i) The Act means Central Goods and Services Tax Act, 2017.

(ii) The amendments shall come into force from on such date as the Central Government may, by notification in the Official Gazette, appoint.

(A) Amendments related to Input Tax Credit

1. Section 16(2) of the Act provides for the conditions for a claim of the input tax credit. A new condition has been added which provides that the input tax credit in respect of invoices or debit notes furnished by the supplier in the statement of outward supplies and communicated to the registered person under section 38 of the Act should not be restricted credit.

2. Accordingly, section 37 of the Act is amended enabling the Government to prescribe conditions and restrictions on furnishing of details of outward supplies in GSTR-1 and on communicating the same to the recipients of the said supplies.

3. The mechanism for reporting of details of ITC under the existing section 38 of the Act, enables the recipient to prepare the details of his inward supplies on his own after verifying, validating, modifying, or deleting the details furnished by the suppliers or by adding the details of those inward supplies not furnished by the suppliers under section 37 of the Act. The implementation of this mechanism was already deferred and hence was not in operation and now has finally been done away with statutorily. Consequently, the reference of the said section in sections 39(9), 47, 48, and section 168(2) of the Act is omitted.

   Section 38 of the Act is now substituted in its entirety by new provisions providing that the auto-generated statement (i.e. GSTR-2B) containing details of the input tax credit shall be made available to the recipients of such supplies subject to such conditions and restrictions as may be prescribed. The revised statutory mechanism provides for availing input tax credit by the recipient based on unidirectional flow on the portal, thereby giving no discretion to claim the provisional input tax credit based on his own details of inward supplies. Section 38(2) of the Act seeks to provide for the classification of input tax credits as reflected in GSTR2B between 'unrestricted credits' and 'restricted credits'. It also provides for a set of circumstances under which the credits can be restricted if the details of inward supplies are

furnished under section 37(1) of the Act by registered persons in the following cases or by such other classes of persons as may be prescribed.

(i) within the prescribed period of taking registration.

(ii) who has defaulted in payment of tax beyond a prescribed period.

(iii) whose output tax payable as per GSTR1 during the prescribed period exceeds the output tax paid in GSTR3B during such period by a prescribed limit.

(iv) who has availed the credit of input tax of an amount that exceeds the un-restricted input tax credit available to him as per GSTR-2B by a prescribed limit.

(v) whose proportion of output tax discharged through credit exceeds the prescribed limit under section 49(12) of the Act.

4. The existing section 41 of the Act provides for a claim of the input tax credit on a provisional basis. The said section has been substituted by a new section providing for availment of the eligible input tax credit by the recipient in his return on a self-assessment basis subject to prescribed conditions and restrictions. The proposed section 41(2) of the Act provides that if the supplier has not paid tax in respect of input tax credit claimed by the recipient, then such recipient shall be required to reverse the credit along with applicable interest and where the said supplier makes the payment of tax payable in respect of such supplies, the recipient can re-avail the amount of credit so reversed in the prescribed manner. The section however does not provide for re-availment of interest paid to cause dual jeopardy since the supplier would also have discharged the interest for delayed deposit of tax. As a consequence of this section 43A of the Act is omitted and a reference to the said section in sections 16(2)(c) and 49(2) of the Act is omitted.

5. Sections 42 and 43 of the Act pertaining to the matching of outward supplies of the suppliers with inward suppliers of the recipients are omitted since the revised statutory scheme is based on availment of input tax credit by the recipients based on the unidirectional flow of invoices and matching is no longer the obligation of the Government, but that of the taxpayer. Consequently, a reference to the said sections in section 37(3) of the Act is omitted.

6. The utilisation of the amount available in the electronic credit ledger towards making any payment towards output tax is also made subject to prescribed restrictions. Similarly, a new provision is made under section 49(12) of the Act empowering the Government to specify by rules such maximum portion of output tax liability that may be discharged through electronic credit ledger by registered persons or class of registered persons.

(B) Return Filing Process and Payment of Taxes - Course Correction & Strengthening compliance

1. Proviso to section 37(1) of the Act restricting the registered person to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period is omitted from the Act.

2. The due date of filing of return by the non-resident taxable person is preponed from 20 days to 13 days after the end of a calendar month.

3. A new sub-section (4) has been inserted in section 37 of the Act only to permit tax period-wise sequential filing of details of outward supplies subject to cases that are exempted from the said sequential filing under the notification issued in that regard.

4. Section 39(7) of the Act is amended in respect of persons required to file the quarterly returns giving them an option to pay the prescribed amount instead of an amount equal to the tax due in a particular month net of the input tax credit as per the existing provision.

5. Further, section 39(10) of the Act is amended to provide for the filing of details of outward supplies mandatorily before the filing of GSTR-3B.

6. Provisions relating to levy of late fees under section 47 of the Act are also made applicable to the delayed filing of return under section 52 of the Act pertaining to TCS.

7. The existing section 29(2)(b) of the Act provides for cancellation of registration of a composition dealer if he has not furnished returns for three consecutive tax periods. The amendment is made providing that for cancellation if the return for a financial year has not been furnished beyond three months from the due date of furnishing of the said return. Similarly, section 29(2)(c) of the Act provides for cancellation of registration of a non-composition dealer if he has not furnished returns for six consecutive months. The amendment is made to provide for

cancellation if the return has not been furnished for a prescribed continuous tax period.

(C) Extension in the time limit for claim of input tax credit and rectification of mistakes and credit notes

The GST Law prescribes timelines for certain actions in relation to input tax credit and rectification of mistakes and issuance of credit notes. Currently, the timeline is based on the due date of filing the return for the month of September immediately following the financial year pertaining to which the input tax credit is to be claimed/ corrective action is sought to be performed. Through various Clauses of the Finance Bill, 2022, the said timeline is sought to be extended up to 30th November following the end of the financial year. The following table summarises the cases where the timeline has been extended up to 30th November.

Sections	Subject matter in Brief
Section 16(4)	Input Tax Credit - Time limit for taking input tax credit in respect of any invoice or debit note pertaining to a financial year.
Section 34	GST on Credit Notes - Time for issuance of credit notes in respect of any supply made in a financial year
Section 37(3)	Rectification in GSTR1 – Time limit for making amendment in the statement of outward supplies (i.e. GSTR-1)
Section 39(9)	Rectification in GSTR3B – Time limit for making rectification in GSTR3B
Section 52	Rectification in TCS Particulars – Time limit for making for rectification in TCS particulars

It may be noted that in all the above cases, if the taxpayer chooses to file the annual return u/s 44 or as the case may be annual statement u/s 52(5) before 30 November, then the timelines will get preponed to the date of filing of the annual return.

(D) Other Amendments

1. Section 49(10) of the Act is amended permitting the transfer of the balance lying the electronic cash ledger of one person to the electronic cash ledger of a distinct person (i.e. another branch of the same legal entity) in cases where the registered person has no unpaid liability in his electronic liability ledger.

2. Explanation to section 54 is amended to provide that in case of zero-rated supplies to Special Economic Zone (SEZ) units or developers, the relevant date for refund shall be the due date of filing the return in respect of zero-rated supplies.

3. Section 54(10) is amended to expand the scope of withholding of refunds in case of outstanding tax payments to all types of refund claims.

4. Section 54 of the Act is amended to provide the time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55 (i.e. refunds by a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf) as two years from the last day of the quarter in which the said supply was received as against the existing six months to bring them at par with other registered assesses.

(E) Retrospective Amendments

1. Notification No. 9/2018 – Central Tax, dated the 23-01-2018, is amended so as to notify www.gst.gov.in, retrospectively, with effect from 22-06-2017, as the Common Goods and Services Tax Electronic Portal, for all functions provided under Central Goods and Services Tax Rules, 2017, other than those provided for e-way bill and for generation of invoices under sub-rule (4) of rule 48 of the Rules.

2. Consequent to the omission of sections 42 and 43, section 50(3) of the Act is amended to charge interest on such amount of input tax credit that has been wrongly availed as well as utilised. This amendment is made with retrospective effect from 01-07-2017. The rate of interest is also notified to be 18% per annum.

3. Retrospective tax exemption has been provided for the supply of unintended waste generated during the production of the fish meal except for fish oil for the period from 01.07.2017 till 30.09.2019. However, it is also provided that taxes already collected will not be refunded.

4. Retrospective tax exemption has been provided for the supply of Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee for the period from 01.07.2017 till 30.09.2019. However, it is also provided that taxes already collected will not be refunded.

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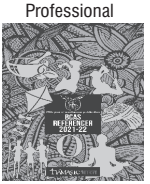

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