



VOICE OF CA
PRESENTS
360 DEGREE ANALYSIS
OF
BUDGET 2021



CA SANJAY K AGARWAL
FOUNDER VOICE OF CA
FCA, L.L.B. B.COM. (HONS.)
CENTRAL COUNCIL MEMBER ICAI
(2010-2019)

Acknowledgement

First and foremost, we express our heartfelt appreciation to all authors, editors and reviewers of our Publication, the “Indian Finance Bill 2021” on behalf of the entire team of Voice of CA. It was with the extensive co-operation, enthusiasm, and spirit of the authors and reviewers we were able to make this Publication a grand success. We are much pleased to bring before you this Finance Bill Publication.

We would like to express our ultimate admiration for the tireless efforts and valuable inputs of Dr. (CA) Girish Ahuja, Dr. Ravi Gupta and CA Ashok Batra which made this publication possible within such a short span of time. We hope that such support and affection of authors and reviewers will continue in the future.

The overwhelming responses from our readers and professional colleagues have been the real motivation for stepping-up from our previous Publications like “Practical Aspects of Direct, Indirect Taxes and Other laws”, “Survey, Search & Seizure under Income Tax Act, 1961” and other treasured publications, Voice of CA has been striving to excel in quality content to get real-time Professional Updates to our readers. We have achieved, up to much extent, the mission to be a platform for the rapid dissemination of high-quality content in the entire arena of Taxation and other Professional Laws with a vision to improve everyday

We look forward to your suggestions and comments on the publication. Do reach out to us at voiceofca@gmail.com.

Heartfelt Thanks & Regards

Team Voice of CA

Visit us at:

 <https://www.voiceofca.in>

 <https://www.facebook.com/profile.php?id=100012325267043>

Disclaimer

Budget 2021 proposals presented by the Finance Minister before the parliament are analysed in this document. It should not be relied upon as a substitute for detailed advice or a basis for formulating business decisions.

The proposals are subject to amendment as the Finance Bill is yet to be passed by the Parliament.

All reasonable care has been taken in preparing this document. Ravi Associates, Advocates & Solicitors, accept no responsibility for any error it may contain, whether caused by negligence, or otherwise or for any loss, however caused or sustained by the person relying on it.

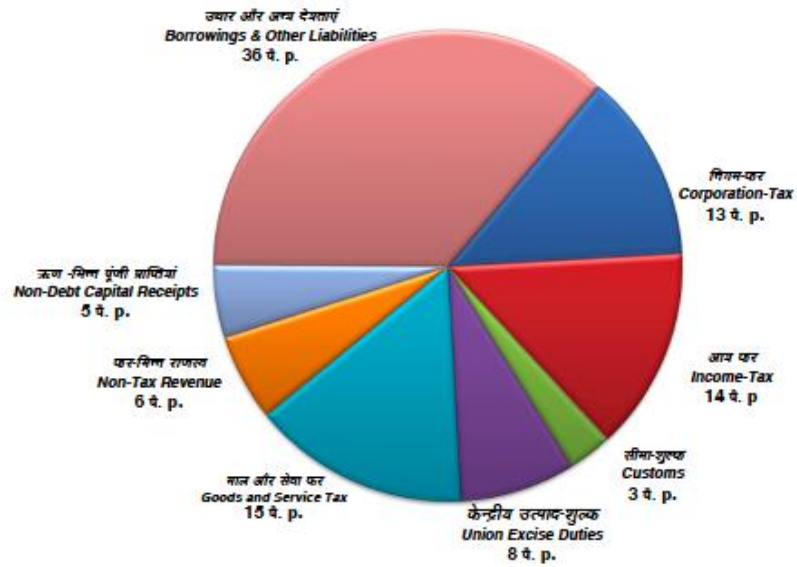
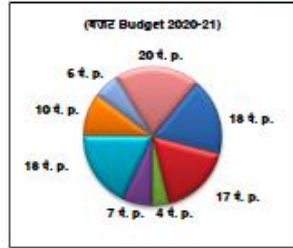
This document is not an offer, invitation or solicitation of any kind and is meant for use of clients and firm's personnel only.

CONTENTS

KEY FEATURES OF BUDGET 2021-22	5
DIRECT TAX PROPOSALS — FINANCE BILL, 2021	19
INDIRECT TAX PROPOSALS	97

KEY FEATURES OF BUDGET 2021-22

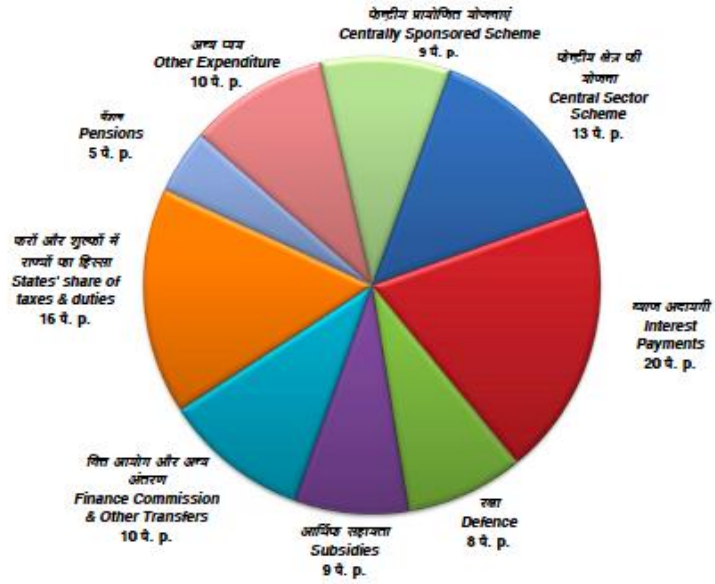
रुपया कहाँ से आता है Rupee Comes From
(बजट Budget 2021-22)



टिप्पणियाँ:-1. कुल प्राप्ति में करों और शुल्कों में राज्यों का हिस्सा शामिल है, जिन्हें कुल 1 पर सारणी में पटा दिया गया है।
2. आंकड़ों को पूर्णांकित किया गया है।

Notes:-1. Total receipts are inclusive of States' share of taxes and duties which have been netted in the table on page1.
2. Figures have been rounded.

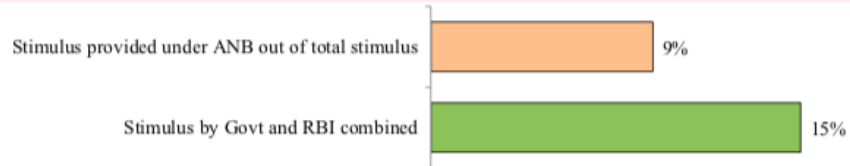
रुपया कहाँ जाता है Rupee Goes To
(बजट Budget 2021-22)



टिप्पणी :- कुल व्यय में राज्यों और शहरों में राज्यों का हिस्सा शामिल है, जिसे पृष्ठ 1 पर सारणी में प्रायिकों में से घटा दिया गया है।

Note:- Total expenditure is inclusive of the States' share of taxes and duties which have been netted against receipts in the table on page 1.

Atma Nirbhar Bharat Abhiyan



GOVERNMENT REFORMS

- Increase in borrowing limits of state governments
- Privatisation of Public Sector Enterprise



ENERGY

- Liquidity support for discoms
- Elimination of Regulatory Assets
- Commercial coal mining
- Reduction in cross-subsidy

MSMEs AND INDUSTRY

- Collateral free loans for businesses
- Fund of funds will be set up for MSMEs
 - PM Garib Kalyan Yojana
 - Subordinate debt for MSMEs
- Disallowing global tenders of up to Rs 200 crore
- Change in definition of MSMEs



SOCIAL SECTOR

- ❖ National Digital Health Blueprint
- ❖ Additional Allocation for MGNREGS
- ❖ Technology driven education: PM eVidya, National Foundational Literacy and Numeracy Mission

MIGRANT WORKERS

- ✓ One Nation One Card
- ✓ Free food grain Supply to migrants



AGRICULTURE AND ALLIED SECTORS



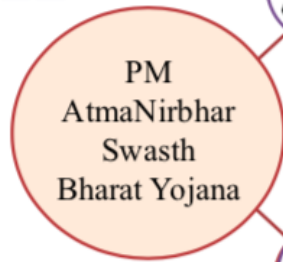
- Concessional Credit Boost to farmers
 - Agri Infrastructure Fund
- Emergency working capital for farmers
- Animal Husbandry infrastructure development
- Amendments to the Essential Commodities Act
 - Agriculture marketing reforms



Holistic Approach to Health



Supplementary Nutrition Programme and Poshan Abhiyan to be merged and launched as Mission Poshan 2.0

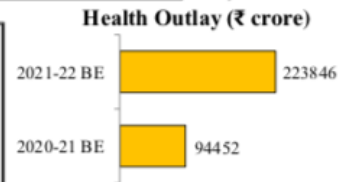
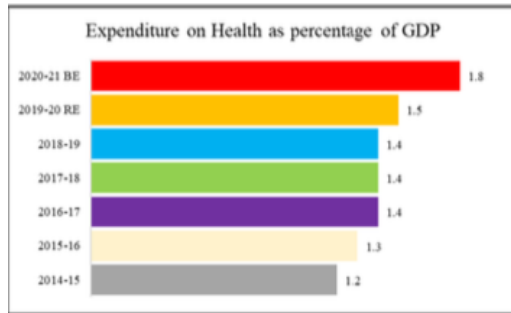


- ❖ Outlay ₹64180 crore over 6 years
- ❖ Support for Health and Wellness centres

- ❖ Setting up of Integrated Public Health Labs
- ❖ Establishing critical care hospital blocks

- ❖ Strengthening NCDC
- ❖ Expanding integrated health information portal

- Pnuemococcal vaccine to be rolled across the country
- ₹35000 crore for Covid-19 Vaccine in 2021-22



Introduction of National Commission for Allied Healthcare Professionals Bill

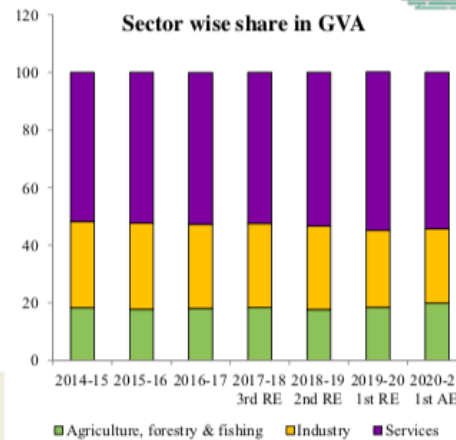
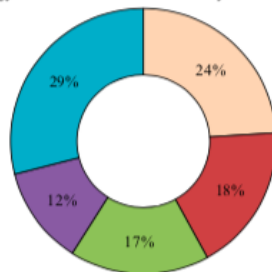
Industry

PLI launched to create manufacturing global champions across 13 sectors with amount committed nearly ₹1.97 lakh crore in next 5 years starting FY2021-22



NIP projects by sector

Energy Road Urban Railways Others



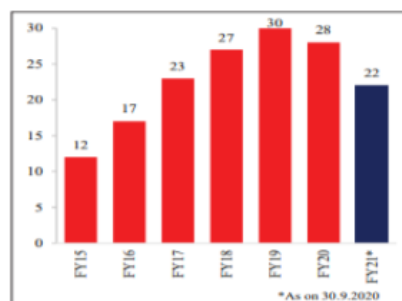
NIP Project pipeline expanded to 7400 projects

MITRA Scheme to create world class infrastructure for global champions in textile sector leading to creation of 7 textile parks over 3 years.

Infrastructure



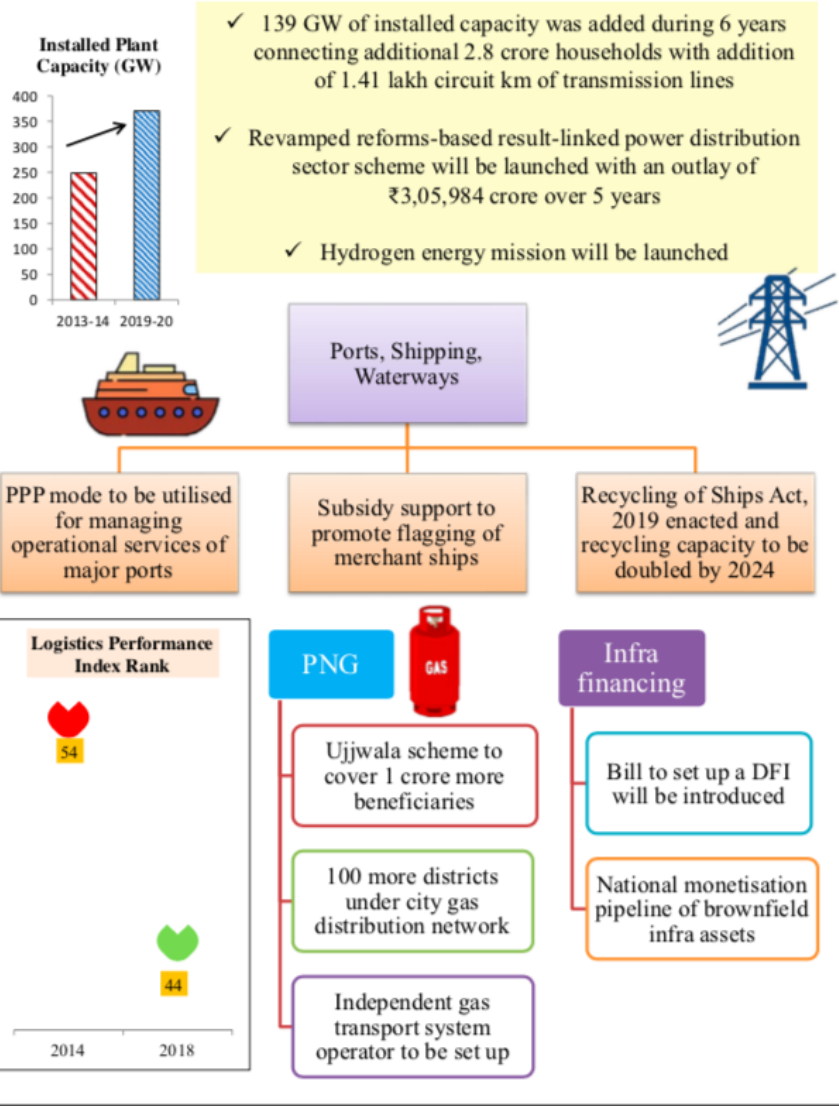
Road Construction Per Day in km



National Rail Plan

- Aims at developing adequate rail infrastructure by 2030 to cater to the projected traffic requirements up to 2050.
- The objective is to increase the modal share of rail in freight from the current level of 27 per cent to 45 per cent.

- 100% electrification of Broad Gauge Routes by 2023
- Indigenously developed automatic train protection system to be launched



Urban Development

Jal Jeevan Mission (Urban) for universal water supply in all ULBs



Urban Swachh Bharat Mission with outlay ₹1,41,678 crore over 5 years

₹2,217 crore for 42 urban centres to tackle air pollution



Voluntary Vehicle Scrapping policy

Innovative PPP models to augment public bus transport



MetroLite and MetroNeo for tier 2 and peripherals of tier 1 cities

Financial Reforms



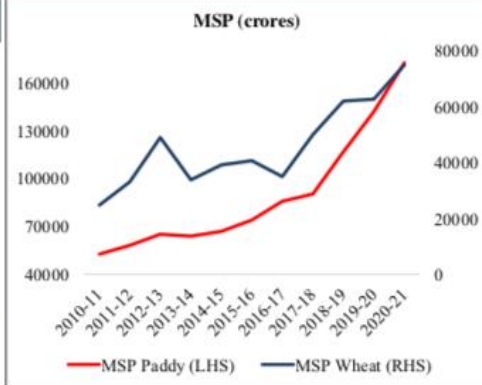
- ❖ Rationalised single Securities Markets Code by 2022
 - ❖ World class fintech hub at GIFT IFSC
- ❖ Permanent institutional framework for Corporate bond market
- ❖ SEBI as regulator and greater role for WDR for development of commodity market ecosystem
 - ❖ Investor charter as a right across all financial products
- ❖ Amending the Insurance Act,1938 to increase the FDI limit with safeguards
- ❖ Asset Reconstruction Company Limited and Asset Management Company to resolve stressed assets problem of PSBs.

Inclusive Development

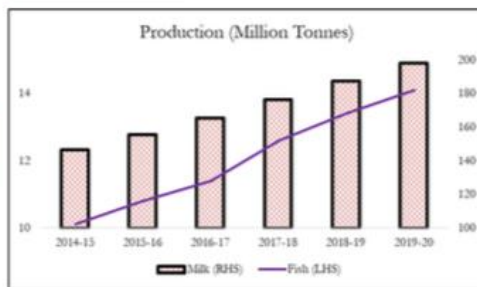


AGRICULTURE

- ❑ Extending coverage of SWAMITVA Scheme to all states/UTs
- ❑ Expansion of Operation Green scheme to include 22 perishable products
- ❑ 1000 more mandis to be integrated with e-NAM



FISHERIES

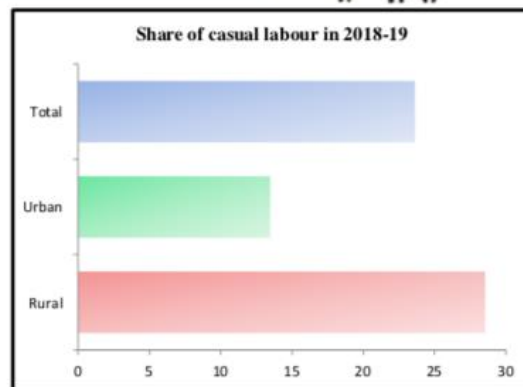


- Development of modern fishing harbours and fish landing centres
- Multipurpose Seaweed Park to be set up in Tamil Nadu

MIGRANT WORKERS AND LABOURERS



- One nation one ration card scheme under implementation in 32 states and UTs.
- A portal to be launched for gig, building and construction workers
- Social security benefits will be extended to gig and platform workers



Human Capital

EDUCATION

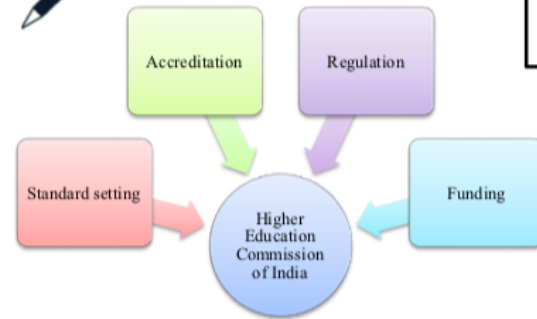
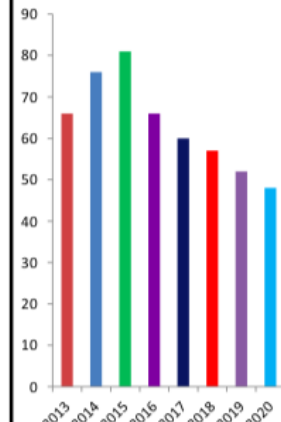
- Revamped Post Matric Scholarship Scheme for welfare of SCs
- 100 new Sainik schools
- 750 Eklavya schools in tribal areas

SKILLS

- ❖ Realigning National Apprenticeship Training scheme for graduates and diploma holders in Engineering
- ❖ Partnership with UAE and Japan in area of skill development and recognition



GII Rank

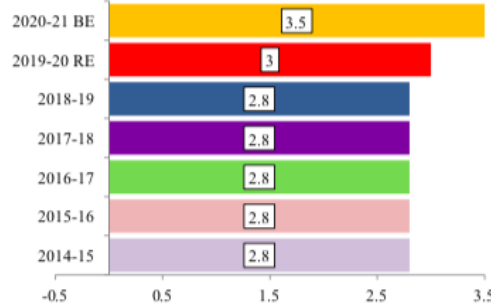


R&D

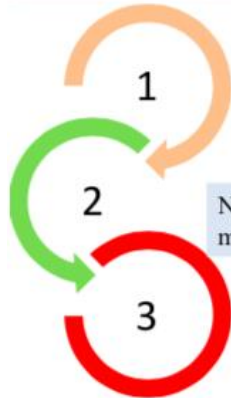
- ✓ National Research Foundation with outlay of ₹50,000 crore over 5 years
- ✓ National Language Translation Mission to boost internet access
- ✓ Deep Ocean Mission for ocean exploration and biodiversity conservation



Expenditure on Education as per cent of GDP



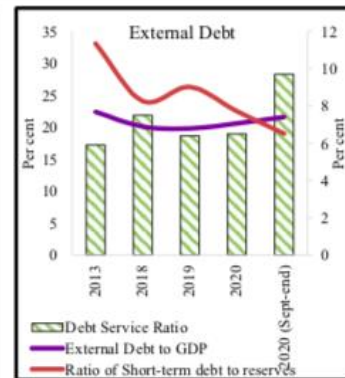
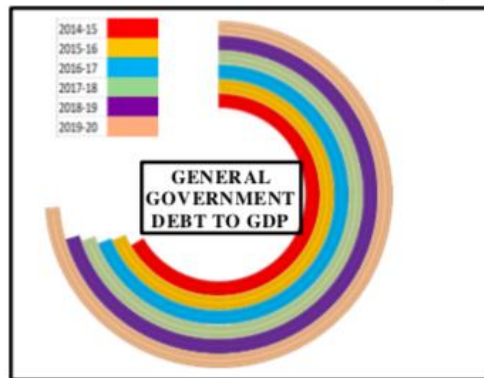
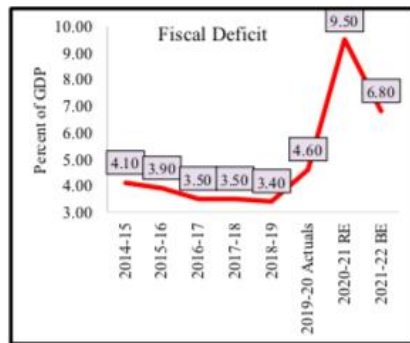
Fiscal Position



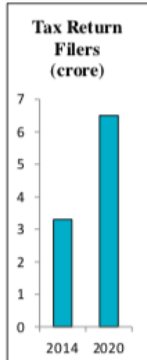
- Allowing a normal ceiling of net borrowing for the states at 4% of GSDP for 2021-22
- Additional Borrowing ceiling of 0.5% of GSDP subject to conditions

NSSF loan to FCI for food subsidy to be replaced by making budget provisions

₹1,18,452 crore as Revenue Deficit grant to 17 states in 2021-22



Tax proposals

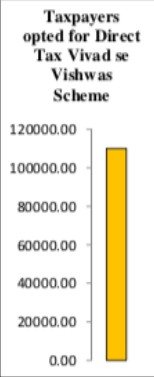


Exemption from filing income tax returns for senior citizens (75 years and above) who only have pension and interest income. The paying bank will deduct the necessary tax on their income.

Reducing time limit for reopening of income tax assessment

Constitution of a Dispute Resolution Committee for small tax payers

Income Tax Appellate Tribunal to be made faceless



Increase in limit for tax audit for persons who carry out 95% of their transactions digitally

Dividend payment to REIT/InvIT to be exempted from TDS

Additional deduction of ₹1.5 lakh shall be available for loans taken up till 31 March 2022 for purchase of affordable house

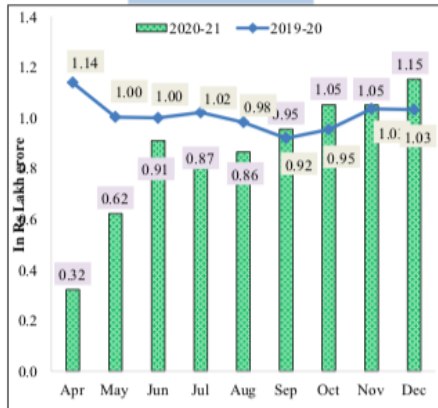
Pre filing of returns will also cover capital gains from listed securities, dividend income, etc.

Eligibility for claiming tax holiday for start ups proposed to be extended by one more year



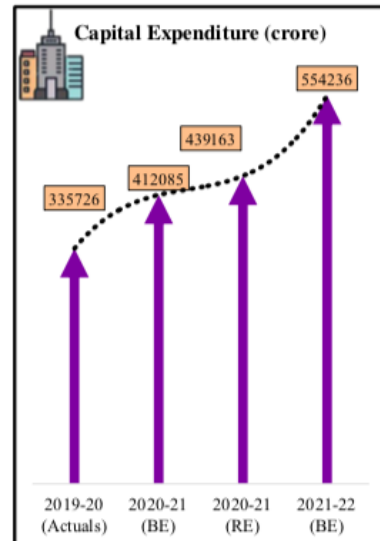
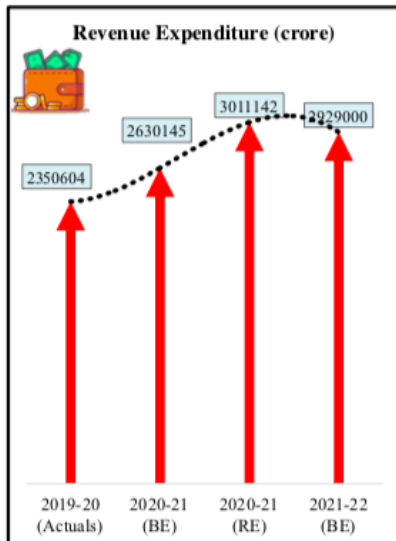
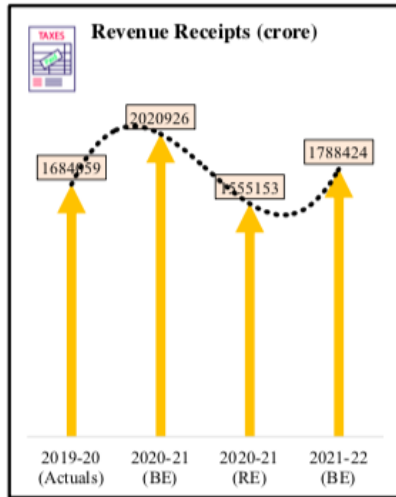
Indirect Tax

GST Collection

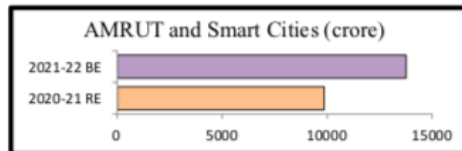
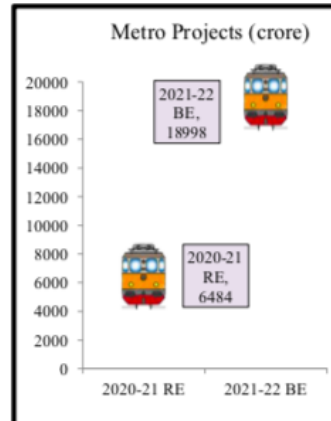
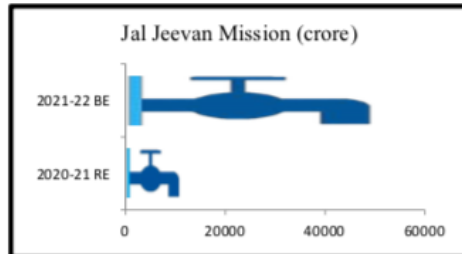
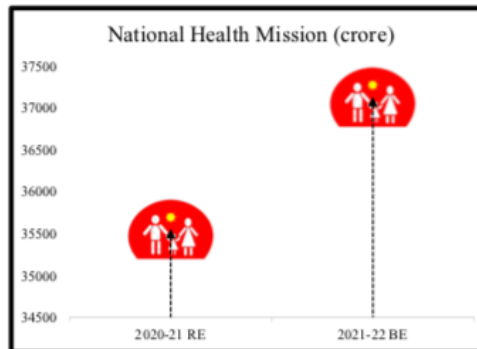
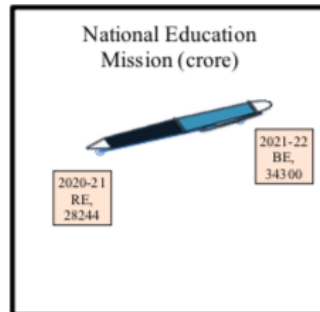
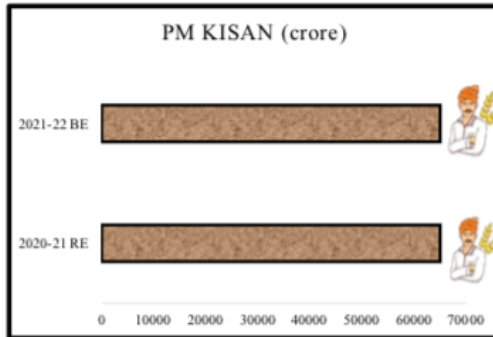
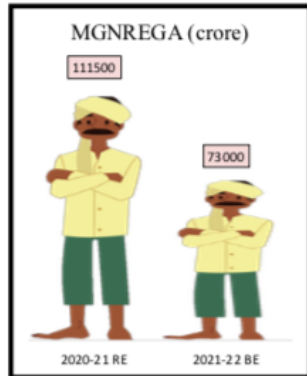


- ❖ Rationalisation of customs duty structure by eliminating outdated exemptions
- ❖ Support to MSMEs hit by recent sharp rise in iron and steel prices and relief to metal recyclers
- ❖ Rationalisation of duties on raw material inputs to man made textiles
- ❖ Rationalisation of custom duty on gold and silver
- ❖ Increase in duty on solar invertors and lanterns to promote domestic production
- ❖ Agriculture Infrastructure and Development Cess on small number of items

Budget at a Glance



Allocation to major schemes



**DIRECT TAX PROPOSALS AS
PER THE FINANCE BILL, 2021**

Ravi Associates

DIRECT TAXES

Rates of income-tax for assessment year 2021-22 and 2022-23

Rates of Income Tax

(A) I. In the case of every Individual (other than those covered in part (II) or (III) below) or Hindu undivided family or AOP/BOI (other than a co-operative society) whether incorporated or not, or every artificial judicial (other than the person opt for taxation under the newly inserted section 115BAC of the Act — See para (A)IV below)

Upto ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000	5%
₹ 5,00,010 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

II. In the case of every **individual**, being a **resident in India**, who is of the **age of 60 years or more but less than 80 years** at any time during the previous year.

Upto ₹ 3,00,000	Nil
₹ 3,00,001 to ₹ 5,00,000	5%
₹ 5,00,001 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

III. In the case of every **individual**, being a **resident in India**, who is of the **age of 80 years or more** at any time during the previous year.

Upto ₹ 5,00,000	Nil
₹ 5,00,001 to ₹ 10,00,000	20%
Above ₹ 10,00,000	30%

Surcharge

The amount of income-tax shall be increased by a surcharge for the purposes of the Union, calculated, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in section 2(31)(vii) of the Income-tax Act not having any income under section 115AD of the Act—

- (a) having a total income exceeding ₹ 50,00,000 but not exceeding ₹ 1 crore, at the rate of 10% of such income-tax;

-
- (b) having a total income exceeding ₹ 1 crore but not exceeding ₹ 2 crore, at the rate of 15% of such income-tax;
 - (c) having a total income exceeding ₹ 2 crore but not exceeding ₹ 5 crore, at the rate of 25% of such income-tax; and
 - (d) having a total income exceeding ₹ 5 crore, at the rate of 37% of such income-tax:

Marginal relief: Marginal relief has also been provided in all cases where surcharge is proposed to be levied.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

IV. From the assessment year 2021-22 (FY 2020-21), individual and HUF tax payers have an option to opt for taxation under the newly inserted section 115BAC of the Act.

(i) On satisfaction of certain conditions, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Upto ₹ 2,50,000	Nil
₹ 2,50,001 to ₹ 5,00,000	5%
₹ 5,00,001 to ₹ 7,50,000	10%
₹ 7,50,001 to ₹ 10,00,000	15%
₹ 10,00,001 to ₹ 12,50,000	20%
₹ 12,50,001 to ₹ 15,00,000	25%
₹ 15,00,001 and Above	30%

Plus the surcharge, marginal relief and cess applicable as discussed above

(ii) The option shall be exercised for every previous year where the individual or the HUF has no business income, and in other cases the option once exercised for a previous year shall be valid for that previous year and all subsequent years.

(iii) The option shall become invalid for a previous year or previous years, as the case may be, if the Individual or HUF fails to satisfy the conditions and other provisions of the Act shall apply;

(iv) the condition for concessional rate shall be that the total income of the individual or HUF is computed,—

-
- (a) without any exemption or deduction under the provisions of clause (5) or clause (13A) or prescribed under clause (14) (other than those as may be prescribed for this purpose) or clause (17) or clause (32) of section 10 or section 10AA or section 16 or clause (b) of section 24 [in respect of property referred to in sub-section (2) of section 23] or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or clause (iia) of section 57 or under any provisions of Chapter VI-A other than the provisions of sub-section (2) of section 80CCD or section 80JJAA;
- (b) without set off of any loss,-
- (i) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; or
- (ii) under the head house property with any other head of income;
- (c) by claiming the depreciation, if any, under section 32, except clause (iia) of sub-section (1) thereof, determined in such manner as may be prescribed; and
- (d) without any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being in force.
- (v) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year so however, that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1.4.2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2020 in the prescribed manner, if the option is exercised for a previous year relevant to the assessment year beginning on 1.4.2021;
- (vi) the concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed,-
- (a) where such individual or HUF has no business income, along with the return of income to be furnished under sub-section (1) of section 139 of the Act; and

(b) in any other case, on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for any previous year relevant to the assessment year commencing on or after 1.4.2021 and such option once exercised shall apply to subsequent assessment years;

(vii) if the individual or HUF has a Unit in the International Financial Services Centre [clause (zc) of section 2 of the Special Economic Zones Act, 2005], as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and

(viii) the option can be withdrawn only once where it was exercised by the individual or HUF having business income for a previous year other than the year in which it was exercised and thereafter, the individual or HUF shall never be eligible to exercise option under this section, except where such individual or HUF ceases to have any business income in which case, option under para (vi)(a) above shall be available.

It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to AMT shall not apply to such individual or HUF having business income.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such individual or HUF having business income.

The condition listed at (iva) above, means that the individual or HUF opting for taxation under the newly inserted section 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

- (i) Leave travel concession as contained in clause (5) of section 10;
- (ii) House rent allowance as contained in clause (13A) of section 10;
- (iii) Some of the allowance as contained in clause (14) of section 10;
- (iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;
- (v) Allowance for income of minor as contained in clause (32) of section 10;
- (vi) Exemption for SEZ unit contained in section 10AA;
- (vii) Standard deduction, deduction for entertainment allowance and employment/ professional tax as contained in section 16;
- (viii) Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);

-
- (ix) Additional depreciation under clause (iia) of sub-section (1) of section 32;
 - (x) Deductions under section 32AD, 33AB, 33ABA;
 - (xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;
 - (xii) Deduction under section 35AD or section 35CCC;
 - (xiii) Deduction from family pension under clause (iia) of section 57;
 - (xiv) Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub-section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme) and section 80JJAA (for new employment) can be claimed.

As many allowances have been provided through notification of rules, it is proposed to carry out amendment of the Income-tax Rules, 1962 (the Rules) subsequently, so as to allow only following allowances notified under section 10(14) of the Act to the Individual or HUF exercising option under the proposed section:

- (a) Transport Allowance granted to a divyang employee to meet expenditure for the purpose of commuting between place of residence and place of duty
- (b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office;
- (c) Any Allowance granted to meet the cost of travel on tour or on transfer;
- (d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.

It is also proposed to amend rule 3 of the Rules subsequently, so as to remove exemption in respect of free food and beverage through vouchers provided to the employee, being the person exercising option under the proposed section, by the employer.

***(B) In the case of every co-operative society
(other than those who opt for taxation under the newly inserted section 115BAD of the Act.)***

(1) where the total income does not exceed ₹ 10,000	10% of the total income;
(2) where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 <i>plus</i> 20% of the amount by which the total income exceeds ₹ 10,000;
(3) where the total income exceeds	₹ 3,000 <i>plus</i> 30% of the amount by

₹ 20,000	which the total income exceeds ₹ 20,000.
----------	--

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a co-operative society having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

From the assessment year 2021-22, resident co-operative societies have an option to opt for taxation under newly inserted section 115BAD of the Act.

(i) notwithstanding anything contained in the Act but subject to the provisions of Chapter XII and satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at **22%** for assessment year 2021-22 onwards in respect of its total income so however that if it fails to satisfy the conditions in any previous year, the option shall become invalid and other provisions of the Act shall apply;

(ii) the condition for concessional rate shall be that the total income of the co-operative society is computed,—

- (a) without any deduction under the provisions of section 10AA or clause (ia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (ia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or section 35AD or section 35CCC or under any provisions of Chapter VI-A;
- (b) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (a) above; and
- (c) by claiming the depreciation, if any, under section 32, except clause (ia) of sub-section (1) thereof, determined in such manner as may be prescribed;

(iii) the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year. However, where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on 1.4.2021, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2020 in the prescribed manner, if the option is exercised for a previous year

relevant to the assessment year beginning on 1.4.2021;

(iv) the concessional rate shall not apply unless option is exercised by the co-operative society in the prescribed manner on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1.4.2021 and such option once exercised shall apply to subsequent assessment years;

(v) if the person has a Unit in the International Financial Services Centre (IFSC), as referred to in sub-section (1A) of section 80LA, the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in that section; and

(vi) the option so exercised cannot be withdrawn;

(vii) The surcharge applicable to such co-operative society shall be levied at 10%. It is further proposed to amend section 115JC of the Act so as to provide that the provisions relating to Alternate Minimum Tax (AMT) shall not apply to such co-operative society.

It is also proposed to amend section 115JD of the Act so as to provide that the provisions relating to carry forward and set off of AMT credit, if any, shall not apply to such co-operative society.

(C) In case of any firm (including limited liability partnership) — 30%.

Surcharge: The amount of income-tax shall be increased by a surcharge at the rate of 12% of such income-tax in case of a firm having a total income exceeding ₹ 1 crore.

Marginal relief: The total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(D) In the case of a company

(i) For domestic companies:

- | | |
|--|-----|
| (a) If the total turnover or gross receipts of the previous year 2018-19 does not exceed ₹ 400 crore | 25% |
| (b) In all other cases | 30% |

Surcharge: Surcharge at the rate of 7% shall continue to be levied in case of a domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act), if the total income of the domestic company exceeds

₹ 1 crore but does not exceed ₹ 10 crore. Surcharge @ 12% shall continue to be levied, if the total income of the domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act) exceeds ₹ 10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹ 1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹ 10 crore, by more than the amount of income that exceeds ₹ 10 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

However, domestic companies also have an option to opt for taxation under section 115BAA or section 115BAB of the Act on fulfilment of conditions contained therein. The tax rate is 15 % under section 115BAB and 22 % under section 115BAA. The Surcharge is 10 % in both the cases.

For detailed analysis of Section 115BAA and Section 115BAB please refer para (F) below:

(E) For foreign company: 40%.

Surcharge: In case of companies other than domestic companies, the surcharge of 2% shall be levied if the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore.

The surcharge at the rate of 5% shall be levied if the total income of the company other than domestic company exceeds ₹ 10 crore.

Marginal relief: However, the total amount payable as income-tax and surcharge on total income exceeding ₹ 1 crore but not exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax on a total income of ₹ 1 crore, by more than the amount of income that exceeds ₹ 1 crore. The total amount payable as income-tax and surcharge on total income exceeding ₹ 10 crore, shall not exceed the total amount payable as income-tax and surcharge on a total income of ₹ 10 crore, by more than the amount of income that exceeds ₹ 10 crore.

Cess: 'Health and Education Cess on Income Tax' @ 4% on income tax (inclusive of surcharge, wherever applicable) shall be levied.

(F) Tax on income of certain domestic companies (Tax on income of certain manufacturing domestic companies as per the amendment made by the Taxation Laws (Amendment) Act, 2019) [Section 115BA]

(1) Certain domestic companies given option to be taxed at the special rate of 25% [Section 115BA(1)]: Notwithstanding anything contained in this Act but subject to the other provisions of this Chapter (i.e. Chapter XII relating to determination of tax in certain special cases), ***other than those mentioned under section 115BAA and section 115BAB*** the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after 1.4.2017, shall, at the option of such person, be computed @ 25%, if the conditions specified in section 115BA(2) are satisfied.

* The words in bold italics above inserted by The Taxation Laws (Amendment) Act, 2019 w.e.f. A.Y. 2020-21.

(2) Specified conditions for opting provisions of section 115BA(1) [Section 115BA(2)]

- (a) the company has been set-up and registered on or after 1.3.2016;
- (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and
- (c) the total income of the company has been **computed**,—
 - (i) **without any**—
 - **deduction** under the provisions of section 10AA (relating to special economic zone), or
 - benefit of accelerated depreciation/additional depreciation under section 32(1)(*ii*a), or
 - benefit of investment allowance under section 32AC or under section 32AD, or
 - deduction under section 33AB (tea/coffee/rubber development account), or
 - deduction under section 33ABA (site restoration fund), or
 - deduction under section 35(1)(*ii*), (*ii*a), (*ii*i), section 35(2AA), section 35(2AB) (relating to scientific research/social research), or
 - deduction under section 35AC (expenditure on eligible projects and scheme), or

-
- deduction under section 35AD (deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (agricultural extension project), or
 - deduction under section 35CCD (skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” other than the provisions of section 80JJAA;
- (ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i) of clause (c); and
- (iii) depreciation under section 32, other than additional depreciation under section 32(1)(iia), is determined in the manner as may be prescribed.

The loss referred to in section 115BA(2)(c)(ii) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year. **[Section 115BA(3)].**

(3) Section not to apply unless the option is exercised in the prescribed manner on or before due date specified under section 139(1) [Section 115BA(4)]: Nothing contained in this section shall apply unless the option is exercised by the person in the **prescribed manner** (See rule 21AD and Form No. 10-IB) on or before the due date specified under section 139(1) for furnishing the **first of the returns of income** which the person is required to furnish under the provisions of this Act:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Provided further where the person exercises option under section 115BAA, the option under this section may be withdrawn (Second proviso inserted by The Taxation Law (Amendment) Act, 2019, w.e.f. A.Y. 2020-21).

Surcharge for assessment years 2020-21 and 2021-22: The amount of income-tax computed as above shall be increased by a surcharge of 7% in case of domestic companies and 2% in case of foreign companies provided the total income of such domestic/foreign company exceeds ₹ 1 crore. If total income of the company exceeds ₹ 10 crore, surcharge in case of domestic company shall be 12% and 5% in case of foreign company.

Health and education cess (H&EC) for A. Ys. 2020-21 and 2021-22: H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

3. Insertion of new sections 115BAA and 115BAB by The Taxation Laws

(Amendment) Act, 2019, w.e.f. A.Y. 2020-21

(A) Special provisions of tax on income of certain domestic companies referred to in section 115BAA

(1) Rate of income tax in case of a domestic company [Section 115BAA(1)]

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter (i.e. Chapter XII, other than those mentioned under section 115BA and section 115BAB), the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1.4.2020, shall, **at the option of such person**, be computed at the rate of 22%, if the conditions contained in section 115BAA(2) are satisfied.

(1A) Option exercised for section 115BAA to become invalid if the conditions contained in section 115BAA(2) are not satisfied [Proviso to section 115BAA(1)]

Where the person fails to satisfy the conditions contained in section 115BAA(2) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) Conditions to be satisfied for paying tax under section 115BAA(1) [Section 115BAA(2)]

The total income of the company will be **computed**,—

(i) **without any—**

- **deduction** under the provisions of section 10AA (relating to special economic zone), or
- benefit of accelerated depreciation/additional depreciation under section 32(1)(*ii*a), or
- benefit of investment allowance under section 32AD, or
- deduction under section 33AB (relating to tea/coffee/rubber development account), or
- deduction under section 33ABA (relating to site restoration fund), or
- deduction under section 35(1)(*ii*) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for scientific research),
- deduction under section 35(1)(*ii*a) (relating to any sum paid to a company to be used by it for scientific research),
- deduction under section 35(1)(*iii*) (relating to any sum paid to certain research associations or to a university, college or other institution to

-
- be used for research in social science or statistical research),
- deduction under section 35(2AA) (relating to any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person to be used for scientific research undertaken under an approved programme
 - deduction under section 35(2AB) (relating to any expenditure incurred on in-house scientific research and development facility (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule
 - deduction under section 35AD (relating to deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (relating to agricultural extension project), or
 - deduction under section 35CCD (relating to skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” (i.e 80-IA to 80Q whichever is applicable to a company other than the provisions of section 80JJAA);
- (ii) **without set off of** any loss carried forward or depreciation from any earlier assessment year if such loss or depreciation is attributable to any of the deductions **referred to in sub-clause (i) above** (See also section 115BAA(3) below);
- (iii) without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i) above; and
- (iv) **by claiming** the depreciation, if any, under any provisions of section 32, (other than additional depreciation under section 32(1)(*ii*a)), determined in such manner as may be prescribed.

(3) Loss and depreciation referred to in clause (ii) and clause (iii) above shall be deemed to have been already given full effect to [Section 115BAA(3)]

The loss and depreciation referred to clause (ii) and clause (iii) above shall be deemed to have been already given full effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

(3A) Adjustment to the written down value of the relevant block to be made if the effect of depreciation allowance has not been given full effect to prior

to the assessment year 2020-21 [Proviso to section 115BAA(3)]

Where there is a depreciation allowance in respect of a block of asset which **has not been given full effect** to prior to the assessment year 2020-21, corresponding adjustment shall be made to the written down value of such block of assets as on 1.4.2019 in the prescribed manner, if the option under section 115BAA(5) is exercised for a previous year relevant to the assessment year beginning on 1.4.2020.

(4) Conditions contained in section 115BAA(2) above to be modified to the extent the deduction under section 80LA is available to such Unit [Section 115BAA(4)]

In case of a person, having a Unit in the International Financial Services Centre, as referred to in of section 80LA(1A), which has exercised option under section 115BAA(5), the conditions contained in section 115BAA(2) shall be modified to the extent that the deduction under section 80LA shall be available to such Unit subject to fulfilment of the conditions contained in the said section.

(5) Assessee to opt for section 115BAA in the prescribed manner before the specified date [Section 115BAA(5)]

Nothing contained in section 115BAA shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under section 139(1) for furnishing the returns of income for any previous year relevant to the assessment year **commencing on or after 1.4.2020 and such option once exercised shall apply to subsequent assessment years.**

(5A) Person may exercise the option under this section (i.e. section 115BAA) if certain conditions of section 115BAB are violated [First proviso to section 115BAA(5)]

In case of a person, where the option exercised by it under section 115BAB has been rendered invalid due to violation of conditions contained in

- sub-clause (ii) (relating to machinery or plant previously used for any purpose) or sub-clause (iii) (relating to building previously used as a hotel or convention centre) of clause (a) of section 115BAB(2) or
- clause (b) (relating to company engaged in any business other than the business of manufacture of production, etc.) of section 115BAB(2),

such person may exercise option under this section (i.e. section 115BAA):

(5B) Option for section 115BAA once exercised cannot be subsequently withdrawn [Second proviso to section 115BAA(5)]

Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

(6) Surcharge on income tax on total income computed under section 115BAA

Provided that in respect of any income chargeable to tax under section 115BAA of the Income-tax Act, the tax computed shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of 10%.

Health and education cess (H&EC): Further H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

Hence, the tax payable by such company shall be 25.168% (ie 22% + 10% + 4%)

Notes

(1) Amendment of section 115JAA relating to allowability of brought forward MAT credit. [Section 115JAA inserted by the Taxation Laws (Amendment) Act, 2019, w.e.f. A.Y. 2020-21]

The provisions of section 115JAA (relating to allowability of brought forward MAT credit) shall not apply to a person who has exercised the option under section 115BAA.

(2) Option for section 115BAA can be exercised at any time

As there is no time line within which option under section 115BAA can be exercised, it may be noted that a domestic company having credit of MAT may, if it so desires, exercise the option after utilising the said credit against the regular tax payable under the taxation regime existing prior to promulgation of the Tax Laws (Amendment) Ordinance, 2019.

(B) Special provisions relating to tax on income of certain new manufacturing domestic companies referred to in section 115BAB

(1) Rate of income tax in case of a new manufacturing domestic company [Section 115BAB(1)]

Notwithstanding anything contained in this Act but subject to the provisions of this Chapter (i.e. Chapter XII, other than those mentioned under section 115BA and section 115BAA), the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after 1.4.2020, shall, at the option of such person, be computed at the rate of 15%, if the conditions contained in section 115BAB(2) are satisfied.

(1A) Incomes other than derived from manufacturing or production and incomes in respect of which no specific rate of tax has been provided separately under this Chapter XII to be taxed @ 22% [First proviso to section 115BAB(1)]

Where the total income of the person, includes any income,

- which has neither been derived from nor is incidental to manufacturing or production of an article or thing, and
- in respect of which no specific rate of tax has been provided separately under this Chapter (i.e. Chapter XII relating to determination of tax in certain special cases),

such income shall be taxed @ 22% **and no deduction or allowance** in respect of any expenditure or allowance shall be allowed in computing such income:

(1B) Income computed by the AO by applying the specified domestic provisions to be taxed @ 30% [Second proviso to section 115BAB(1)]

The income-tax payable in respect of the income of the person deemed so under second proviso to section 115BAB(6) (see below) shall be computed @ 30%.

(1C) Short-term capital gain on transfer of depreciable of a capital asset on which no depreciation is allowable to be taxed @ 22% [Third proviso to section 115BAB(1)]

The income-tax payable in respect of income being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed @ 22%.

(1D) Option to become invalid if the conditions contained in section 115BAB(2) are not satisfied [Fourth proviso to section 115BAB(1)]

Where the person fails to satisfy the conditions contained in section 115BAB(2) (see below) in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the person as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

(2) Conditions to be satisfied for paying tax under section 115BAB(1) [Section 115BAB(2)]

- (a) The company has been set-up and registered on or after 1.10.2019, and has commenced manufacturing or production of an article or thing on or before 31.3.2023 and—
 - (i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:
Provided that this condition shall not apply in respect of a company,

business of which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

- (ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii) above, any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation, used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed 20%, of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with.

- (iii) does not use any building previously used as a hotel or a convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Explanation.—For the purposes of this sub-clause, the expressions "convention centre" and "hotel" shall have the meanings respectively assigned to them in clause (a) and clause (b) of subsection (6) of section 80-ID.

- (b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

Explanation.—For the removal of doubts, it is hereby clarified that the business of manufacture or production of any article or thing referred

to in clause (b) above shall not include business of,—

- (i) development of computer software in any form or in any media;
- (ii) mining;
- (iii) conversion of marble blocks or similar items into slabs;
- (iv) bottling of gas into cylinder;
- (v) printing of books or production of cinematograph film; or
- (vi) any other business as may be notified by the Central Government in this behalf; and

(c) the total income of the company has been computed,—

(i) **without any—**

- **deduction** under the provisions of section 10AA (relating to special economic zone), or
- benefit of accelerated depreciation/additional depreciation under section 32(1)(*ii*a), or
- benefit of investment allowance under section 32AD, or
- deduction under section 33AB (relating to tea/coffee/rubber development account), or
- deduction under section 33ABA (relating to site restoration fund), or
- deduction under section 35(1)(*ii*) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for scientific research),
- deduction under section 35(1)(*ii*a) (relating to any sum paid to a company to be used by it for scientific research),
- deduction under section 35(1)(*ii*i) (relating to any sum paid to certain research associations or to a university, college or other institution to be used for research in social science or statistical research),
- deduction under section 35(2AA) (relating to any sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person to be used for scientific research undertaken under an approved programme
- deduction under section 35(2AB) (relating to any expenditure incurred on in-house scientific research and development facility (not being expenditure in the nature of cost of any land or building) by a company engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the

list of the Eleventh Schedule

- deduction under section 35AD (relating to deduction on account of capital expenditure on specified business), or
 - deduction under section 35CCC (relating to agricultural extension project), or
 - deduction under section 35CCD (relating to skill development project), or
 - deduction under any provisions of Chapter VI-A under the heading “C.—Deductions in respect of certain incomes” (i.e 80-IA to 80Q whichever is applicable to a company other than the provisions of section 80JJAA);
- (ii) **without set off** of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i) above;

Explanation.—For the removal of doubts, it is hereby clarified that in case of an amalgamation, the option under section 115BAB(7) shall remain valid in case of the amalgamated company only and if the conditions contained in section 115BAB(2) are continued to be satisfied by such company; and

- (iii) **by claiming** the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) Loss referred to clause (ii) of section 115BAB(2)(c) above to be deemed to have been already given full effect to [Section 115BAB(3)]: The loss referred to in clause (ii) of section 115BAB(2) above, shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Board with the approval of Central Government empowered to issue guidelines for the purpose of any difficulty [Section 115BAB(4)]: If any difficulty arises regarding fulfilment of the conditions contained in sub-clause (ii) or sub-clause (iii) of clause (a) of section 115BAB(2) or clause (b) of said section, as the case may be, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

(5) Guidelines issued by the Board under section 115BAB(4) to be laid before each House of Parliament and shall be binding on the person and department [Section 115BAB(5)]: Every guideline issued by the Board under

section 115BAB(4) shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.

(6) How to compute profit where there is close connection between the company and any other person [Section 115BAB(6)]: Where it appears to the Assessing Officer that, owing to the close connection between the person to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F:

Provided further that the amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person.

(7) Assessee to opt for section 115BAB in the prescribed manner and before the specified date [Section 115BAB(7)]: Nothing contained in section 115BAB shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under section 139(1) for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after 1.4.2020 **and such option once exercised shall apply to subsequent assessment years.**

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Explanation.—For the purposes of section 115BAA and this section, the expression "unabsorbed depreciation" shall have the meaning assigned to it in clause (b) of sub-section (7) of section 72A.

(8) Rate of income tax on total income if the new manufacturing domestic company opts for section 115BAB

S. No.	Nature of Income	Rate of income tax
1.	Income derived from manufacturing or production of an article or thing [Section 115BAB(1)]	15%
2.	Income taxable at special rates as per Chapter XII i.e. (i) Short-term capital gain referred to in section 111A	15%
	(ii) Long-term capital gain other than referred to in section 112A	10/20%, as the case may be
	(iii) Long-term capital gain referred to in section 112A	10% on the LTCG exceeding ₹ 1,00,000
3.	Income computed by the AO by applying the specific domestic provisions i.e. where there is close connection between the company and any other person [Second proviso to Section 115BAB(1)]	30%
4.	Short-term capital gain on transfer of of a capital asset on which no depreciation is allowable [Third proviso to Section 115BAB(1)]	22%
5.	Any other income of the company [First proviso to Section 115BAB(1)]	22%

(9) Surcharge on income tax on total income computed under section 115BAB

Provided that in respect of any income chargeable to tax under section 115BAB of the Income-tax Act, the tax computed above shall be increased by a surcharge, for the purposes of the Union, calculated at the rate of 10%.

(10) Health and education cess (H&EC)

Further H&EC @ 4% shall be levied on the total tax (including surcharge) payable by the assessee.

4. Amendment of section 115JAA relating to allowability of brought forward MAT credit. [Section 115JAA inserted by the Taxation Laws (Amendment) Act, 2019, w.e.f. A.Y. 2020-21]

The provisions of section 115JAA (relating to allowability of brought forward MAT credit) shall not apply to a person who has exercised the option under section 115BAA.

5. Rate of MAT reduced from 18.5% to 15% and MAT has been made non

applicable in certain cases

As per section 115JB(1), where in the case of a company, the *income-tax payable* on the total income as computed under the Income-tax Act, is less than 18.5% of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income (book profit) shall be the amount of the income-tax at the rate of 18.5%.

**Amendment made by the Taxation Laws (Amendment) Act, 2019
[W.e.f. A.Y. 2020-21]**

(1) The following proviso has been inserted under section 115JB(1)

"Provided that for the previous year relevant to the assessment year commencing on or after 1.4.2020, the provisions of section 115JB(1) shall have effect as if for the words "18.5%", the words "15%" had been substituted."

(2) Section 115JB(5A) amended

As per section 115JB(5A), the provisions of section 115JB shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.

The above sub-section (5A) has been substituted by the following:

"(5A) The provisions of this section shall not apply to —

- (i) any income accruing or arising to a company from life insurance business referred to in section 115B;
- (ii) a person who has exercised the option referred to under section 115BAA or section 115BAB."

6. Enhanced surcharge not to apply on any capital gain on sale of equity share or equity oriented mutual fund covered under section 111A and 112A

The Taxation Laws (Amendment) Act, 2019 has amended section 2 and Part II & III of the First Schedule to the Finance (No. 2) Act, 2019—

(1) Amendment in section 2 of the Finance (No. 2) Act, 2019, w.e.f. 1.4.2019

Where the foreign institutional investor (FII) is an association of persons or body of individuals, whether incorporated or not, having income under section 115AD of the Income-tax Act, the surcharge shall be chargeable—

- (i) @ 10%, of such "advance tax", where the total income exceeds ₹ 50,00,000, but does not exceed ₹ 1 crore;
- (ii) @ 15%, of such "advance tax", where the total income exceeds ₹ 1 crore but does not exceed ₹ 2 crore;

-
- (iii) @ 25%, of such "advance tax", where the total income [**excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act**] exceeds ₹ 2 crore but does not exceed ₹ 5 crore;
- (iv) @ 37%, of such "advance tax", where the total income [**excluding the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act**] exceeds ₹ 5 crore;
- (v) @ 15%, of such "advance tax", where the total income [**including the income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Income-tax Act**] exceeds ₹ 2 crore but is not covered in sub-clauses (iii) and (iv) above:

Provided that in case where the total income includes any income chargeable under section 115AD(1)(b) of the Income-tax Act, the rate of surcharge on the advance tax computed on that part of income shall not exceed 15%;;

In other words, in case of foreign institutional investor, the surcharge on the tax payable on short-term capital gain referred to in section 111A and long-term capital gain referred to in section 112A shall not exceed 15% even if the total income exceeds ₹ 2 crore or ₹ 5 crore, as the case may be.

(2) Amendment in Part II and Part III of the First Schedule of the Finance (No. 2) Act, 2019

Enhanced surcharge on individual HUF, AOP, BOI @ 25% in case income exceeds ₹ 2 Crore and @ 37% in case income exceeds ₹ 5 Crore **shall not be applicable** in respect of short-term capital gain referred to in section 111A and long-term capital gain referred to in section 112A arising on sale of equity share in a company or a unit of equity oriented fund or unit of a business trust liable for security transaction tax.

This surcharge shall also not apply on capital gain arising on sale of any security including derivatives in the hands of foreign portfolio investor.

However, surcharge on the tax on the total income other than referred to section 111A and 112A shall be 10%/15%/25%/37% as applicable.

Amendments relating to Definitions

1. Facilitating strategic disinvestment of public sector company [Section 2(19AA), section 72A]

Section 2 of the Act provides the definitions for the purposes of the Act. Clause (19AA) of the said section defines that "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged

company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

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

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

- (i) It is proposed to amend clause (19AA) of section 2 of the Act to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if
 - such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
 - the resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and
 - fulfils such other conditions as may be notified by the Central Government in the Official Gazette.
- (ii) It is proposed to amend sub-section (1) of section 72A of the Act,
 - (a) to substitute clause (c) to provide that the provision of subsection (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.
 - (b) to insert clause (d) to provide that the provision of sub-section (1) of section 72A shall also apply in case of amalgamation of an erstwhile public sector company with one or more company or companies, if
 - the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and

-
- the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.
- (c) to insert a proviso to sub-section (1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment;
- (d) to insert an Explanation to sub-section (1) to define the followings:—
- (A) “Control” shall have the same meaning as assigned to in clause (27) of Section 2 of the Companies Act, 2013;
 - (B) “Erstwhile public sector company” means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.
 - (C) “Strategic disinvestment” shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

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

2. Definition of the term “Liable to tax” [Section 2(29A)]

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

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

3. Rationalisation of the provision of slump sale [Section 2(42C)]

Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines “slump sale” to mean the transfer of one or more undertakings as a result of sale

for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word “transfer” in relation to capital asset like exchange, relinquishment etc, are excluded.

While discussing transfer as a result of sale it needs to be kept in mind that it is the substance of transaction that is more important than the name given to it by the parties to the transaction. For example, a transaction of “sale” may be disguised as “exchange” by the parties to the transaction, but such transactions may already be covered under the definition of slump sale as it exists today on the basis that it is transfer by way of sale and not by way of exchange. This principle was enunciated by Hon'ble Supreme Court in CIT vs. R.R. Ramakrishna Pillai [(1967) 66 ITR 725 SC]. Thus, if a transfer of an asset is in lieu of another asset (non-monetary) it can be said to be monetized in a situation where the consideration for the asset transferred is ascertained first and is then discharged by way of non-monetary assets. In this situation it would be a case of transfer by way of sale and would thus be covered within existing provisions of section 50C of the Act. Based on this principle, Hon'ble SC in the case of Artex Manufacturing Company [(1997), 227 ITR 260] held that the sale of business on a going concern for a lump-sum non-monetary consideration was transfer by way of sale on the ground that the slump price was determined by the value on the basis of itemized assets, though this price was not mentioned in the agreement. Similarly, Hon'ble SC in the case of Dhampur Sugar Mills [(2006) 147 STC 57] considered the case of a dealer who took a sugar mill on long term lease for an agreed amount of license fee and in satisfaction therefore, the dealer was required to give the entire quantity of molasses to the owner of the sugar mill. It was held that the said transaction “in effect and substance” involved passing of monetary consideration and was accordingly liable to sales tax.

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

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

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

4. Issuance of zero coupon bond by infrastructure debt fund [Section 2(48)]

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

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

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

Amendments relating to income exempt from tax

5. Tax incentives for units located in International Financial Services Centre (IFSC) [Section 9A, 10(4D) (4E) (4F) (23FF), 47, 80LA, 115AD, 194A]

Government has establishment a world class financial services centre. Units located in IFSC enjoy some concession. In order to make location in IFSC more attractive, it is proposed to provide the following additional incentives:

- (i) It is proposed to amend section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of sub-section(3) or clauses (a) to (d) of sub-section (4) of section 9A of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before the 31st day of March, 2024.
- (ii) It is also proposed to amend clause (4D) of section 10 of the Act so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.
- (iii) It is also proposed to amend the expression “specified fund” to include under the purview the investment division of offshore banking unit which has been granted a category III AIF registration and fulfils other

conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a nonresident located in an International Financial Services Centre and which has commenced operation on or before the 31st day of March, 2024.

- (iv) It is also proposed to insert new clause (4E) in of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of International Financial Services Centre which commenced operations on or before the 31st day of March, 2024 and fulfils prescribed conditions.
- (v) It is also proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA for that previous year and has commenced operation on or before the 31st day of the March, 2024.
- (vi) It is also proposed to insert new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

“Original Fund” is proposed to be defined as a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

- (a) the fund is not a person resident in India;
- (b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into; or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf;
- (c) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and
- (d) fulfils such other conditions as prescribed;

“Relocation” is proposed to be defined as transfer of assets of the original fund to a resultant fund on or before the 31st day of March, 2023, where consideration for such transfer is discharged in the form of share 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 in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund.

“Resultant fund” is proposed to be defined as a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which—

- (a) has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and exchange Board of India Act, 1992 (15 of 1992); and
 - (b) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA.
- (vii) It is also proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains. The definition of “Original Fund”, “Relocation” and Resultant Fund shall be as already described above.
- (vii) Consequential amendments shall be proposed in section 49, 56 and 79 of the Act on account of such relocation.
- (ix) It is also proposed to amend the section 80LA of the Act to:
- provide that deduction under said section is also available to a unit of International Financial Services Centre if it is registered under the International Financial Services Centre Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.

-
- provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.
 - to provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.
- (x) It is proposed to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

The expression “investment division of offshore banking unit” is also proposed to have the meaning as defined in Para (iii).

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

Consequential amendment has also been proposed in clause (x) of sub-section (3) of section 194A of the Act which will take effect from 1st April, 2021

6. Taxation of proceeds of high premium unit linked insurance policy (ULIP) [Section 10(10D)]

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

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

- (i) Insert Explanation 3 to the clause (10D) of section 10 of the Act to define

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

- (ii) insert fourth proviso to clause (10D) of section 10 of the Act to provide that the exemption under this clause shall not apply with respect to any ULIP issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds two lakh and fifty thousand rupees.
- (iii) insert fifth proviso to this clause to provide that, if premium is payable by a person for more than one ULIPs, issued on or after the 1st February, 2021, exemption under this clause shall be available only with respect to such policies aggregate premium whereof does not exceed the amount of two lakh fifty thousand rupees, for any of the previous years during the term of any of the policy.
- (iv) insert sixth proviso to this clause providing that the provisions of fourth and fifth provisos shall not apply to any sum received on the death of a person.
- (v) insert seventh proviso to this clause to enable CBDT to issue guidelines with the approval of Central Government for the purpose of removing the difficulty and to lay every guideline issued by the Board before each House of Parliament and to make it binding on the income-tax authorities and the assessee.
- (vi) provide that a ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] is a capital asset under clause (14) of section 2 of the Act.
- (vii) provide for the deemed taxation of profit and gains from the redemption of ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] as capital gains by inserting new sub-section (1B) in section 45 and to take power to prescribe rules for calculation of such capital gains.
- (viii) Include such ULIPs [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] in the definition of equity oriented fund in section 112A so as to provide them same treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

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

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

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

7. Taxability of Interest on various funds where income is exempt [Section 10(11), (12)]

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

Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under clause (11) and clause (12) of section 10 of the Act. This exemption without any threshold benefits only those who can contribute a large amount to these funds as their share. Accordingly, it is proposed to insert proviso to clause(11) and clause (12) of section 10 of the Act, providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund, on or after 1st April, 2021, computed in such manner as may be prescribed.

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

8. Raising of prescribed limit for exemption under sub-clause (iiiad) and (iii ae) of clause (23C) of section 10 of the Act [Section 10(23C)]

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

Sub-clauses (iiiad) of clause (23C) of the section 10 provides for the exemption for the income received by any person on behalf of university or educational institution as referred to in that sub-clause. The exemptions under

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

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

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

9. Rationalisation of provisions related to Sovereign Wealth Fund (SWF) and Pension Fund (PF) [Section 10(23FE)]

Clause (23FE) of section 10 of the Act provides for the exemption to specified persons from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India. Specified persons are SWF or PF which fulfils conditions prescribed therein and are specified for this purpose by the Central Government through notification in the Official Gazette. This provision was introduced through the Finance Act, 2020 to encourage investments of SWF and PF into infrastructure sector of India. Subsequent to enactment, a notification was also issued to enlarge the scope of infrastructure activities eligible for investments. One SWF has already been notified under this provision. In order to rationalise the provision of this clause and to remove the difficulties in meeting some of the conditions, the followings amendments are proposed in the Bill:

- Allowing Alternate Investment Fund (AIF) to invest up to 50% in non-eligible investments
Presently SWF/PFs may invest in a Category-I or Category-II Alternative Investment Fund, having 100% investment in eligible infrastructure company. It is proposed to:
 - (a) relax the condition of 100% to 50%.
 - (b) allow the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust (InvIT).

-
- (c) Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or companies or in InvIT is less than 100%.
 - Investment through holding company
Presently, SWF/PFs are not allowed to invest through holding company. It is proposed to allow the same subject to the following conditions:
 - (a) Holding company should be a domestic company.
 - (b) It should be set up and registered on or after 1st April, 2021.
 - (c) It should have minimum 75% investments in one or more infrastructure companies.
 - (d) Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%
 - Investment in NBFC- IDF/IFC (non-banking finance company- infrastructure debt fund/Infrastructure finance company)
Presently, SWF/PFs are not allowed to invest in NBFC-IFC/IDF. It is proposed to allow the same subject to the following conditions:
 - (a) NBFC-IDF/IFC should have minimum 90% lending to one or more infrastructure entities.
 - (b) Exemption under this clause shall be calculated proportionately, in case if aggregate lending of NBFC-IDF or NBFC-IFC in infrastructure company or companies is less than 100%.
 - Loan or borrowings by SWF/Pension Fund
Presently, SWF/PFs are not allowed to have loans or borrowings or deposit or investments as there is a condition that no benefit should enure to private person. It is proposed to provide that there should not be any loan or borrowing for the purpose of making investment in India. It is also proposed to provide that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India.
 - Commercial activity
Presently, SWF/PFs are not allowed to undertake any commercial activity. This condition is proposed to be removed and replaced with a condition that SWF/PFs shall not participate in day to day operation of investee. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operation. The term "investee" is proposed to define to mean a business trust or a company or an enterprise or an entity or a category I or II

Alternative Investment Fund or an Infrastructure Investment Trust or a domestic company or an Infrastructure Finance Company or an Infrastructure Debt Fund, in which the SWF or PF, as the case may be, has made the investment, directly or indirectly, under the provisions of this clause.

- **Liable to Tax**

Presently, some PFs are liable to tax in their country though given exemption subsequently. It is proposed to amend this sub-clause to provide that if pension fund is liable to tax but exemption from taxation for all its income has been provided by the foreign country under whose laws it is created or established, then such pension fund shall also be eligible.

- **Rules to prescribe the method of calculation**

It is also proposed to provide that the Central Government may prescribe the method of calculation of 50% or 75% or 90% referred above.

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

Amendments relating to Assessment of Trusts

10. Rationalisation of the provision of Charitable Trust and Institutions to eliminate possibility of double deduction while calculating application or accumulation [Section 10(23C), section 11, section 12]

Exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under clause (23C) of section 10 of the Act and sections 11 and 12 of the Act. Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from the 1st April, 2021.

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

- (a) Explanation to third proviso to clause (23C) of section 10 provides that income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus.
- (b) Clause (d) of sub-section (1) of Section 11 provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.

These entities are not allowed to accumulate more than 15% of their income

or accumulate for specific purpose up to 5 years, other than corpus donations referred above. Instances have come to the notice where these entities claim the corpus donations to be exempt and at the same time claim their application as part of the mandatory 85% application from income other than such corpus. This results in a situation where the corpus income has been exempted and its application has been claimed as application against the mandatory 85% application of non-corpus income.

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

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

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

- (a) Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.
- (b) Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.
- (c) Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.
- (d) Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed

These amendments will take effect from 1st April, 2022 and will accordingly

apply to the assessment year 2022-23 and subsequent assessment years.

<p style="text-align: center;">Amendments relating to income under the Head "Salaries"</p>

11. Exemption for LTC Cash Scheme [Section 10(5)]

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

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

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

- (a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;
- (b) "specified expenditure" means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;
- (c) "specified period" means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;

-
- (d) the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;
 - (e) the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;
 - (f) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the proposed amendment would be available only to the extent of exemption admissible under above listed provisions.

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

Amendments relating to Income under the Head "Profits and Gains of Business or Profession"

12. Depreciation on Goodwill [Section 32, section 50, section 55]

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

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

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

Section 50 of the Act provides for conditions for the applicability of provisions

of section 48 and 49 for computation of capital gains in case of depreciable assets where the capital asset is an asset forming part of a block of asset in respect of which depreciation has been allowed under this Act.

Section 55 of the Act provides meaning of terms "adjusted", "cost of improvement" and "cost of acquisition" for the purposes of sections 48 and 49 of the Act. In relation to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business or profession, tenancy rights, stage carriage permits or loom hours, it is defined to mean the purchase price if it is acquired by purchase. In other cases it is nil except when it is covered by sub-clauses (i) to (iv) of sub-section (1) of section 49.

It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case *Smiff Securities Limited* [(2012)348 ITR 302 (SC)]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

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

- Sixth proviso the section 32 of the Act mandates that in a case of succession/amalgamation/demerger during the previous year, depreciation is to be calculated as if the succession or amalgamation or demerger has not taken place during the previous year and apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.
- Explanation 2 of sub-section (1) of section 32 of the Act provides that the term "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.
- Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, inter-alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year.
- Sub-section (1) of section 43 of the Act which defines "Actual cost" as actual cost of the assets to the assessee. Explanation 7 to this section

covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It clarifies that in this situation, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

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

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

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

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

In view of above discussion, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the

condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

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

- (a) amend clause (11) of section 2 of the Act to provide that 'block of asset' shall not include goodwill of a business or profession;
- (b) amend clause (ii) of sub-section (1) of section 32 of the Act to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation. Further, it is also proposed to amend Explanation 3 to sub-section (1) of the said section to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section.
- (c) amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.
- (d) amend section 55 of the Act by substituting clause (a) of subsection (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—
 - (i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
 - (ii) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and
 - (iii) in any other case, shall be taken to be nil
- (e) provide that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition

will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.

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

13. Payment by employer of employee contribution to a fund on or before due date [Section 36(1)(va), section 43B]

Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.

Section 36 of the Act pertains to the other deductions. Sub-section (1) of the said section provides for various deductions allowed while computing the income under the head 'Profits and gains of business or profession'.

Clause (va) of the said sub-section provides for deduction of any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that, for the purposes of this clause, "due date" to mean the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there-under or under any standing order, award, contract of service or otherwise.

Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B. According to it, if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B and such deduction would be admissible for the accounting year. This provision does not cover employee contribution referred to in clause (va) of sub-section (1) of section 36 of the Act.

Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provision of section 43B on employee contribution as well. There is a distinction between employer contribution and employee's contribution towards welfare fund. It may be noted that employee's contribution towards welfare funds is a mechanism to ensure the compliance by the employers of the labour welfare laws. Hence, it

needs to be stressed that the employer's contribution towards welfare funds such as ESI and PF needs to be clearly distinguished from the employee's contribution towards welfare funds. Employee's contribution is employee own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measures of penalizing employers who mis-utilize employee's contributions.

Accordingly, in order to provide certainty, it is proposed to -

- (i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the "due date" under this clause; and
- (ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

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

14. Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units [Sections 43CA, 56(2)(x)]

Section 43CA of the Act, inter alia, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, inter alia, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration

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

In order to boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers, it is proposed to increase the safe harbour threshold from existing 10% to 20% under section 43CA of the Act, if the following conditions are satisfied:—

- The transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021
- The transfer is by 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 two crore rupee

Further it is proposed to provide the consequential relief to buyers of these residential units by way of amendment in clause (x) of sub-section (2) of section 56 of the Act by increasing the safe harbour from 10% to 20%. Accordingly, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

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

15. Rationalisation of provisions relating to tax audit in certain cases [Section 44AB]

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

- (i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and
- (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

In order to incentivise non-cash transactions to promote digital economy and

to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold from five crore rupees to ten crore rupees in cases listed above.

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

16. Rationalisation of the provision of presumptive taxation for professionals under section 44ADA [Section 44ADA]

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

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

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

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

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

17. Tax neutral conversion of Urban Cooperative Bank into Banking Company [Section 44DB, section 47]

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

The Reserve Bank of India (RBI) has permitted voluntary transition of primary cooperative bank [urban co-operative banks (UCB)] into a banking company by way of transfer of Assets and Liabilities vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.

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

Necessary amendments to this effect have been proposed in section 44DB and in clause (vica) and clause (vicb) of section 47 of the Act.

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

<p style="text-align: center;">Amendments relating to Income under the Head "Capital Gains"</p>
--

18. Rationalisation of provision of transfer of capital asset to partner on dissolution or reconstitution [Section 45(4), (4A)]

The existing provisions of section 45 of the Act inter alia, provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place. Further sub-section (4) of

the said section, provides that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.

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

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

New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity. The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution. In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person. For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

New proposed section sub-section (4A) of section 45 of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity. The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution. In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified

entity of the previous year in which the money or other asset was received by the specified person. For the purposes of section 48 of the Act,

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

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

For the purposes of these two sub-sections,-

- “specified person” is proposed to be defined as a person who is partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society), in any previous year;
- “specified entity” is proposed to be defined as a firm or other association of persons or body of individuals (not being a company or a cooperative society);and
- “self-generated goodwill” and “self-generated assets” are proposed to be defined as goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

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

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

<p style="text-align: center;">Amendments relating to deductions to be Made in Computing Total Income</p>
--

19. Extension of date of sanction of loan for affordable residential house property [Section 80EEA]

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

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

20. Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up [Section 80-IAC]

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

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

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

- (i) it is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022; and
- (ii) it is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March 2022.

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

21. Incentives for affordable rental housing [Section 80-IBA]

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

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

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

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

Amendments relating to Rebate and Relief

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

There is mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries. At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India. In order to address this mismatch and remove this genuine hardship, it is proposed to insert a new section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government. It is also proposed to define the expression "specified person", as a person resident in India who opened a specified account in a notified country while being non-resident in India and

resident in that country. "Specified account" is proposed to be defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption. "Notified country" is proposed to be defined to mean a country notified by the Central Government for the purposes of this section in the Official Gazette.

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

Amendments relating to Assessment of Companies

23. Rationalisation of provisions of Minimum Alternate Tax (MAT) [Section 115JB]

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

The computation of book profit under section 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA). Hence it is proposed to,-

- (i) provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.
- (ii) to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the

Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

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

Amendments relating to Return of Income and Procedure of Assessment
--

24. Extending due date for filing return of income in some cases, reducing time to file belated return and to revise original return and also to remove difficulty in cases of defective returns [Section 139(4), (5), (9)]

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

Sub-section (1) of the section provides for the filing of original return of income for an assessment year. The Explanation 2 of the said section specifies the due-dates for filing of original return for different class of persons. The sub-clause (iii) of clause (a) of the said Explanation 2 provides that the due date for filing of original return of income for the partner of a firm whose accounts are required to be audited under the said Act or under any other law for the time being in force shall be 31st day of October of the assessment year.

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

Since the total income of a partner can be determined after the books of accounts of such firm have been finalised, the due dates of partners are already aligned with the due date of the firm. Thus, the due date for filing of original return of income of such partner is 31st October of the assessment year. However, this relaxation is not there for spouse of such partner to whom section 5A of the Act applies. Therefore, it is proposed that the due date for the filing of original return of income be extended to 31st October of the assessment year 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 for the time being in force, if the provisions of section 5A applies to them.

Further, in the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic

transaction, as per section 92E of the Act, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalised, it is proposed that the due date of such partner be extended to 30th November of the assessment year.

Sub-sections (4) and (5) of section 139 of the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under sub-sections (4) and (5) respectively of the said section at present could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier. With the massive technological upgrade in the Department where the processes under the Act are moving towards becoming faceless and jurisdiction-less, the time taken to conduct and complete such processes has greatly reduced. Therefore, it is proposed that the last date for filing of belated or revised returns of income, as the case may be, be reduced by three months. Thus the belated return or revised return could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

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

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

25. Allowing prescribed authority to issue notice under clause (i) of sub-section (1) of section 142 [Section 142(1)(i)]

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

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

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

26. Rationalisation of the provision relating to processing of returned income and issuance of notice under sub-section (2) of section 143 of the Act [Section 143(1), (2)]

The existing provisions of clause (a) of sub-section (1) of section 143 of the Act provides that at the time of processing of return of income made under section 139, or in response to a notice under sub-section (1) of section 142, the total income or loss shall be computed after making the adjustments specified in clauses (i) to (vi) therein.

It is proposed to amend the following provisions of sub-section (1) of section 143 of the Act,—

- (i) Amend sub-clause (iv) of clause (a) of sub-section (1) of the section 143 of the Act, to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.
- (ii) Amend sub-clause (v) of clause (a) of sub-section (1) of the section 143 of the Act so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act, 2018.
- (iii) Amend the provisions of section 143 to reduce the time limit for sending intimation under sub-section (1) of section 143 of the Act from one year to nine months from the end of the financial year in which the return was furnished.

Consequently, it is also proposed to reduce the time limit for issue of notice under sub-section (2) of section 143 of the Act from six months to three months from the end of the financial year in which the return is furnished.

These amendments will take effect from 1st April, 2021

27. Income escaping assessment and search assessments [Sections 148, 148A, 149, 153A to 153D]

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

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases. These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

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

issued. The salient features of new procedure are as under:—

- (i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- (ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.
- (iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).
- (iii) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.
- (iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.
- (v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.
- (vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.
- (vii) New Section 148A of the Act proposes that before issuance of notice the

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

- (viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:
- in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.
 - in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;
 - Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.
 - Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.
 - It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue

of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

- (ix) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —
 - (a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
 - (b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.
- (x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

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

28. Reduction of time limit for completing assessment [Section 153]

Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The sub-section (1) of the said section provides that the time-limit for passing an assessment order under section 143 or 144 of the Act shall be 21 months from the end of the assessment year in which the income was first assessable. However, this time limit had earlier been curtailed in order to improve the efficacy and efficiency of the Department to give effect to computerization of processes under the Act. As a result, the time limit for completion of assessment proceedings under sections 143 or 144 of the Act was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017.

Since then, the assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The assessment procedure is now conducted in a completely faceless and jurisdiction-less way where all internal and external communication is made electronically and different aspects of the assessment procedure like verification, scrutiny of books of accounts etc. are carried on by different units. The person-to-person interface between the taxpayer and the Department has been eliminated. This team-based approach for assessment with a dynamic jurisdiction is technologically driven and

very efficient. Thus, the time required for completion of assessment procedure needs to be further reduced.

The benefits of shorter time period for scrutiny proceedings are manifold. On the one hand, it reduces the compliance burden on the taxpayers who find it easier to explain matters pertaining to a recent previous year which also improve the ease of doing business. On the other hand, it enhances the ability of the Department to detect and bring to tax any leakages of revenue as the instances of tax evasion come to the notice of the Department within a shorter span of time.

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

This amendment will take effect from 1st April, 2021

<p style="text-align: center;">Amendments relating to Deduction and Collection of Tax at Source</p>
--

29. Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt [Section 194]

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

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

30. Deduction of tax in case of specified senior citizen. [Section 194P inserted]

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

(2) The provisions of section 139 shall not apply to a specified senior citizen for the assessment year relevant to the previous year in which the tax has been deducted under subsection (1).

Explanation.— For the purposes of this section,—

-
- (a) “specified bank” means a banking company as the Central Government may, by notification in Official Gazette, specify;
 - (b) “specified senior citizen” means an individual, being a resident in India—
 - (i) who is of the age of seventy-five years or more at any time during the previous year;
 - (ii) who is having income of the nature of pension and no other income except the income of the nature of interest received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income; and
 - (iii) has furnished a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.’

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

31. Tax Deduction at Source (TDS) on purchase of goods [Section 194Q]

Chapter XVIIIB of the Act relates to deduction of tax at source. The provisions of this chapter provide for TDS on various payments at rates contained therein. It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept very low at 0.1%. To ensure that compliance burden is only on those who can comply with it, it is proposed that the tax is only required to be deducted by those person (i.e “buyer”) whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Central Government is proposed to be empowered by notification in the Official Gazette to exempt a person from obligation under this section on fulfilment of conditions as may be specified in that notification. Tax is required to be deducted by such person, if the purchase of goods by him from the seller is of the value or aggregate of such value exceeding fifty lakh rupees in the previous year. It is also proposed to provide that the provisions of this section shall not apply to,-

- (i) a transaction on which tax is deductible under any provision of the Act; and
- (ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this

section shall be carried out.

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

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

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

These amendments will take effect from 1st July, 2021.

32. Rationalisation of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs) [Section 196D]

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

Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction. The situation is different in cases where the provision mandates TDS at rate in force. This is for the reason that the definition of the expression "rate in force", in clause (37A) of section 2 of the Act, allows benefit of agreement under section 90 or section 90A in determining the rate of tax at which the tax is to be deducted at source. This principle of tax deduction has also been upheld by Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012).

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

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

33. TDS/TCS on non filer at higher rates [Section 206AB]

Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly section 206CC of the Act provides for higher rate of TCS for

non-furnishing of PAN. It is seen that while these provisions have served their purpose in ensuring obtaining and furnishing of PAN by various person, there is need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS.

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

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

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

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

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

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

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

The specified person is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be. Further the time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years. There is another condition that aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Specified person shall not include a non-resident who does not have a permanent establishment in India

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

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

Amendments relating to Advance Payment of Tax

34. Advance tax instalment for dividend income [Section 234C]

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

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

- (a) the amount of capital gains; or
- (b) income of the nature referred to in sub-clause (ix) of clause (24) of section 2; or
- (c) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or
- (d) income of the nature referred to in sub-section (1) of section 115BBDA.

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

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

Amendments relating to Dispute Resolution

35. Constitution of Dispute Resolution Committee for small and medium taxpayers [Section 245MA]

The Central Government has consciously adopted a policy to make the processes under the Act, which require interface with the taxpayer, fully faceless. In this backdrop, new schemes for faceless assessment, for faceless appeal at the level of Commissioner (Appeals) and for faceless imposition of penalty have

already been made operational. Further, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has empowered the Central Government to introduce similar schemes for other functions being performed by the income-tax authorities.

It is expected that with these reforms, there would be lesser number of disputes. However, some disputes would still be there. Government has always been striving to reduce disputes and provide tax certainty. Vivad se Vishwas scheme was launched last year to settle pending disputes. Indications are there that the scheme has been a great success. While pending disputes are being resolved or adjudicated, it is important that in future there is less number of disputes from fresh assessments. Hence, in order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a new scheme for preventing new disputes and settling the issue at the initial stage.

The new scheme is proposed to be incorporated in a new section 245MA and has the following features

- (i) The Central Government shall constitute one or more Dispute Resolution Committee (DRC).
- (ii) This committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.
- (iii) Only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC.
- (iv) If the specified order is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A, of the Act, such specified order shall not be eligible for being considered by the DRC.
- (v) Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.
- (vi) Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision.
- (vii) The DRC, subject to such conditions as may be prescribed, shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.
- (viii) The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution

under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from 1st April, 2021

Amendments relating to Appeals and Revision

36. Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdiction less manner [Section 255]

In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, it is imperative that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme. This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources.

Therefore, it is proposed to insert new sub-sections in the section 255 of the Act so as to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT so as to impart greater efficiency, transparency and accountability by,—

- (a) eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing an appellate system with dynamic jurisdiction. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March, 2023. It is proposed that every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

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

Amendments relating to Settlement of Cases

37. Discontinuance of Income-tax Settlement Commission [Chapter XIX-A, Sections 245A to 245-L]

It is proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases. The various amendments proposed are as under:

- ITSC shall cease to operate on or after 1st February, 2021
- No application under section 245C of the Act for settlement of cases shall be made on or after 1st February, 2021;
- All applications that were filed under section 245C of the Act and not declared invalid under sub-section (2C) of section 245D of the Act and in respect of which no order under section 245D(4) of the Act was issued on or before the 31st January, 2021 shall be treated as pending applications.
- Where in respect of an application, an order, which was required to be passed by the ITSC under section 245(2C) of the Act on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.

-
- The Central Government shall constitute one or more Interim Board for Settlement (hereinafter referred to as the Interim Board), as may be necessary, for settlement of pending applications. Every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.
 - On and from 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply mutatis mutandi to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under sub-section (4) of section 245D of the Act. However, where the time-limit for amending any order or filing of rectification application under section 245(6B) of the Act expires on or after 1st February, 2021, in computing the period of limitation, the period commencing from 1st February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to sixty days, if less than sixty days.
 - With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal.
 - Where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.
 - The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board.
 - Where the pending application is allotted to an Interim Board or transferred to another Interim Board subsequently, all the records, documents or evidences, with whatever name called, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes.
 - Where the assessee exercises the option to withdraw his application, the proceedings with respect to the application shall abate on the date on which such application is withdrawn and the Assessing Officer, or, as the

case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C of the Act had been made. However, for the purposes of the time-limit under sections 149, 153, 153B, 154 and 155 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment, the period commencing on and from the date of the application to the ITSC under section 245C of the Act and ending with the date on which application is withdrawn shall be excluded. Further, the income-tax authority shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it. However, this restriction shall not apply in relation to the material and other information collected, or results of the inquiry held or evidence recorded by the Assessing Officer, or, as the case may be, other income-tax authority during the course of any other proceeding under this Act irrespective of whether such material or other information or results of the inquiry or evidence was also produced by the assessee or the Assessing officer before the ITSC.

- The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible; optimising utilisation of the resources through economies of scale and functional specialisation; and introducing a mechanism with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st March, 2023. Every such notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

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

Amendments relating to Advance Rulings

38. Constitution of the Board for Advance Ruling [Chapter XIX-B, Sections 245N to 245W]

With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Advance Rulings was incorporated in the Act vide the Finance Act, 1993 by inserting a new Chapter XIX-B. Under these provisions the Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the Tax department. AAR consists of a Chairman and various Vice-Chairman, revenue members and law members. There are three benches of the Authority. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member, each. A bench cannot function if the post of Chairman or Vice-Chairman is vacant. As per section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired judges of the Supreme Court, retired Chief Justice of a High Court or retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the persons eligible for appointment as Vice-Chairman are retired judges of a High Court. As per past experience, the posts of Chairman and ViceChairman have remained vacant for a long time due to non-availability of eligible persons.

This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner. Hence, it is proposed to constitute a Board of Advance Ruling and to make the following amendments in the existing provisions of AAR:—

- (i) The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).
- (ii) It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.

-
- (iii) Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.
 - (iv) Section 245N is proposed to be amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.
 - (v) Section 245-O is proposed to be amended to provide that the Authority constituted under the said section shall cease to operate on or after the notified date.
 - (vi) Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings.
 - (vii) Section 245P is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words "Authority", the words "Board for Advance Rulings" had been substituted;
 - (viii) Section 245Q (which deals with filing of application) is proposed to be amended to provide that the pending application with the Authority i.e. in respect of which order under section 245R(2) or section 245R(4) has not been passed before the notified date shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.
 - (ix) Section 245R (which deals with the procedure) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words "Authority", the words "Board for Advance Rulings" had been substituted and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
 - (x) The Central Government is also proposed to be empowered to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Board of Advance Ruling under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March,

2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

- (xi) Section 245S (which deals with the applicability of advance ruling and makes it binding on the assessee and the Department) is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date.
- (xii) Section 245T (which deals with advance ruling to be void in certain situation) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words "Authority", the words "Board for Advance Rulings" had been substituted. Also, a specific reference to advance ruling pronounced by the Authority shall be amended to make it advance ruling pronounced under sub-section (6) of section 245R so that the Board for Advance Ruling can also exercise powers under the said section in respect of rulings pronounced by the present Authority.
- (xiii) Section 245U is proposed to be amended to provide that on or from the notified date, the powers of the "Authority" under the said section shall be exercised by the "Board for Advance Rulings" and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
- (xiv) Section 245V is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date
- (xv) A new section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. This appeal can be filed by the applicant as well as by the Department. Such appeal shall be filed within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal. The Central Government shall be empowered to notify a scheme for filing of appeal by the Assessing Officer so as to impart greater efficiency, transparency and accountability by optimising utilisation of the resources through economies of scale and functional specialisation; introducing a system with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

- (xvi) References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in section 245N and in section 245Q relating to application for advance ruling is proposed to be omitted.

These amendments will take effect from 1st April, 2021

Amendments relating to Miscellaneous Provisions

39. Provisional attachment in Fake Invoice cases [Section 281B]

Section 281B of the Act contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months. Further, the said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment. The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time. The powers under this section can only be exercised by the Assessing Officer.

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

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

40. Adjudicating authority under the PBPT Act

Section of the 71 of the PBPT Act, inter alia, provides that the Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the PBPT Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA) and the Appellate Tribunal established under section 25 of the PMLA may

discharge the functions of the Adjudicating Authority and the Appellate Tribunal, respectively, under the PBPT Act for such period and in respect of such cases or class of cases as may be specified in the said notification.

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

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

41. Clarification regarding the scope of Vivad se Vishwas Act, 2020

With the objective of reducing pending income tax litigation, generating timely revenue for the Government and giving benefit to taxpayers by providing them peace of mind, certainty and savings on account of time and resources, the Direct Tax Vivad se Vishwas Act, 2020 (hereinafter referred to as 'VsV') was enacted on 17th March, 2020.

The settlement provisions under the Income-tax Act, 1961 (Income-tax Act) provide for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted into determination of tax liability and instead approached the Income Tax Settlement Commission (ITSC) for settlement of his case under Chapter XIX-A of the Income-tax Act. As the VsV was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Income-tax Act, such cases as are covered by Chapter XIX-A of the Income-tax Act (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.

With a view to remove any ambiguity, it is proposed to amend the provisions of VsV to clarify the original legislative intent for which the definitions of "appellant" in section 2(1)(a), "disputed tax" in section 2(1)(j) and "tax arrear" in section 2(1)(o), of the VsV are proposed to be amended by way of removal of doubts by this Bill.

The said amendments are proposed to take effect retrospectively from the

17th March 2020.

42. Income Declaration Scheme (IDS) amendment

The Income Declaration Scheme, 2016 (the Scheme) contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to come clean and make payment of tax, surcharge and penalty as per the provisions of the Scheme. The Scheme commenced on 01.06.2016.

Section 187 of the Finance Act, 2016 inter alia, provides that the tax, surcharge and penalty payable under the Scheme shall be paid on or before the specified date and if the declarant failed to pay such amount, the declaration filed by the declarant shall be deemed invalid. Further, section 191 of the Finance Act, 2016, inter alia, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable. A proviso was inserted in section 191 of the Finance Act, 2016 vide Finance (No. 2) Act, 2019 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable. It is now proposed to amend the proviso of section 191 of the Finance Act, 2016, so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest.

This amendment will take effect retrospectively from 1st June, 2016.

Amendments relating to Equalisation Levy

43. Rationalisation of the provisions of Equalisation Levy [Section 165A of Finance Act, 2016, Section 10(50)]

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

- (i) to a person resident in India; or
- (ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or
- (iii) to a person who buys such goods or services or both, using internet protocol address located in India.

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

- (i) online sale of goods owned by the e-commerce operator;
- (ii) online provision of services provided by the e-commerce operator;
- (iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
- (iv) any combination of activities listed in clause (i), (ii) or clause (iii);

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

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

- Insert an Explanation to section 163 of the Finance Act, 2016, clarifying that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act.
- Insert an Explanation to clause (cb) of section 164 of the Finance Act, 2016, providing that for the purposes of defining e-commerce supply or service, “online sale of goods” and “online provision of services” shall include one or more of the following activities taking place online:
 - (a) Acceptance of offer for sale;
 - (b) Placing the purchase order;
 - (c) Acceptance of the Purchase order;
 - (d) Payment of consideration; or
 - (e) Supply of goods or provision of services, partly or wholly
- Amend section 165A of the Finance Act, 2016, to provide that consideration received or receivable from e-commerce supply or services shall include:
 - (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and

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

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

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

- (i) provide that section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.
- (ii) clarify that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government under section 90 or section 90A of the Act.
- (iii) define e-commerce supply or services under section 10(50) as the meaning assigned to it in clause (cb) of section 164 of Chapter VIII of the Finance Act,2016.

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

INDIRECT TAXES

Ravi Associates

GOODS AND SERVICE TAX

Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified.

Amendments in the CGST Act, 2017

Scope of Supply (r.w.e.f. 01.07.2017):

A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.

Eligibility and conditions for taking input tax credit:

A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.

Audit by Chartered Accountant:

Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.

Annual return:

Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.

Proposed to empower the Central Government to provide by rules the time within which and the form and manner in which every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return.

Interest on delayed payment of tax Section 50 (r.w.e.f 01.07.2017)—

Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.

Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.—

Section 74 of the CGST Act is being amended so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

Amendment in Section 75:

An explanation to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.

Provisional attachment to protect revenue in certain cases.—

Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.

Substituting sub-section (1) thereof, which empowers the Central Government to provide by rules the manner in which the Commissioner may attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122.

Appeals to Appellate Authority (Section 107)

A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five percent of penalty has been paid by the appellant.

Detention, seizure and release of goods and conveyances in transit (Section 129)

Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

Sub-section (6) of the said section seeks to empower the Central Government to provide by rules the manner in which and the time within which the goods or conveyance detained or seized under that section shall be sold or

disposed of.

Confiscation of goods or conveyances and levy of penalty (Section 130)

Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

Power to collect statistics.

Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Bar on disclosure of information (Section 152)

Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

Amendments in the IGST Act, 2017:
--

Amendment in Zero Rated Supply (Section 16):

Clause 114 of the Bill seeks to amend section 16 of the Integrated Goods and Services Tax Act, 2017 so as to make provisions for restricting the zero rated supply on payment of integrated tax only to specified class of taxpayers or specified supplies of goods or services. It further provides to link the foreign exchange remittance in case of export of goods with refund and further restricting zero rating of supplies made to special economic zone only when such supplies are for authorised operations.

Sub-section (3) of the said section seeks to empower the Central Government to provide by rules the conditions subject to which and the safeguards and procedures in respect of which a registered person making zero rated supply shall claim refund of unutilized input tax credit on supply of goods or services or both. The proviso thereto seeks to empower the Central Government to provide by rules the manner in which the registered person making zero rated supply of goods shall deposit the refund received.

CUSTOMS

Amendment in Section 46 Custom Act:

Clause 84 of the Bill seeks to amend sub-section (3) of section 46 of the Customs Act so as to insert a new proviso therein to empower the Board to provide by regulations different time limits for presentation of the Bill of entry.

Amendment in Section 9

Amendment in section 9 of the Customs Tariff Act.

The proposed sub-section (1B) seeks to empower the Central Government to provide by rules the circumstances in which absorption of countervailing duty have taken place.

Amendment in section 9A of the Customs Tariff Act.

The proposed sub-section (1B) seeks to empower the Central Government to provide by rules the circumstances in which absorption of anti-dumping duty have taken place.

Section 110 of the Customs Act is being amended so as to revise the procedure for pre-trial disposal of seized gold, in any form as notified. Commissioner (Appeals) having jurisdiction, to certify the correctness of inventory of the seized goods and carry out other procedures as prescribed, before the disposal of the gold in a manner as may be determined by the Central Government. Other consequential amendments to give effect to this provision are also being carried out.

Confiscation of any goods Sub-section (ja) is being added to section 113 to provide for the confiscation of any goods entered for exportation under claim of remission or refund of any duty or tax or levy, so as to make a wrongful claim in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force.

Penalty: A new section 114AC is being inserted in Customs Act to prescribe penalty in specific case where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilize Input Tax Credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax.

Common Portal for Facilitating procedures: Chapter XVII is being amended so as to insert a new section 154C for notification of a common portal for facilitating registration, filing of bills of entry, shipping bills, any other document or form prescribed under this act or under any other law for the time being in force or the rules and regulations made thereunder, payment of duty and for carrying out such other functions and for such purposes as may be specified.

Section 9 of the Customs Tariff Act is being amended to include provisions

for anti-absorption, retrospective levy from the date of initiation of investigation in anti-circumvention cases, aligning countervailing duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when countervailing duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing Countervailing duty on review for period not exceeding 5 years at a time, instead of the 5 years at present

Section 9A of the Customs Tariff Act is being amended to include . provisions for anti-absorption, retrospective levy in anti-circumvention cases, aligning anti-dumping duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when anti-dumping duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing ADD on review for period not exceeding 5 years at a time, instead of the 5 years at present.