



# Tax Proposals Budget 2021





## BACKGROUND

Finance Minister Nirmala Sitharaman presented the Union Budget 2021-22, which was one of the most awaited budgets in recent memory. And it did not disappoint. Broadly, the theme of the budget was focused on capital expenditure, leading to enhanced allocation to infrastructure spending. It can be expected that a lot more new infra projects, especially in road, airport, and railways are announced in coming fiscal year.

On the tax front, largely, the provisions and tax rates have remained unchanged. GST laws have not been tinkered with either. Efforts have been made to ease the process of doing business in India, especially for small and medium companies. Further, focus has been placed on reducing tax litigations;

This presentation summarizes the key direct tax and corporate law proposals of the Union Budget 2021-22.

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EASE OF DOING BUSINESS

# Corporate Law

## ONE PERSON COMPANY

- Earlier, only Indian resident citizen was allowed to form one person companies (OPCs) in India.
- Now, it has been proposed to reduce the residency limit of NRIs from 182 to 120 days - thereby allowing NRIs to incorporate an OPC in India.
- The government has also proposed for an OPC to convert itself into any other type of company at any time.
- It has been also proposed to incentivize the incorporation of OPCs by allowing them to grow with no restriction on paid-up capital and turnover.
- The said proposed amendments can encourage startups and small business set up without the concerns of a larger compliance framework or minimum capital commitment.

## RELAXATIONS FOR SMALL COMPANIES

- As per section 2(85) of Companies Act, 2013, Small company means a company whose paid-up share capital of which does not exceed fifty lakh rupees and turnover of which does not exceed two crore rupees as per profit and loss account for the immediately preceding financial year.
- The said definition has now been amended by increasing the thresholds for paid up share capital from "not exceeding fifty lakh rupees" to "not exceeding two crore rupees" and turnover from "not exceeding two crore rupees" to "not exceeding twenty crore rupees".

# Corporate Law

The said proposed change in the definition of small companies shall bring benefit to more than two lakh companies in easing their compliance requirement as there are certain relaxation and exemptions provided to small companies under Companies Act 2013 i.e., which include the following:

- A small company may hold only two board meetings in a year. i.e., one board meeting in each half of the calendar year and the gap between the two meetings is not less than ninety days;
- A small company need not include cash flow statement as part of its financial statement;
- Annual Return can be signed by the company secretary, or where there is no company secretary, by a single director of the company;
- A small company is exempted from the requirement from mandatory rotation of auditor.
- An auditor of small companies is not required to report on the adequacy of the internal financial control and its operating effectiveness in the auditor's report.

# Corporate Law

## DECRIMINALIZATION ON THE PROVISIONS OF LLP ACT, 2008

Currently, the Government has completed the decriminalizing of the procedural and technically compoundable offences under the Companies Act, 2013.

It has now been proposed to decriminalize the provisions of Limited Liability Partnership Act, 2008 and the said provisions shall be notified by the Government in due course.

## SPECIAL NCLT FRAMEWORK

It has been proposed to strengthen National Company Law Tribunal (NCLT) framework in order to ensure faster resolution of cases.

Further, e-Court system shall be implemented, and alternate methods of debt resolution shall be introduced.

It has been also proposed to establish special framework for MSMEs.

# Tax Compliance & Administration

## THRESHOLD FOR TAX AUDIT FURTHER RELAXED

The threshold limit of turnover for a person carrying on business has been revised from INR 5 crore to INR 10 crore in cases where:

- Cash receipts do not exceed 5% of the total amount received during the year and
- Cash payments do not exceed 5% of the total amount paid during the year.

However, person other than covered as above and having turnover more than INR 1 crore or more is still liable for tax audit. This relaxation is aimed to further discourage cash transactions.

## FACELESS TAX TRIBUNAL PROCEEDINGS

Proposed to launch faceless scheme for proceedings before tax tribunals in line with the existing faceless appeal mechanism for Commissioner (Appeals).

*This move is aimed to reduce cost of compliance for taxpayers and increase transparency in disposal of appeals.*

***These amendments will be applicable from FY 2020-21 onwards.***

# Tax Compliance & Administration

## EXEMPTION OF TDS ON DIVIDEND TO BUSINESS TRUST

Section 194 of the Act provides deduction of tax at source on payment of dividend to residents.

It has been proposed that provisions of Section 194 of the Act to not apply on dividend income credited or paid to a business trust\*

The amendment will be effective from FY 2020-21 onwards.

## TIME LIMIT FOR ISSUANCE OF INTIMATION UNDER SECTION 143(1)

Proposed to reduce the time limit for issuing of intimation under section 143(1) of the Act from 12 months to 9 months from the end of Financial year in which return is furnished.

It is further proposed to make adjustment towards increase in Income indicated in tax audit report.

The amendment will be effective from FY 2020-21 onwards.

*\*as defined in clause (13A) of section 2 of the Act by a special purpose vehicle referred to in the Explanation to clause (23FC) of section 10 of the Act or any other person as may be notified by the Central government in this behalf.*

# Tax Compliance & Administration

## **TIME LIMIT FOR ISSUANCE OF SCRUTINY NOTICE UNDER SECTION 143(2)**

Proposed to reduce the time limit for issuing of notice under section 143(2) of the Act from 6 months to 3 months from the end of financial year in which the return is furnished.

The above provisions are proposed to be applicable from FY 2020-21 onwards.

## **TIME LIMIT FOR COMPLETION OF ASSESSMENT**

Proposed to amend Section 153 of the Act providing the time limit for completing the assessment under section 143 or section 144 of the act for Assessment Year 2021-22 onwards to be 9 months from the end of relevant Assessment Year instead of 12 months as applicable earlier.

The above provisions are proposed to be applicable from FY 2020-21 onwards.

# Revision In Compliance Due Dates

## Due date of spouse of partner covered in section 5A

Due date in case of spouse of a partner of a firm whose accounts are required to be audited under this act or under any other law, if Section 5A applies to them, shall be 31 October of the relevant assessment year.

*Section 5A provides for taxation of spouses governed by Portuguese civil code which are applicable in Goa, Dadra and Nagar Haveli, Daman and Diu.*

## Due date of partner of the firm who is subject to transfer pricing audit

Due date in case of a partner of the firm who are covered under the provisions of transfer pricing and required to furnish Form 3CEB, is proposed to be 30 November of the relevant assessment year.

## Reduction in time limit for filing belated and revised return

With this amendment, the belated/revised return can now only be filed up to 9 months from the relevant financial year (i.e., 31 December of the relevant assessment year) or before the completion of the assessment, whichever is earlier.

*Earlier, time limit to file the belated/revised return was till end of the relevant AY or completion of assessment, whichever is earlier.*

## Power of Board to give some relaxation in defective return

Section 139(9) of the Act covers defective return and lists out the conditions for treating the return as defective.

To address the difficulties faced by the stakeholders, it has now been proposed to insert a proviso empowering the board to notify the class of assessee to which such provisions shall not apply or shall apply with modification.

***\*All amendments will be applicable from FY 2020-21 onwards.***

# Relaxation In Advance Tax Payment

## EXISTING PROVISIONS OF THE ACT

- Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay the advance tax installment as per provisions of Section 208 of the Act.
- The first proviso of the Section 234C of the Act provides that the in case of special incomes like capital gain, PGBP income for the first time etc., no interest shall be charged in case the advance tax liability has been paid by the assessee in the next quarter.

## PROPOSED CHANGE

- It has been proposed to add dividend income to the category of incomes those are referred in first proviso of Section 234C of the Act.
- The dividend as referred to in this section will assign its meaning from the provisions of Section 2(22) of the Act, except Section 2(22)(e) of the Act
- The said amendment shall be effective from 1 April 2021 and will accordingly apply to the assessment year 2021-22 and subsequent years.

## IMPLICATIONS OF THE AMENDMENT

- Since, the dividend income can not be estimated by an assessee in the beginning of the year, therefore, the assessee ends up paying interest on the said income. By this amendment, the assessee will save on interest cost who earns dividend income.
- Cases where the provisions Section 2(22)(e) of the Act get triggered, there shall be no change in advance tax provisions.

# Relief Granted To Specific Units In IFSC

## AIRCRAFT LEASING

It has been proposed that any income in the nature of royalty from lease of an aircraft arising to a non-resident from a unit of an IFSC shall be exempt from tax.

Further, it has also been proposed that any capital gain arising on disposal/sale of aircraft or aircraft engine by the unit of IFSC to a domestic company shall be exempt under section 80LA.

## RELOCATION OF SPECIFIED ORIGINAL FUND TO A RESULTANT IFSC FUND

It has been proposed to exempt any capital gain income arising to Non-resident on account of transfer of share of a company resident in India and such shares were transferred from the original fund to resultant fund in relocation, subject to the following:

- Such transfer has taken place on or before 31 March 2023;
- Consideration for such transfer is discharged in the form of shares or unit or interest in the resulting fund to the shareholder or unit holder or interest holder of the original fund in the same proportion;
- Corresponding amendment to be provided in cost of acquisition, carry forward of losses.

***These amendments will be applicable from FY 2021-22 onwards.***

# Relief Granted To Specific Units In IFSC

## RELAXATION SAFE HARBOUR CONDITION

It has been proposed to provide relaxation from certain condition prescribed under section 9A to an eligible investment fund or its eligible fund manager, if the fund manager is located in IFSC and has commenced its operations on or before 31 March 2024.

## INVESTMENT DIVISION OF OFFSHORE BANKING UNIT (IBU)

It has also been proposed to include under the specified fund category investment division of offshore banking unit who is granted CAT 111 AIF registration in IFSC as defined in section 10(4D). Accordingly, any income towards transfer of capital asset as referred under 47(viiab), is exempt under section 10(4A), provided it commences operation on or before 31 March 2024.

Further, it has been proposed to exempt IBU income earned from transfer of non-deliverable forward contracts by non-residents, where IBU has commenced its operations on or before 31 March 2024.

***These amendments will be applicable from FY 2021-22 onwards.***

# Increase In Safe Harbor Limit For Home Buyers And Real Estate Developers

## INCENTIVE TO REAL ESTATE DEVELOPER

Section 43CA of the Act provides that in case where the land or building or both (other than capital asset) is transferred below the stamp duty value, in such case stamp duty value shall be the deemed to be sale consideration.

It further provides that where the stamp duty value does not exceed 110% of the sales consideration received, then sales consideration received shall be considered full value of the consideration.

The above safe harbor limit of 110% has been proposed to be increased to 120% subject to prescribed conditions.

## INCENTIVE TO HOME BUYER

Section 56(2)(x) of the Act provides that where the assessee receives an immovable property for a consideration which is less than stamp duty value by an amount exceeding INR 50,000, then the difference between sales consideration and stamp duty value shall be income under IOS.

It further provides that where the stamp duty value does not exceed 110% of the sales consideration, then no income shall be chargeable to tax.

The above safe harbor limit of 110% has been proposed to be increased to 120% subject to prescribed conditions.

## CONDITIONS FOR AVAILING THE BENEFIT

The conditions for availing the increased safe hour limits are as under:

- The transfer of residential unit should take place during the period from 12 November 2020 to 30 June 2021.
- The transfer is by the way of first-time allotment of the residential unit to any person.
- The consideration received or accruing as a result of such transfer does not exceed INR 2 crore.

# Relaxations Under GST

- Mandatory requirement of getting annual accounts audited and furnishing of reconciliation statement has been abolished.
- Further, furnishing of annual return with self-certified reconciliation statement has been provided.
- The Commissioner has been empowered to exempt a class of taxpayers from the requirement to file annual return.

# Miscellaneous Changes

## **MCA 21 VERSION 3.0**

It has been proposed that the government will launch data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0 during the coming fiscal 2021-22.

The said version 3.0 will have additional modules for e-scrutiny, e-adjudication, e-consultation and compliance management.

## **DIVESTMENT IN PUBLIC SECTOR COMPANY**

In order to promote strategic disinvestment in PSUs, it is proposed to relax the carry forward and set-off conditions prescribed u/s 79 of the Act.

Consequential amendments proposed in definition of demerger u/s 2(19AA) and Section 72A for carry forward of losses and unabsorbed depreciation.



## CLARIFICATORY AMENDMENTS

# Clarificatory Amendments

## DEFINITION OF ZERO-COUPON BOND AMENDED

Till date, Section 2(48) of the Income tax Act, 1961 ('the Act') defined zero coupon bond as the bond issued amongst others by Infrastructure capital company or infrastructure capital fund in respect of which no payment and benefit is received or receivable before maturity or redemption.

The above definition has now been amended to include 'Infrastructure Debt Fund'\* in order to enable such funds to issue zero coupon bonds.

## CLARIFICATION FOR PROFESSIONALS UNDER SECTION 44ADA

Currently, the provisions of section 44ADA provides an option to an assessee, being resident in India, to pay tax on 50% of the gross receipts where such gross receipts do not exceed INR 50 lakh in a given previous year.

It has been proposed to amend the section to clarify that the provisions shall apply to individual, HUF or a partnership firm not being an LLP Firm as defined under Section 2 of LLP Act, 2008.

***\*Zero coupon bonds issued by Infrastructure debt funds which are notified by Central Government u/s 10(47) of the Act to be included in the definition***

# Clarificatory Amendments

## PROVISION OF SLUMP SALE

The capital gains arising on transfer of assets by way of 'slump sale' is taxed according to Section 50B of the Act;

The 'slump sale' u/s Section 2(42C), means transfer of undertaking(s) as a result of sale for a lump-sum consideration without value being assigned to individual assets and liabilities;

As a result, some courts interpreted that other means of transfer viz. exchange, relinquishment etc. to be excluded for computing capital gains for slump sale.

*Clarificatory amendment has been proposed to include all types of transfers within the scope of 'slump sale'.*

## DELAYED PAYMENTS TO LWF NOT ALLOWABLE

Employee's contribution to any labour welfare fund is allowable as deduction only if paid within the statutory due date under their respective laws.

***These amendments will be applicable from FY 2020-21 onwards.***

# Clarificatory Amendments

## Rate Of TDS On FII - Clarified

- The existing provisions of Section 196D provides for deduction of tax @ 20% on income of FIIs from specified securities.
- It has been now clarified that the rate of withholding as per Section 196D shall be twenty percent or rate or rate in force (as per DTAA), whichever is lower.
- Clarificatory amendment introduced in line with judgement pronounced by the Hon'ble Supreme Court in the case of PILCOM vs. CIT [(2020) 116 taxmann.com 394]

# Allowability Of Depreciation On Goodwill

## BACKGROUND OF DEPRECIATION ON GOODWILL

- Goodwill of a business or profession, although considered as an 'Asset' has not been specifically included as an asset either in the definition of 'block of assets' as provided under section 2(11) or in Section 32 of the Act;
- The question whether goodwill of a business is an asset and whether depreciation is allowable on goodwill was discussed by Hon'ble Supreme Court in the case of Smiff Securities Limited [(2012) 348 ITR 302];
- It was held by the Hon'ble Supreme Court that 'Goodwill' of a business or profession is a depreciation asset under section 32 of the Act

## AMBIGUITY AROUND DEPRECIATION CALCULATION

- While Hon'ble Supreme Court has held that the goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation is required to be carried out after taking into consideration various other provisions of the Act which leads to uncertainty;
- Also, in general, goodwill, depending upon how the business runs, may see appreciation

# Allowability Of Depreciation On Goodwill

## PROPOSED AMENDMENT

- In view of the ambiguity revolving around depreciation on goodwill, it has been proposed to not consider goodwill of a business or profession to be a depreciable asset;
- As a result, there would not be any depreciation on goodwill of a business or profession *in any situation*.
- Consequential clarificatory amendments shall be brought in section 2(11), Section 32(1)(ii), Section 50 and Section 55 of the Act.

## EFFECT OF PROPOSED AMENDMENT

- As a consequence, where goodwill is purchased, the purchase price of goodwill will continue to remain cost of acquisition for the purposes of computing capital gains on transfer of such goodwill;
- The purchase price shall stand reduced by depreciation, if any claimed in relation to such goodwill prior to FY 2020-21 for computing the capital gains as discussed above;
- The above may also include the merger transactions, where goodwill is mainly created due to difference in the purchase price and the book value of the acquired assets.

# Rationalization Of MAT Provisions U/S 115JB

## IMPACT OF SECONDARY ADJUSTMENT AND APA ON BOOK PROFITS

- Adjustment allowed in book profits of current year for additional income of past years included in the books of accounts of current year on account of APA u/s 92CC or secondary adjustment u/s 92CE.
- Assessee to make an application to the AO to enable the AO to carry out necessary adjustments in the relevant prior year(s). AO can make such adjustments within 4 years from the end of FY in which such application is received by him.

## IMPACT OF DIVIDENDS EARNED BY FOREIGN COMPANIES ON BOOK PROFITS

- Consequent to the abolition of dividend distribution tax (DDT) and reinstatement of the classical system of taxation for dividend income, income and expenses pertaining to dividends will be excluded while computing the book profits u/s 115JB wherein the dividend rate is lower than the MAT rate due to application of DTAA.

***These amendments will be applicable from FY 2020-21 onwards.***



EXPANDING THE TAX BASE

# Transfer Of Capital Asset To Partner On Dissolution/Reconstitution

## EXISTING PROVISIONS

- Section 45(4) of the Act provides for taxability of the profits/gains arising from the transfer of capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals, in the previous year in which transfer takes place.
- The fair market value of the asset on the date of transfer shall be deemed to be full value of consideration for the purposes of Section 48.

## NEED FOR AMENDMENT

- As there is uncertainty regarding applicability of Section 45(4) to a situation where:
  - i) assets are revalued or
  - ii) self-generated assetsare recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution

# Transfer Of Capital Asset To Partner On Dissolution/Reconstitution

## PROPOSED AMENDMENT

- It is proposed to substitute Section 45 (4) of the IT Act and insert new Section 45(4A) to compute tax on capital gains arising from dissolution or reconstitution of firms in the hands of firms.
- Section 45(4) to provide for taxability of capital gains arising on transfer of a capital asset after considering fair market value of the asset on date of receipt of such asset by partner to be full value of consideration for the purposes of computing the capital gains.

## PROPOSED AMENDMENT

- Similar provisions have been proposed in new section 45(4A) to cover money and any other asset for purposes of computing the capital gains in the hands of the firm.
- The proposed amendment further clarifies that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase due to revaluation / self-generated goodwill / asset.
- Similar taxability for receipt of money or other asset by way of insertion of new sub-section (4A) to section 45.

*The above amendment is proposed to be effective from FY 2020-21 onwards.*

# Equalisation Levy

## PROPOSED PROVISIONS

- The Finance Act 2020 enlarged the scope of equalization levy. However, there were numerous ambiguities warranting a clarification.
- Equalisation levy shall not be applicable if the consideration is taxable as royalty or fees for technical services under the Act read with tax treaties entered into by India.

*[Insertion of proviso to section 163 of the Finance Act 2016]*

## IMPACT

**With this amendment, there shall be no double taxation in the hands of the taxpayers.**

***These amendments will take effect from FY 2020-21 onwards.***

## COMMENTS

- This is more of a clarificatory amendment but an important one to alleviate the fear of double taxation of same income as royalty or fee for technical services and equalisation levy, in the hands of same taxpayer(s).

# Equalisation Levy

## PROPOSED PROVISIONS

- “Online sale of goods/provision of services” shall include one or more of the following activities taking place online:

(a) Acceptance of offer for sale;

(b) Placing the purchase order;

(c) Acceptance of the Purchase order;

(d) Payment of consideration;  
or

(e) Supply of goods or provision of services, partly or wholly

*[Insertion of Explanation to clause (cb) of section 164 of the Finance Act 2016]*

## IMPACT

**This amendment widens the scope of the levy.**

***These amendments will take effect from FY 2020-21 onwards.***

## COMMENTS

- With this amendment, online sale of goods and online provision of services has been specifically defined. However, this is an inclusive definition which may be subject to wider implications.

# Equalisation Levy

## PROPOSED PROVISIONS

- Consideration received or receivable from e-commerce supply or services shall include:
  - (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
  - (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

*[Insertion in sub-section (3) to section 165A of Finance Act 2016]*

## IMPACT

**This will even bring pure aggregators operating in the e-commerce industry under its ambit irrespective of whether or not they own the inventory of goods or provide the services.**

***These amendments will take effect from FY 2020-21 onwards.***

## COMMENTS

- This will expand the scope of the levy and will have far reaching implications.

# TDS On Purchase Of Goods

## PROPOSED PROVISION

- Proposed to insert Section 194Q for deduction of tax on purchase of goods in excess of INR 50 lakh.
- Tax to be withheld on purchase of goods by the buyer @ 0.1%.
- Applicable to Buyers Whose turnover exceeds INR 10 Crore in immediately preceding FY.
- In the absence of PAN of seller, tax to be deducted @ 5%.

## IMPACT

**Monitor its purchases on regular basis to ensure TDS withholding compliance.**

***Applicable from 1 July 2021 and onwards***

## COMMENTS

- This amendment shall help the Government to monitor certain high value transactions.
- There will be preponement of taxes on behalf of seller.
- Where there is an overlap of similar TCS provision under section 206(1H), the provision of section 194Q will prevail.
- Difficulty in ascertaining whether TCS to be collected by seller or TDS to be deducted by the buyer on the same transaction exceeding INR 50 lakh.

# TDS/TCS On Payments To Non-filers Of Tax Returns

## PROPOSED PROVISION

- Higher rate of TDS/TCS to be applicable where the specified person\* (defined below) has not filed its tax returns **and** the aggregate of TDS/TCS in each of the years exceeds INR 50,000.
- TDS/TCS to be **higher** of:
  - Twice the rate specified in the relevant provision of the Act or
  - Twice the rate or rates in force; or
  - Rate of 5%.

*\***Specified Person** is a person who has not filed the tax returns for last 2 previous years immediately preceding the previous year in which tax is required to be deducted or collected and the time limit for filing such returns has expired*

## IMPACT

**This amendment will encourage small taxpayers to file their tax returns.**

**The same would result in increase in the no. of tax compliant assesseees.**

### Does not cover

- *NR who does not have permanent establishment in India.*
- *Salary individuals, lottery and horse race winnings, cash payments by banks etc.*

**Applicable from 1 July 2021 and onwards**

## COMMENTS

- This amendment will increase burden on deductor to ensure whether the specified person has filed its tax return.
- This provision seems to be against the objective of ease of doing business in India.
- Clarification needed for consideration of aggregate TDS/TCS of INR 50,000, i.e., by the payer or of payee

# Definition Of The Term 'Liable To Tax'

## PROPOSED PROVISION

- Section 2(29A) is introduced to define the term "liable to tax" which defines it as follows "in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided".

## IMPACT

**With insertion of specific definition, existing litigation on this front (w.r.t. foreign tax credits) is expected to come to an end. However, it will widen the ambit of definition of resident u/s 6 of the Act.**

***The amendment is effective from FY 2020-21 onwards.***

## COMMENTS

- Until now, the term "liable to tax" was not defined in the Act despite it being used in various sections (Section 6, section 10(23FE) and various tax treaties entered into by India. With this amendment, various disputes on eligibility of foreign tax credits are expected to be settled. However, on the other hand, this definition may lead to various non-residents being treated as resident of India for tax purposes. This definition may raise some interpretation issues leading to litigation.



STREAMLINING THE TAX  
LITIGATION PROCESS

# Revision Of Time Limit For Issuance Of Notice For Reassessment

## PROPOSED PROVISION

The time limit for issuance of the notice u/s 148 for initiating reassessment has been proposed to be revised to:

- 3 years from the end of the relevant assessment year;
- Beyond 3 years but not beyond 10 years from the end of relevant assessment years to be issued only in specific cases\*;

*\*specific cases mean the cases for which the assessing officer has in his possession evidence revealing that the income escaping assessment is likely to exceed INR 50 lakh*

## IMPACT

**Reopening of cases cannot, in any case, go beyond 10 assessment years now.**

***The said amendment shall be applicable from FY 2020-21.***

## COMMENTS

This amendment will provide tax certainty to the taxpayers and will also result into reduced litigation.

Simply put, considering that we are currently into FY 2020-21 (AY 2021-22), the amended time limit u/s 148 is explained by way of an example:

Where income escapement is:

- Less than INR 50 lakh: Cases upto AY 2018-19 can be reopened upto 31 March 2022.
- At least INR 50 lakh: Cases upto AY 2011-12 can be reopened upto 31 March 2022.

# New Procedure For Assessments/Reassessments In Certain Cases

## PROPOSED PROVISION

- It has been proposed to introduce a complete new procedure for conducting assessment/reassessment for certain cases;
- As a result, the assessing officer to conduct necessary enquiries and provide opportunity of being heard to the assessee before issuing notice for re-assessment/search.
- The cases shall include re-assessments for income escaping assessment and the cases where search has been initiated on or after 1 April 2021 under the relevant provisions of the Act

## IMPACT

**The new system with reduced timelines to result in less litigation and provide ease of doing business to taxpayers.**

## COMMENTS

- The new provision is expected to curtail the number of pending litigations in India;
- At the same time, it needs to be seen how the new procedure is implemented.

# Dispute Resolution Committee

## PROPOSED PROVISION

- The Government has proposed to set up a Dispute Resolution Committee in order to provide early tax certainty to small and medium taxpayer.
- Accordingly, a new section 245MA is proposed to be introduced.
- The committee is stated to be faceless and optional.

## IMPACT

**The committee subject to such conditions have the power to reduce or waive any penalty imposable under this Act or grant immunity from prosecution or any offence under this Act.**

*This scheme is aimed to prevent new disputes and settle the issue at initial stage.*

***The said amendment shall be applicable from FY 2020-21.***

## PERSON/SPECIFIED ORDER NOT COVERED IN SCHEME

- Person whose returned income is INR 50 lakh or more and total amount of variation proposed in specified order is INR 10 lakh or more.
- Order based on a search or survey or information received in lieu of section 90 or 90A of the Act.
- Person in respect of whom an order of detention, prosecution or conviction under various laws has been made read with certain criteria as laid down in section 245MA.
- Some other condition as may be prescribed by board.

# Constitution Of Board For Advance Ruling

## EXISTING PROVISIONS

- The scheme of Advance Ruling ('AAR') was introduced by Finance Act, 1993 to avoid dispute in respect of assessment of tax liability and to provide tax certainty;
- The application to advance ruling was made by non-residents/residents to determine their tax liability on a particular transaction and the ruling pronounced was binding both on applicants and tax department;
- The AAR consisted of a Chairman, Vice-Chairmen, revenue members and law members.

## NEED FOR AMENDMENT

- Posts of Chairman, Vice Chairman remained vacant for a long time, which hampered the working of AAR and led to pendency of the applications in large numbers;
- AAR used to be an effective mechanism in providing certainty on tax matters, specially to non-resident taxpayers;
- Due to ongoing issue of filing up posts, AAR was rendered ineffective. Hence, there was a need to look for an alternate method to dispose of the applications and provide rulings in a timely manner.

# Constitution Of Board For Advance Ruling

## PROPOSED AMENDMENT

- Consequently, it is proposed to constitute a Board of Advance Ruling;
- Cease the operations of existing AAR from notified date\*;
- Board of Advance Ruling to constitute 2 members, not below the rank of Chief Commissioner;
- Advance Rulings pronounced by Board not to be binding on the applicant or Department. If aggrieved, an appeal may be filed before the High Court by either party.

## CONSEQUENCES

- The relevant provisions of the Act pertaining to procedure of advance rulings\* to include 'Board of Advance Rulings' and to apply mutatis mutandis to such board
- The new scheme, if implemented properly, may impart greater efficiency, transparency and accountability in disposing off the applications. The scheme is also expected to eliminate interface to the extent technologically feasible.

*\*Consequential amendments have been proposed from Section 245N to Section 245V of the Act*

# Discontinuance Of Income Tax Settlement Commission

## EXISTING PROVISIONS

- The Income Tax Settlement Commission ('ITSC') was constituted in year 1976 under Section 245B of the Act.
- The objective of setting up of ITSC was to settle the tax liabilities in complicated cases, avoiding endless and prolonged litigation.
- The taxpayer approached the ITSC during the pendency of assessment proceedings, subject to certain prescribed conditions.

## PROPOSED AMENDMENT

- ITSC shall cease to operate on or after 01 February 2021. Therefore, no application shall be filed on or after the said date.
- For the settlement of pending applications, one or more Interim Board shall be constituted. The said Interim board may consist of 3 members each being an officer of the rank of Chief Commissioner, as may be nominated by the CBDT.
- On and from 01 February 2021, all the powers vested in the hands of ITSC shall mutatis mutandis vested in the hands of the Interim Board.

# Benami Act

## CHANGE IN ADJUDICATING AUTHORITY

- It has been proposed that competent authority constituted under Smugglers and Foreign Exchange Manipulators (Forfeiture of property) Act 1976 shall be the adjudicating authority under the Prohibition of Benami property Act which shall commence from 1 July 2021. Earlier, it was with authorities of PMLA (Prevention of Money Laundering Act. 2002).
- Further it has been proposed that the cases where the time limit for passing the order expires during the period between 1 July 2021 till 29 September 2021, the time limit for passing such order shall stand extended to 30 September 2021.



# INDIVIDUAL TAXES

# Individual Taxes

## ENACTMENT OF LTC CASH VOUCHER SCHEME

- Through press release dated 12 October 2020, LTC cash voucher scheme was announced for the Central Government employees. The said scheme provided that in lieu of one LTC of block year (i.e., 2018 – 2021), a cash payment will be made to employees for the amount spent on the purchase of prescribed goods and services on fulfilment of certain conditions.
- The benefit of the aforesaid scheme was passed on to the private sector employees through press release dated 29<sup>th</sup> October 2020.
- The above LTC cash Voucher Scheme has been enacted to the provisions of the Act through the amendment. The benefit of scheme shall be only for FY 2020-21 only.
- It has been further clarified that where an individual has claimed the benefit of the LTC cash voucher scheme for the amount spent on purchase of prescribed good or services, then the said amount spent on such purchases cannot be claimed by any other individual.

## INCENTIVES FOR AFFORDABLE RENTAL HOUSING

Section 80IBA of the Act provides that an assessee subject to satisfying certain condition, can claim 100% deduction of profit generated from the business of developing affordable housing. One of the conditions was that the housing project should have been approved after 16 June 2016 but on or before 31 March 2021. The sunset date for the above approval has been extended to 31 March 2022. Further, the benefit of the said section has been passed onto assessee engaged in business of rental housing project. Rental housing projects shall be notified by CBDT in due course.

# Individual Taxes

## **EXTENSION OF SUNSET DATE FOR SECTION 80EEA**

Section 80EEA of the Act provides that an assessee subject to satisfying certain conditions, can claim deduction of INR 1,50,000 on account of interest paid on housing loan. One of the conditions was that the loan should have been sanctioned during the period beginning from 1 April 2019 and ending 31 March 2021. The sunset date for the loan approval has been extended to 31 March 2022.

## **RELIEF TO SENIOR CITIZEN TAXPAYERS**

- In order to provide relief to senior citizen in compliances, Section 194 has been introduced to provides exemption to the senior citizen from filing the tax return.
  
- The conditions for availing the benefit of the said section are as follows –
  - Senior Citizen is a resident and age of 75 years or more
  - He is having income from pension and interest on such pension income only
  - The bank account has to be maintained with scheduled bank as notified by CBDT
  - Senior citizen shall be required to furnish a prescribed declaration to the scheduled bank to opt for the said provisions.

# Changes Relating To Interest From Provident Fund

## INTEREST FROM PPF/RPF

- Till date, the interest accrued/received from contributions made to public provident fund/recognised provident fund is exempt from Income tax under section 10(11) and 10(12) respectively.
- It has been now proposed to withdraw the above exemption on the interest received/accrued to a taxpayer to the extent the interest relates to contributions made to PPF/RPF in excess of INR 250,000 in a given FY.

***The above amendment shall be applicable w.e.f. FY 2021-22***



CHARITABLE INSTITUTIONS

# Changes Relating To Charitable Institutions

## EXISTING PROVISIONS

- Sub clause (iiiad) of Section 10(23C) of the Act provided for exemption of income to small universities or educational institution existing solely for education purposes and whose aggregate annual receipts did not exceed INR **1 Crore** in a FY;
- Sub clause (iii ae) of Section 10(23C) of the Act provided for exemption of income to small hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and whose aggregate annual receipts did not exceed INR **1 Crore** in a FY

## PROPOSED AMENDMENT

- The limits have now been proposed to be increased to INR **5 Crore;**
- Where the person has incomes from both the sources as mentioned above or from multiple entities within the same source, limit of INR 5 Crore shall be seen in **aggregate** and not for individual sources or entity;
- The above amendments shall be applicable w.e.f. FY 2021-22

# Changes Relating To Charitable Institutions

## CORPUS DONATIONS

- Corpus donations received by eligible entities registered under Section 10(23C) of the Act shall not be considered to be income of the institution subject to the additional condition that such funds shall be invested in any of the forms / modes prescribed under Section 11(5) of the Act and maintained specifically for such corpus;
- Amount applied by eligible entities registered under Section 10(23C) of the Act out of the corpus shall not be considered as application of income;
- Such amount shall however be considered as application of income in the FY in which the amount is invested back in the forms or modes prescribed under Section 11(5) of the Act out of the income of that year;
- Similar amendments have been made to Section 11 of the Act to cover entities registered under Sections 12A or 12AA of the Act.
- The above amendments shall be applicable w.e.f. FY 2021-22.

*Provisions to rationalise the claim of exemption by charitable entities so that double deduction is not given for the same receipt*

# Changes Relating To Charitable Institutions

## APPLICATION OUT OF BORROWED FUNDS

- Amount applied by eligible entities registered under Section 10(23C) of the Act out of funds borrowed shall not be considered as application of income;
- Such amount, when repaid, to be considered as application of income to the extent of such repayment;
- Similar amendments have been made to Section 11 of the Act to cover entities registered under Sections 12A or 12AA of the Act.

## EXCESS UTILIZATION FROM PAST YEARS

- Calculation of income required to be applied or accumulated during the FY by entities registered under Section 10(23C) of the Act shall be made without any set off or deduction or allowance of any excess application of any of the year preceding to the FY;
- Similar amendments have been made to Section 11 of the Act to cover entities registered under Sections 12A or 12AA of the Act.

***The above amendments shall be applicable w.e.f. FY 2021-22 onwards.***



# MISCELLANEOUS PROVISIONS

# Changes Relating To Unit Linked Insurance Policy

## EXEMPTION UPON MATURITY

- For ULIP(s) issued on or after 1 February 2021, no exemption under Section 10(10D) of the Act shall be available for the sums received upon maturity of such ULIP, on an individual policy basis, if the premiums paid in a FY during the term of such policy exceeds INR 250,000;
- The above shall not apply where the sum is received upon death of the person;
- CBDT may issue guidelines, with the previous approval of the Central Government, for the purposes of removing the difficulty under this section.

## ULIPS CONSIDERED AS CAPITAL ASSETS

- ULIP(s) which are not covered by the exemption under Section 10(10D) of the Act, considered as capital asset under Section 2(14) of the Act;
- Gain or loss arising from receipt of maturity proceeds of above mentioned ULIP(s), including amount received as bonus, shall be chargeable to tax as capital gains under Section 45(1B) of the Act;
- Above ULIPs have also been placed at par with equity oriented funds under Section 112A of the Act to provide for a capital tax rate at 10% on such gains arising upon maturity.

***The above amendments shall be applicable w.e.f. FY 2020-21 onwards.***

# Other Amendments

## PROVISIONAL ATTACHMENT

Section 281B which deals with provisional attachment of the property of the taxpayer is proposed to be amended.

The proposal has been made to cover the cases where penalty under section 271AAD, i.e., for fake invoices has been initiated and amount of penalty is likely to exceed INR 2 crore, the assessing officer may provisionally attach the assets of the assessee.

*Applicable from FY 2020-21 onwards*

## CLARIFICATION REGARDING VIVAD SE VISHWAS

Vivad se Vishwas scheme was launched to reduce the existing tax litigations;

It has been proposed to clarify that the said scheme was enacted for the resolution of disputed tax and not the taxes covered by the order of settlement commission. Accordingly, it has been clarified that the cases under settlement commission are outside the purview of VSV.

*Applicable retrospectively from 17 March 2020*

## NOTICE UNDER SECTION 142(1)

Proposed to empower the prescribed Income Tax Authority besides the Assessing officer to issue the notice under section 142(1) in the cases asking for the return, where the return has not been submitted by the assessee.

The proposal to include any prescribed income tax authority aimed to make all process faceless.

# Other Amendments

## **RATIONALIZATION OF PROVISION RELATING TO SOVEREIGN WEALTH FUND (SWF) AND PENSION FUND (PF)**

Certain Income towards long-term capital gain, dividend, interest Income earned from specified Indian infrastructure businesses modified/extended to include investment in:

- AIFs having minimum 50% investments in notified infrastructure businesses or in InvITs;
- Indian holding companies set up on/after 1 April 2021 having minimum 75% investments in notified infrastructure businesses; and
- NBFC – IDF/IFC with at least 90% lending to companies/entities in notified infrastructure businesses.

# Amendments Under GST

- Retrospective amendment (with effect from 1 July 2017) under proviso to Section 50(1) of the CGST Act has proposed to provide that interest under GST to be charged on 'net cash liability' component retrospectively.
- Foreign exchange realization would be mandatory for refund of unutilized ITC for zero-rated supply of goods. In case of non-realization, benefit of refund would be deposited along with interest.
- Definition of 'self-assessed tax' has been amended to provide that it shall include the tax payable in respect of outward supplies furnished in Form GSTR-1, but not included in Form GSTR-3B.
- Definition of zero-rated supply has been proposed to be amended. As per this, only notified class of persons and notified class of goods or services can make zero rated supply with payment of IGST.
- With the insertion of new clause under section 7 of CGST Act 2017, the scope of supply has now been extended to the activities or transactions which involves supply of goods or services or both by any person such as clubs to its members or vice-versa for cash, deferred payments or other valuable consideration.
- A new condition has been proposed to be inserted for availment of input tax credit. Input tax credit on invoice or debit note can be availed only when the details of such invoices/debit notes has been furnished by the supplier in Form GSTR 1.
- Provisions for filing appeal against order of detention of goods or conveyance by proper officer has been proposed to be amended to provide that 25% of the penalty is required to be paid before filing of any appeal.

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