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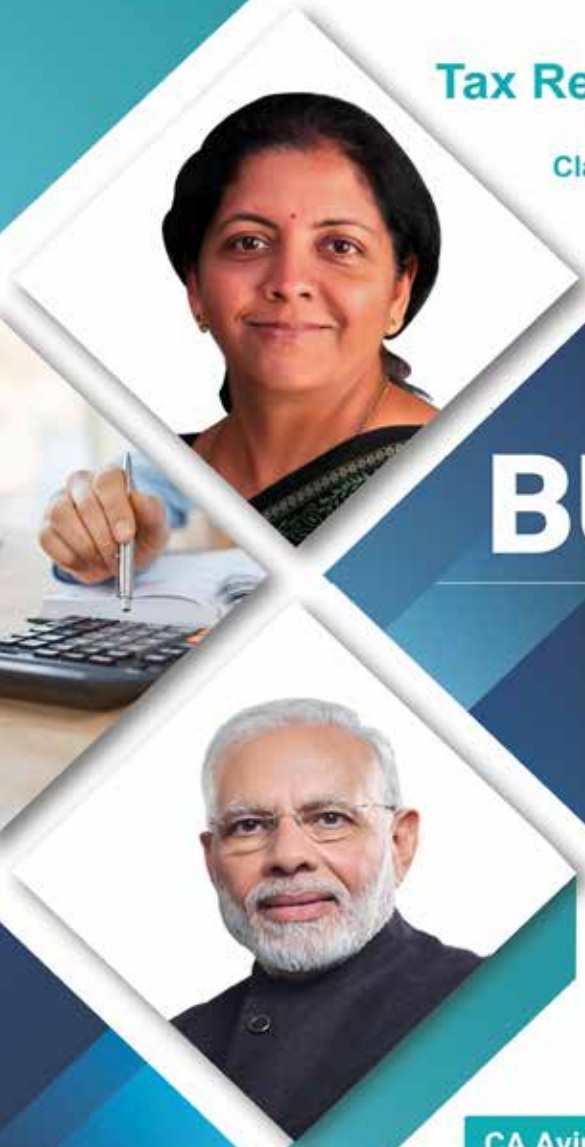

BUDGET 2022

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He has been elected to NIRC of The Institute of Chartered Accountants of India (ICAI) for the period 2019-2022. He is Chairman of Direct Tax Committee of NIRC of ICAI. He is President of Tax Research Foundation, an NGO doing research in the field of taxation. He has been nominated as YIN India Representative for a period of 2 years for International Fiscal Association – India Branch (A Netherland based body). He is partner in APT & Co LLP, Chartered Accountants having head offices at Delhi and 18 branches all over India.

He has delivered more than 900 lectures at national and international level. He is visiting faculty member at **National Academy of Direct Taxes, Nagpur, DTRTIs, Shri Ram College of Commerce**, ICAI, ICSI, ICWAI and Management Institutes. He is also faculty member of Certification Course on International Taxation for CAs. He was special invitee of **Direct Tax Committee of ICAI and International Taxation Committee of ICAI**. He has experience of handling various International Taxation including Transfer Pricing matters of big corporate.

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1. Tax Rates

i. Personal Tax Rates

Option 1

Individuals other than Senior Citizen

Income (Rs)	Proposed rate of tax (AY 2023-24)
Upto 2,50,000	Nil
2,50,001-5,00,000	5%
5,00,001-10,00,000	20%
10,00,001 and above	30%

Senior Citizen (Between 60 – 80 years of age)

Income (Rs)	Proposed rate of tax (AY 2023-24)
Upto 3,00,000	Nil
3,00,001-5,00,000	5%
5,00,001-10,00,000	20%
10,00,001 and above	30%

Super Senior Citizen (Between above 80 years of age)

Income (Rs)	Proposed rate of tax (AY 2023-24)
Upto 5,00,000	Nil
5,00,001-10,00,000	20%
10,00,001 and above	30%

Option 2

Income (Rs)	Proposed rate of tax (AY 2023-24)
Upto 2,50,000	Nil
2,50,001-5,00,000	5%
5,00,001-7,50,000	10%
7,50,001-10,00,000	15%
10,00,001-12,50,000	20%
12,50,001-15,00,000	25%
15,00,001 and above	30%

**Note- No deduction*

Note: Cess of 4% is leviable on the amount of income tax and surcharge, if any.

Rebate under Section 87A continues for a resident individual (whose income does not exceed 5,00,000). The amount of rebate is 100% of income tax calculated before education cess or 12,500 whichever is less.

Surcharge to be added

Income (Rs)	Proposed rate of tax (AY 2023-24)	Old rate of Tax (AY 2022-23)
Upto 50 Lakhs	Nil	Nil
50 Lakhs - 1 Crore	10%	10%
1 Crore - 2 Crore	15%	15%
2 Crore - 5 Crore	25%*	25%*
Above 5 Crore	37%*	37%*

*Surcharge on Dividend income and capital gains u/s 111A, 112 & 112A will be restricted to 15% only.

ii. Corporate Tax Rates

Income	Proposed rate of tax (AY 2021-22)
Domestic Company having total income less than 1 Crore	30%*
Domestic Company having total income more than 1 Crore but less than 10 Crore	30%* plus surcharge of 7%
Domestic Company having total income more than 10 Crore	30%* plus surcharge of 12%
Other Company having total income less than 1 Crore	40%
Other Company having total income more than 1 Crore but less than 10 Crore	40% plus 2%
Other Company having total income more than 10 Crore	40% plus 5%

Note: Cess of 4% shall be levied over and above the above taxes.

**Reduced rate of 25% shall be applicable where total turnover / receipts in the last P.Y. does not exceed Rs 400 Cr*

**Reduce Tax Rate 22% plus surcharge as applicable u/s 115BAA*

iii. Firms

Flat tax rate of 30% and surcharge @ 12% of income tax if net income exceeds Rs 1 Cr. Additionally, cess of 4% is applicable.

iv. Cooperative Societies

Particular	Rate of Tax
Having total income of less than 10,001	10%
Having total income of more than 10,000 but less than 20,001	1,000 plus 20% of total income in excess fo Rs.10,000
Having total income of more than 20,000	3,000 plus 30% of total income in excees of Rs. 20,000

Surcharge to be added

Income (Rs)	Proposed rate of tax	Old rate of Tax
	(AY 2023-24)	(AY 2022-23)
Upto 1 Crore	Nil	Nil
1 Crore- 10 Crore	7%	12%
Above 10 Crore	12%	12%

Additionally, cess of 4% shall be levied.

A co-operative society resident in India have the option to pay tax at 22 per cent, as per the provision of Section 115BAD, Surcharge would be at 10% on such tax.

2. Individual Tax

2.1 Incentives of NPS to State Government Employees [A Y 2020-21]

Under the existing provisions of the Act, any contribution by the Central Government to the NPS account shall be allowed as a deduction, if it does not exceed 14% of his salary where such contribution is made by the Central Government. This limit is presently 10% where such contribution is made by any other employer.

The State Governments were given an option to raise the contribution to 14% w.e.f 01.04.2019 on their own volition. In order to ensure that the State Government employees also get full deduction, it is proposed to increase the limit of deduction under section 80CCD of the Act to 14% in respect of contribution made by the State Government.

2.2 Relief for releasing of annuity to a disabled person [A Y 2020-21]

The existing provision of section 80DD provides for a deduction to an individual or HUF, who is a resident in India for contribution made to LIC or any other insurance company for the benefit of the dependent who is suffering from disability. The deduction is available to the individual only if the scheme provides annuity or lumpsum amount after the death of such individual.

Now, it is proposed to allow deduction under the said section to the individual/ HUF even if the annuity or lumpsum amount is payable by the insurance company during the lifetime but upon attaining age of 60 years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.

2.3 Relief for amount received for medical treatment and on account of death due to COVID-19 [A Y 2020-21]

In order to provide the relief for COVID, it is proposed to insert section 17(2)(c) to state that, any sum paid by the employer in respect of any expenditure actually incurred by the employee for medical treatment of self or family relating to COVID-19 subject to conditions,

as may be notified by the Central Government, shall not form part of "perquisite". Hence, the same will be exempt from tax to the extent the said amount is actually incurred by the employee.

Further, it is proposed to amend the proviso to section 56(2)(x) by inserting two new clauses in the proviso so as to provide that-

i. any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19 subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person;

ii. any sum of money received by a member of the family of a deceased person,

   - from the employer of the deceased person (without limit), or

   - from any other person or persons to the extent that such sum or aggregate of such sums does not exceed Rs. 10 lakh,

where the cause of death of such person is illness relating to COVID-19 and the payment is, received within 12 months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.

3. Business Taxation

3.1 No deduction for cess and surcharge [A Y 2005-06]

Few courts has allowed the deduction of cess and surcharge in computing the income chargeable under the head "Profits and gains of business or profession".

Now, new Explanation has been added w.e.f. AY 2005-06 to provide that the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax and the same will not be allowed as deduction under the head PGBP.

3.2 Incentive for Manufacturing Company

Section 115BAB provides for an option of concessional rate of taxation @ 15% for new domestic manufacturing companies registered on or after 01.10.2019, and the company is required to commence manufacturing or production of an article or thing on or before 31st March 2023.

It is proposed to amend section 115BAB to extend the date of commencement of manufacturing or production of an article or thing, to 31st March, 2024.

3.3 Incentive for Start Up

The existing provisions of the section 80-IAC of the Act provide for a deduction of an amount equal to 100% of the profits derived from an eligible business by an eligible start-up for 3 consecutive years out of 10 years, beginning from the year of incorporation, at the option of the assesses provided it is incorporated on or after the 1st day of April, 2016 but before 1st day of April 2022.

Now, it is proposed to extend the period of incorporation of eligible start-ups to 31st March, 2023.

3.4 Change in AMT by Co-operative Socities

Section 115JC of the Act provides for the alternate minimum tax (AMT) payable by co-operative societies, which is at the rate of 18.5%. However, the Minimum Alternate Tax (MAT) rate for companies has been 15% only.

In order to provide parity between co-operative societies and companies, it is proposed to modify section 115JC(4) to reduce the AMT rate at 15% at which co-operative societies are liable to pay income-tax.

Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of "alternate minimum tax"

3.5 Facilitating Strategic Disinvestment of PSU

It order to facilitate the strategic disinvestment of public sector companies, it is proposed to amend section 79 of the Act to provide that the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% of the voting power of the erstwhile public sector company in aggregate.

It is further proposed to provide that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

The terms "erstwhile public sector company" and "strategic disinvestment" shall have the meaning assigned to in clause (ii) and (iii) of the *Explanation* to clause (d) of sub-section (1) of Section 72A respectively.

3.6 Taxation of foreign dividend received[A Y 2023-24]

As per the existing provisions of Section 115BBD, any dividend income received from foreign company by any Indian company is taxable at the special rate of 15% subject to fulfillment of certain conditions. This concessional rate of tax has been abolished.

3.7 Set off-of loss in search cases [A Y 2023-24]

It is proposed to insert a new section 79A in the Act to provide that no set off of loss is allowed against the undisclosed income found/ surrendered consequent to proceeding u/s 132, or u/s 132A or a

u/s 133A, other than under section 133A(2A). In other words, where the total income of any previous year of an assessee includes any undisclosed income, the same cannot be set-off against any loss, whether brought forward or otherwise, or unabsorbed depreciation u/s 32(2) allowable to the assessee under any provision of this Act in computing his total income for such previous year.

3.8 Disallowance u/s 14A [AY 2022-23]

Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to exempt income.

It is proposed to amend section 14(1), so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

3.9 Disallowance for expense in contravention of Law [AY 2022-23]

It is proposed to insert explanation 3 to section 37(1) to clarify that, the explanation 1, shall include and shall be deemed to have always included expenditure incurred by an assessee-

i. for any purpose which is an offense under, or which is prohibited by, any law for the time being in force, in India or outside India; or

ii. to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or

iii. to compound an offense under any law for the time being in force, in India or outside India.

3.10 Disallowance of interest on conversion to debentures [AY 2023-24]

It is proposed to amend Explanation 3C, 3CA and 3D to section 43B so as to provide that conversion of interest payable u/s 43B clause (d), (da) & (e) into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to have been actually paid. Hence, such interest, on being converted to debentures, is disallowed.

4. Capital Gains & Other sources

4.1 Expansion of Scope of bonus stripping and dividend stripping [AY 2022-23]

It is proposed to amend section 94(8), pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well. Also it is proposed to amend explaination to said section to include units of business trust such as InvIT, REIT and AIF within the definition of units.

4.2 Cash credits under section 68 of the Act [AY 2023-24]

It is proposed to amend the provisions of section 68 of the Act so as to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well regulated entity, i.e. it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

4.3 Reduction of Goodwill from block of assets to be considered as 'transfer' [AY 2021-22]

It is proposed to clarify that for the purposes of section 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, shall be deemed to be transfer.

5. Changes in International Tax

5.1 Power of Sec 263 given to TPO [AY 2022-23]

If CCIT or PCIT considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.

5.2 New Provision for Claiming refund for Net of Tax Contracts [AY 2023-24]

In case of a deductor who is deducting WHT u/s 195 on the basis of net of taxes under an agreement or arrangement and borne the tax liability but he claims that there is no tax deduction was required, he may file an application for refund of such tax deducted before the Assessing Officer.

If the deductor is not satisfied with the order of the AO, he may go into appeal against such order before the CIT (Appeals), under section 246A of the Act.

5.3 Tax Incentives to International Financial Services Centre (IFSC)

In order to incentivise operations from IFSC, it is proposed to provide the following incentives:

i. It is proposed to amend clause (4E) of section 10 of the Act to extend the exemption under the said clause to the income accrued or arisen to or received by a non-resident as a result of transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit of an International Financial Services Centre, referred to in sub-section (1A) of section 80LA.

ii. It is proposed to amend clause (4F) of section 10 to extend the exemption under the said clause to the income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of

section 80LA, if the unit has commenced its operations on or before the 31st March, 2024.

It is also proposed to define "ship" to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.

iii. It is proposed to insert clause (4G) in section 10 to provide exemption to any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit, in any International Financial Services Centre, referred to in sub- section (1A) of section 80LA, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

iv. It is also proposed to provide that "portfolio manager" shall have the same meaning as assigned to it in clause (z) of sub-regulation (1) of regulation (2) of International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 made under the International Financial Services Centres Authority Act, 2019;

v. It is proposed to amend the Explanation to clause (viib) of section 56 of the Act to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the International Financial Services Centres Authority Act, 2019.

vi. It is proposed to amend clause (d) of sub-section (2) of section 80LA of the Act to provide that in addition to the income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the International Financial Services Centre to any person shall also be eligible for deduction under section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the 31st March 2024.

6. Penalty

6.1 Power to CIT(A) to levy penalty u/s 271AAB, 271AAC and 271AAD of the Act [AY 2023-24]

It is proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the CIT (Appeals) also to levy penalty under these sections in case of enhancement is made by CIT(A).

6.2 Increase in Penalty u/s 272A

It is proposed to increase the amount of penalty from Rs. 100 per day to Rs. 500 per day for failures listed u/s 272A(2) like non-issue to TDS certificates, non-compliance of notice u/s 94(6), etc.

7. Tax Administration and Compliance

7.1 New Provision for Updating ITR [AY 2022-23]

The due date for filling ITR u/s 139(1) of the Act is 31st July, 31st October and 30th November for various types of assessee. The due date for filling revised return u/s 139(5) is 31st December of the relevant assessment year or before the completion of assessment, whichever is earlier. Similarly, the due date for filling belated return u/s 139 (4) is also 31st December of the relevant assessment year or before the completion of assessment, whichever is earlier.

In order to provide more time to tax payers, it is proposed to introduce a new provision in section 139(8A) of the Act for filing an **updated return** of income by any person, whether he has filed a return previously for the relevant assessment year, or not. The proposal for updated return over a period longer than that is provided in the existing provisions of Income-tax Act would on the one hand bring use of huge data with the IT Department to a logical conclusion resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment.

Any person may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act for the P. Y. relevant to such A. Y., within 24 months from the end of the A. Y. with additional tax. Such return shall be furnished in the prescribed form and manner and shall contain prescribed particulars.

The new proposed provision of Sec 139(8A) shall not apply, if the updated return,

- is a return of a loss or
- has the effect of decreasing the total tax liability determined on the basis of return furnished u/s 139(1), (4) or (5) or
- results in refund or increases the refund due on the basis of return furnished u/s 139(1), (4) or (5)

A person shall also not be eligible to furnish an updated return u/s 139(8A) if:–

(a) search has been initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A in the case of such person, or

(b) a survey has been conducted u/s section 133A, other than 133A(2A), in the case such person, or

(c) a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned u/s 132 or sec 132A in the case of any other person belongs to such person, or

(d) a notice has been issued to the effect that any books of account or documents, seized or requisitioned u/s 132 or sec 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

The above exception is for the A Y relevant to the P Y in which such search is initiated or survey is conducted or requisition is made and two A. Ys. proceeding such assessment year.

Also, no updated return shall be furnished by any person for the relevant assessment year, where,

1. an updated return has been furnished by him u/s 139(8A) for the relevant assessment year, or
2. any proceeding for assessment or reassessment or re-computation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case, or
3. the Assessing Officer has information in respect of such person for the relevant assessment year in his possession under
   - the Prevention of Money Laundering Act, 2002 or
   - the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or
   - the Prohibition of Benami Property Transactions Act, 1988 or
   - The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

and the same has been communicated to him, prior to the date of his filing of updated return, or

4. information for the relevant assessment has been received under exchange of information under DTAA in respect of such person and the same has been communicated to him, prior to the date of his filing of updated return,or
5. any prosecution proceedings under Chapter XXII have been initiated for the relevant assessment year in respect of such person, prior to the date of his filing of updated return, or
6. he is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

Further, It has also been proposed to amend sec 139(9) to provide that a return filed u/s 139(8A) shall be treated as defective return unless such return is accompanied by the proof of payment of tax as required under the proposed section 140B.

A new section 140B has been proposed to provide for the tax required to be paid for opting to file the updated return:-

I. Where no return furnished earlier:

Where no ITR has been furnished u/s 139(1) or (4) by an assessee, he shall be liable to pay thetax due together with interest and fee payable under any provision of the Act for any delay in furnishing the return or any default or delay in payment of advance tax, alongwith the payment of additional tax.

The tax payable shall be computed after taking into account the following:-

(i) the amount of advance tax, if any;
(ii) any TDS or TCS;
(iii) any relief of tax claimed u/s 89;
(iv) any relief of foreign tax claimed u/s 90 or 91;
(v) any relief of foreign tax claimed u/s 90A; and
(vi) any tax credit claimed to be set off u/s 115JAA or section 115JD.

Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

II. Where return furnished u/s 139(1) or (4) or (5):

In such case, he shall be liable to pay the tax due together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid in the earlier return. The tax payable shall be computed after taking into account the following:-

(i) TDS, TCS, Advance Tax, Self-assessment tax and the amount of relief taken in the earlier return;
(ii) TDS or TCS on additional income offered;
(iii) Foreign tax credit u/s 90 or 91 on additional income offered;
(iv) Foreign tax credit u/s 90 or 91 on additional income offered
(v) any tax credit claimed to be set off u/s 115JAA or section 115JD which is not claimed in the earlier return.

The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

A payment of additional tax by persons opting to furnish their updated returns u/s 139(8A) is also required at following rates:-

December of the AY till 12 months from the end of the relevant assessment year	25% of aggregate of tax and interest payable
After the expiry of 12 months from the end of A Y but before completion of 24 months from the end of the relevant A Y	50% aggregate of tax and interest payable

It is also clarified that for the purposes of computation of "additional income-tax", tax shall include surcharge and cess, by whatever name called, on such tax.

7.2 No repetitive appeal by the revenue [AY 2022-23]

It is proposed to insert a new section 158AB in the Act to provide a new procedure when an appeal by revenue is pending on an identical question of law to provide that where the collegium is of the opinion that any question of law arising in the case of an assessee for any assessment year ("relevant case") is identical with a question of law already raised

- in his case or
- in the case of any other assessee

for an assessment year, which is pending before the jurisdictional High Court or the Supreme Court or in a SLP under article 136 of the Constitution,

against the order of the ITAT or the jurisdictional High Court, in favour of such assessee ("other case"),

the collegium may decide and intimate the PCIT or CIT not to file any appeal, at this stage, to the ITAT or to the High Court.

"collegium" shall comprise of two or more CCITs or PCCITs, as specified by the Board in this regard.

Further, on receipt of a communication from the collegium, the PCIT or CIT shall direct the AO to make an application to the ITAT or jurisdictional High Court in the prescribed form within 60 days from the date of receipt of the order of the CIT(A) or within 180 days from the date of receipt of the order of the ITAT, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case. The PCIT or CIT shall direct the AO to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case, and in case no such acceptance is received, the PCIT and CIT shall proceed in normal case.

7.3 Dispute Resolution Committee [AY 2022-23]

The existing provisions of the Act do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee.

Now, it is proposed to insert a new sub-section to enable the AO to pass an order giving effect to the resolution of dispute by the DRC. However, since DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under section 144C of the Act or the DRC under section 245MA of the Act, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee.

7.4 Liability in case of Business reorganization [AY 2022-23]

Section 170 governs the procedure of taxation in case of succession to business in the event of reorganization or restructuring of the business.

Though section 170 provides for assessment in cases of succession otherwise than by death, in practice once an entity starts the process of reorganization by filing an application with the adjudicating authority or any High Court, the period of time involved in coming to a conclusion with respect to such reorganization is found to be a long-drawn process and is not time-bound. The reorganization often is from a preceding date. During the pendency of the court proceedings the income tax proceedings and assessments are carried on and often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.

Hence, till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court. Therefore, with a view to clarify that such proceedings under the Act are valid, it is proposed to insert new section 170(2A), to provide that the assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor.

7.5 Fresh period to file consolidate return in case of Merger [AY 2022-23]

In many cases, it is seen that there is a gap between the effective date of merger order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, it is proposed to insert a new section 170A to the Act, to enable for the entities going through such business reorganization, for filing of modified returns for the period between the date of effective date of merger and the date of issuance of final order of the competent authority. Now, a modified return can be filled in the prescribed form and prescribed manner within a period of 6 months from the end of the month in which such order is issued.

7.6 Reduction of demand under IBC [AY 2022-23]

It can been in many cases that the tax demand, in the case of companies transferred as a result of the proceedings under the Insolvency and Bankruptcy Code, 2016, has been modify by the NCLT but there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register by the AO. Hence, in order to remove this anomaly, it is proposed to insert a new section 156A to the Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

7.7 Deferment of Faceless Assessment in few cases [AY 2021-22]

As part of this process of making the tax administration transparent and efficient, provisions for notifying faceless schemes under sections 92CA, 144C, 253 and 264A were introduced in the Act through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.11.2020 and under section 255, was inserted through Finance Act, 2021 with effect from 01.04.2021:

S.No.	Section	Scheme	Date of Limitation
1.	92CA	Faceless determination of arm's length price	31st day of March, 2022
2.	144C	Faceless Dispute Resolution Panel	31st day of March, 2022
3.	253	Faceless appeal to Appellate Tribunal	31st day of March, 2022
4.	255	Faceless procedure of Appellate Tribunal	31st day of March, 2023

Section 92CA and section 144C are principally related to the transfer pricing functions and international taxation which are presently out of the regime of faceless assessment. New schemes for these two functions are a part of the assessment function and should follow the faceless assessment procedure, wherein certain modifications are proposed which will have an impact on the information technology structure. Therefore, notification at this time shall result in delay in stabilization of the systems.

As for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

In light of the above limitations, it is proposed to extend the date for issuing directions for the purposes of these sections 92CA, 144C, 253 and 255 till 31st March, 2024.

7.8 Amendment in Faceless Assessment Scheme

It is proposed that the existing provisions of the section 144B of the Act may be amended to streamline the process of faceless assessment in order to address the various legal and procedural problems being faced in the implementation of the said section so as to provide that–

(a) the provisions of the proposed section shall apply for faceless assessment, reassessment or recomputation u/s 143(3) or

u/s 144 or u/s 147 of the Act, as the case may be, in the cases specified therein.

(b) the National Faceless Assessment Centre (NaFAC) shall assign the case selected for the purposes of faceless assessment to a specific Assessment Unit(AU) and intimate the assessee that assessment in his case shall be completedin accordance with the procedure laid down in the proposed section.

(c) the assessee shall be served a notice u/s 143(2) or u/s 142(1) of the Act, through the NaFAC. The assessee may file his response to the aforementioned notice u/s 143(3), within the date specified in such notice in this regard, to the NaFAC, which shall forward the reply to the AU.

(d) Thereafter, the AU may make a request, through the NaFAC, for obtaining such further information, documents or evidence from the assessee or any other person, as it may specify and the NaFAC shall serve appropriate notice or requisition on the assessee or any other person for obtaining such information, documents or evidence. The AU may also make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit (VU) and the request shall be assigned by the NaFAC to a VU through an automated allocation system. The AU may also similarly make a request in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit and therequest shall be assigned by the NaFAC to a Technical Unit (TU) through an automated allocation system.

(e) The assessee or any other person, as the case may be, shall file his response incompliance to the said notice served by NaFAC, at the request of AU, to the NaFAC which shall forward the reply to the AU. If the assessee fails to comply with the said notice seeking information served by NaFAC, or the earlier notice u/s 143(2) or u/s 142(1), theNaFAC shall intimate the same to the AU. The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144 giving him the opportunity to explain as to why the assessment in his

case should not be completed to the best of its judgement. Further any report received by the NaFAC, from the VU or TU shall also be forwarded to the AU.

(f) The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice, to the NaFAC which shall forward the same to the AU. If the assessee fails to respond, the NaFAC shall intimate the same to the AU.

(g) The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no variation prejudicial to assessee is proposed and send the same to the NaFAC. If a variation is being proposed then a show cause notice is served on the assessee stating the variations proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation shouldnot be made, through the NaFAC.

(h) The assessee shall file his reply to the show cause notice to the NaFAC, on date and time as specified, which shall forward the reply to the AU. If the assessee fails to respond within the specified time, the NaFAC shall intimate the same to the AU. After considering the response of the assessee or the intimation of failure of the assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, in writing, and send the same to the NaFAC.

(i) Upon receipt of the income or loss determination proposal, with or without any variations proposed to the income of the assessee, as the case may be, the NaFAC may, on the basis of guidelines issued by the Board, convey to the AU to prepare draft order in accordance with such income or loss determination proposal, which shall thereafter prepare a draft order, or assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.

(j) The NaFAC shall forward the review report received from the RU to the AU which had proposed the income or loss determination proposal. The AU may accept or reject some or all of the modifications proposed in such review report, prepare a draft order accordingly, and send it to NaFAC. The AU shall record reasons in writing if it is rejecting the modifications proposed by the RU.

(k) The NaFAC shall, upon receiving draft order in a case of eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee u/s 144C(1) for reference to Dispute Resolution Panel, serve such draft order on the assessee. In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the NaFAC. The NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice, specifying the sum payable by, or refund of any amount due to the assessee on the basis of such assessment, to the assessee.

(l) An eligible assessee, as referred to in section 144C, shall, upon receiving the draft order as served on him above, shall file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations, with the Dispute Resolution Panel, under section 144C and the NaFAC, within the period specified in sub-section (2) of section 144C.

(m) In case the variations proposed in the draft order are accepted by the assessee or not objected to within the time given in section 144C(2), the NaFAC shall intimate the AU of the same, which shall complete the assessment, on the basis of the draft order, within the time allowed under section 144C(4) and initiate penalty proceedings, if any, and send the order to the NaFAC.

(n) Where the eligible assessee files objections with the Dispute Resolution Panel, against the variations proposed in the draft order in his case, the NaFAC shall send such intimation along with a copy of such objections to the AU. Upon receiptof the directions issued by the Dispute Resolution Panel in the case of an eligible assessee under section 144C, the NaFAC shall forward such directions to the AU. The AU shall complete the assessment within the time allowed in section 144C(13) and initiate penalty proceedings, if any, in conformity with the directions issued by the Dispute Resolution Panel under section 144C(5), and send a copy of such order to the NaFAC.

(o) The NaFAC shall, upon receipt of final assessment order, in the case of an eligible assessee under section 144C or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment. The NaFAC shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Income-tax Act.

(p) The proposed section also provides that faceless assessment shall be made in respect of persons or class of persons, or incomes or class of incomes, or cases or class of cases or such territorial area, as may be specified by the Board.

(q) The proposed section also provides that Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:-

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) assessment units (referred to as AU), as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the

determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers to the extent so assigned by the Board; ;

(iii) verification units (referred to as VU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;:

Further, the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of the Act and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit.;

(iv) technical units (referred to as TU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under sections 90 or 90A, which may be required in a particular case or a class of cases and the term "technical unit", wherever used in this section, shall

refer to an Assessing Officer having powers so assigned by the Board;

(v) review units (referred to as RU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xix) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues on which addition or disallowance should be made have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

(r) It is also proposed that the AU, VU, TU and the RU shall have the following authorities, namely:—

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

(s) The proposed section also provides that all communication, among the AU, RU,VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC, between the NaFAC and the assessee, or his authorised representative, or anyother person and all internal communications between the NaFAC and various units shall be exchanged exclusively by electronic mode. However, this provision shall not apply to the enquiry or verification

conducted by the verification unit in the circumstances as may be specified by the Board in this regard.

(t) It is further proposed that for the purposes of faceless assessment, an electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal. It is also proposed that every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the registered account of the assessee or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative or byuploading an authenticated copy on the assessee's Mobile App, and followed bya real time alert.

(u) The proposed section further seeks to provide that the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the NaFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated. The time and place of dispatch and receipt of electronic record shall be determined in accordance withthe provisions of section 13 of the Information Technology Act, 2000.

(v) A person shall not be required to appear either personally or through authorisedrepresentative in connection with any proceedings before any unit set up under the proposed section.

(w) Further, it is proposed that in a case where a variation is proposed in the incomeor loss determination proposal or the draft order, and an opportunity is providedto the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal

hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit. Where the request for personal hearing has been received, the income-taxauthority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board. Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(x) It is proposed that the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locationsas may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencingor video telephony at his end. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, with the prior approval of the Board, lay down the standards, procedures and processesin the specified manner for effective functioning of the NaFAC and the units set up, in an automated and mechanised environment.

(y) The proposed section also seeks to provide that if at any stage of the proceedings before it, the AU having regard to the nature and complexity of the accounts, volume of the accounts, doubts

about the correctness of accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the revenue, is of the opinion that itis necessary to do so, it may, upon recording its reasons in writing, refer the caseto the NaFAC stating that the provisions of sub-section (2A) of section 142 maybe invoked in the case. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 maybe invoked in the case, forward the reference received from the AU to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioneror Commissioner having jurisdiction over such case, and inform the AU accordingly. Such case shall also be taken up for transfer to the jurisdictional Assessing Officer with the approval of the Board. Where a reference has been received the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, he shall direct the Assessing Officer having jurisdiction over such case to invoke the provisions of section 142(2A). However, where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioneror Principal Commissioner or Commissioner, having jurisdiction over such case,the AU shall proceed to complete the assessment in accordance with the procedure laid down in the proposed section.

(z) It is also proposed to provide that the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case, in addition to a case referred to in (y) to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board. It is also proposed to define the terms such as electronic verification code, assessment unit, technical unit, verification unit, review unit etc used in the proposed section.

7.9 Reassessment u/s 148 & 148A

In order to simplify the procedures u/s 148, it is proposed to–

(i) insert a new proviso to the effect that there is no requirement for approval for issuing notice u/s 148 if the AO has passed an order under 148A(d) with prior approval of the specified authority.

(ii) to omit the requirement of approval of specified authority in following cases;-

- any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- any information received under an agreement referred to in section 90 or section 90A of the Act; or
- any information made available to the Assessing Officer under the scheme notified under section 135A; or
- any information which requires action in consequence of the order of a Tribunal or a Court

8. Tax Deduction at Source

8.1 Change in Sec. 194-IA [AY 2022-23]

As per the existing provisions of the section 194-IA, TDS is to be deducted at the time of credit or payment of sum to the resident at the rate of 1% where the consideration for the transfer of an immovable property is more than fifty lakh rupees. The TDS is deducted on the amount of consideration paid for transfer of immovable property.

Now, TDS is to be deducted at the rate of 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher. In case the consideration paid for the transfer and stamp duty value is less than fifty lakh rupees, no tax is to be deducted u/s 194-IA.

8.2 TDS on benefit or perquisite of a business or profession [AY 2022-23]

In order to widen and deepen the tax base, it is proposed to insert a new section 194R in the act so as to provide a new levy of TDS at the rate of 10% on transaction specified in Sec 28(iv) of the Income Tax Act.

As per Sec 28(iv) of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hand of the recipient of such benefit or perquisite.

8.3 TDS/TCS at higher rate u/s 206AB and 206CCA [AY 2022-23]

It is proposed to reduce 2 years requirement to 1 year, by amending sections 206AB and 206CCA of the Act, to provide that "specified person" to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year. Hence, normal TDS rate will be applicable if conditions are fulfilled in 1 financial year.

The above provisions of deduction or collection at higher rate will not apply in following cases:-

- TDS u/s 194-IA (Transfer of immovable property),
- TDS u/s 194-IB (Payment of Rent by Individuals & HUF), and
- TDS u/s 194M (Payment of sum exceeding Rs 50 Lakh by Individual & HUF)

8.4 New TDS on transfer of Virtual Digital Assets

Any person responsible for paying to a resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to 1% of such sum as tax thereon u/s 194S.

Provided that in a case where the consideration for transfer of virtual digital asset is–

(a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

(b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,

the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax has been paid in respect of such consideration for the transfer of virtual digital asset.

Further, The provisions of sections 203A and 206AB shall not apply to a specified person.

There is no need to deduct any TDS where–

(a) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed Rs. 50,000 during the financial year; or

(b) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed Rs. 10,000 during the financial year.

"Specified Person" means a person,–

(a) being an individual or a HUF, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed Rs. 1 crore in case of business or Rs. 50 lakh in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

(b) being an individual or a HUF, not having any income under the head "Profits and gains of business or profession".

9. Miscellaneous Amendments

9.1 New AIR by producers of cinematograph films [AY 2022-23]

Under section 285B, it is proposed to include producers of cinematograph films or persons engaged in specified activities to expand the scope of reporting requirement in Form 52A to report particulars of all payments of over Rs. 50,000 in aggregate made by him or due from him to each such person as is engaged by him in such production or specified activity.

"Specified Activities" would mean event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

9.2 New Taxation for Virtual Digital Assets [AY 2023-24]

A new scheme has been introduced to provide for taxation of virtual digital assets (VDA) u/s Sec 115BBH which provides for taxation income from transfer of any virtual digital asset at the rate of 30% . However, no deduction in respect of any expenditure other than cost of acquisition or set off of any losses shall be allowed while computing income from transfer of such asset. Moreover carry forward of losses to subsequent assessment year will also be not allowed.

9.3 Amendments relating to Assessment of Trusts

Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes

(i) Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and

(ii) Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).

In the Finance Bill, it is proposed to rationalise the provisions of both the exemption regimes by-

(I) ensuring their effective monitoring and implementation;

(II) bringing consistency in the provisions of the two exemption regimes; and

(III) providing clarity on taxation in certain circumstances.

Some consequential amendments are also proposed following the amendments of past few years. All the proposals are discussed below:-

Ensuring effective monitoring and Implementation of two exemption regimes Books of account to be maintained by the trusts or institutions under both the regimes

a) Where the total income of any trust or institution under the second regime, as computed under this Act without giving effect to the provisions of section 11 and section 12 of the Act, exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required to get its accounts audited. Similar provision exists for the trusts or institutions under the first regime in the tenth proviso to clause (23C) of section 10 of the Act.

b) However, there is no specific provision under the Act providing for the books of accounts to be maintained by such trusts or institutions. In order to ensure proper implementation of both the exemption regimes, it is proposed to amend clause (b) of sub-section (1) of section 12A of the Act and tenth proviso to clause (23C) of section 10 of the Act to provide that where the

total income of the trust or institution under both regimes, without giving effect to the provisions of clause (23C) of section 10 or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed.

c) These amendments will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.

Penalty for passing on unreasonable benefits to trustee or specified persons

a) Under section 13 of the Act, trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, it is proposed to insert a new section 271AAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year. The proposed section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.

b) The proposed new section seeks to provide that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (proposed to be inserted by the Finance Bill and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty,

i) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

ii) a sum equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

c) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Reference to the Principal Commissioner or Commissioner (PCIT/CIT) for the cancellation of registration/approval:

a) The following issues related to the process of approval or registration, or cancellation or withdrawal thereof, have been noticed, namely:-

i) Registration or approval of non-genuine trusts or institution under automated approval system:

First and second provisos to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021. These provisos provided that the application for the approval of any trust or institution under the first regime, shall be made to the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority. Similarly, provisions of clause (ac) of sub-section (1) of section 12A provide that application for the trusts or institution under the second regime shall be made to the principal Commissioner

or Commissioner. The provisional registrations or provisional approval or re-registrations or approvals in certain cases, under these clauses, are granted in an automated manner and the respective rules have been amended accordingly. It is essential to ensure that non-genuine trusts or institutions do not get exemption provided by these provisions.

ii) Differences in the provisions related to reference for the cancellation of trusts under the both the regimes:

Provisions of sub-section (3) of section 143 provide that no order under this subsection shall be made, denying the benefits of clause (23C) of section 10, unless the Assessing Officer has intimated the Central Government or prescribed authority the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 and approval granted to such trust or institution has been rescinded. There is no such provision in cases of trusts or institutions under second regime.

iii) No time limit prescribed for the PCIT/CIT to decide on references for the withdrawal of approval:

For the trusts or institutions under the first regime, the provisions for making reference by the Assessing Officer to the Principal Commissioner or Commissioner are contained in the first proviso to sub-section (3) of section 143 and the time limitation for the completion of assessment is extended as per the provisions of clause (iii) of Explanation 1 to section 153. Presently, there is no time limit for such Principal Commissioner or Commissioner to decide on such reference.

b) In order to address the above issues, it is proposed to amend the provisions of section 12AB and fifteenth proviso to clause (23C) of section 10 of the Act as follows:

(I) Sub-section (4) of section 12AB of the Act is proposed to be substituted with a new sub-section (4) to provide that where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) of section

12AB or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year, or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the trust or institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation have taken place;

(iii) pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violation;

(iv) forward a copy of the order under clause (ii) or (iii) as the case may be, to the Assessing Officer and such trust or institution.

(II) The term "specified violation" is proposed to be defined by inserting an Explanation to sub-section (4) of section 12AB of the Act to mean the following violation :-

(a) where any income of the trust or institution under the second regime has been applied other than for the objects for which it is established; or

(b) the trust of institution under the second regime has income from profits and gains of business whichis not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or the institution under the second regime has applied any part of its income from the property held under a trust for private religious purposes which does not enure for the benefit of the public; or

(d) the trust or institution under the second regime established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste;

(e) any activity being carried outby the trust or the institution under the second regime,

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or the institution under the second regime has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

(III) Sub-section (5) of section 12AB of the Act is proposed to be substituted with a new sub-section (5) to provide that that the order under clause (ii) or (iii) of subsection (4) shall be passed

before expiry of the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of subsection (4);

(IV) Similarly, the fifteenth proviso to clause (23C) of section 10 of the Act is proposed to be substituted to provide that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of the said section 10 is approved under said clause and subsequently—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;

(ii) pass an order in writing cancelling the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable

opportunity of being heard, for such previous year and all subsequent previous years if he is satisfied that one or more specified violation has taken place;

(iii) pass an order in writing refusing to cancel the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or (iii), as the case may be, to the Assessing Officer and such fund or trust or institution or any university or other educational institution or any hospital or other medical institution;

V) It is also proposed to insert an Explanation 1 to the fifteenth proviso to clause (23C) of section 10 of the Act to provide that for the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.

VI) The term "specified violation" is also proposed to be defined by inserting an Explanation (Explanation 2) to the fifteenth proviso to clause (23C) of section 10 of the Act to mean the following: -

(a) where any income of trust or institution under the first regime has been applied other than for the objects for which it is established; or

(b) the trust or institution under the first regime has income from profits and gains of business is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) any activity being carried out by the trust or institution under the first regime—

(A) is not genuine; or

(B) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

(d) the trust or institution under the first regime has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever name called, holding that such noncompliance has occurred, has either not been disputed or has attained finality. Consequentially sub-section (3) of section 143 of the Act is proposed to be amended by deleting the reference to trusts or institution under the first regime in the first proviso and delete the existing third proviso.

It is also proposed to provide by inserting an Explanation (Explanation 3) to the fifteenth proviso to clause (23C) of section 10 of the Act that where a reference, under the first proviso to sub-section (3) of section 143, has been made on or before the 31st March, 2022 by the Assessing Officer for the contravention of certain

provisions of clause (23C) of section 10 of the Act, such references shall be dealt with in the manner provided under the said Explanation.

VII) It is proposed to insert another proviso in sub-section (3) of section 143 of the Act providing that where the Assessing Officer is satisfied that any trust or institution under first or second regime has committed any specified violation, as defined in the Explanation 2 to fifteenth proviso to clause (23C) of section 10 or Explanation to sub-section (4) of section 12AB, as the case may be, he shall,

(a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and

(b) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB

Consequentially, it is also proposed to amend the provisions of clause (iii) of Explanation to section 153 by deleting the reference to trusts or institution under the first regime and to insert a new clause (xiii) to provide that the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to subsection (3) of section 143 or is deemed to have been made under Explanation 3 to the fifteenth proviso to clause (23C) of section 10, and ending with the date on which the copy of the order under clause (ii) or (iii) of fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing Officer shall be excluded in computing the period of limitation.

These amendments will take effect from 1st April, 2022.

Bringing consistency in the provisions of two exemption the regimes

As mentioned earlier, there is a requirement for alignment of certain provisions of the two regimes as they both intend to grant similar benefit.

Accumulation provisions

i) Under the existing provisions of the Act, a trust or institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during the previous year, it is allowed to accumulate such income for a period not exceeding 5 years as per the following provisions, namely:

   (I) sub-section (2) of section 11 of the Act for the trusts or institution under the second regime; and

   (II) third proviso to clause (23C) of section 10 of the Act for trusts or institution under the first regime.

ii) However, the accumulation of income, as per the provisions of sub-section (2) of section 11 of the Act is allowed subject to the fulfilment of certain conditions while there are no such conditions specifically provided under the third proviso to clause (23C) of section 10 of the Act;

iii) Similarly, sub-section (3) of section 11 of the Act provides for the specific previous year in which the accumulated income will be subjected to tax in case of different types of violations. It, inter alia, provides that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. While, on the other hand, there are no such specific provisions under clause (23C) of section 10 of the Act and therefore, if the accumulated income is not applied within 5 years, the same shall be taxed in the 5th year itself.

iv) In order to bring consistency in the two regimes, the following are proposed:-

A) It is proposed to amend the provisions of sub-section (3) of section 11 of the Act to provide that any income referred to in sub-section (2) which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of subsection (2) of section 11, but not utilised for the purpose for which it is so accumulated or set apart.

B) It is proposed to insert Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of application under this proviso, where eighty-five per cent of the income referred to in clause (a) of the third proviso, is not applied, wholly and exclusively to the objects for which the trust or institution under the first regime is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be

accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11; and

(c) the statement referred to in clause (a) of Explanation 3 is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year;

C) It is proposed to insert a proviso to the proposed Explanation 3 to the third proviso to clause (23C) of section 10 of the Act to provide that in computing the period of five years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

D) It is also proposed to insert an Explanation (Explanation 4) to third proviso to clause (23C) of section 10 to provide that any income referred to in the proposed Explanation 3 shall be deemed to be the income of the previous year in which the following takes place—

(a) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or

(b) the income ceases to remain invested or deposited in any of the forms or modes

specified in sub-section (5) of section 11, or

(c) the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of the proposed Explanation 3,

(d) the income is credited or paid to any trust or institution under the first or second regime.

For the circumstances referred to in clause (c), it is proposed that the income shall be deemed to be the income of previous year which is the last previous year of the period, for which the income is accumulated or set apart under sub-clause (a) of clause (iii) of the proposed Explanation 3, but not utilised for the purpose for which it is so accumulated or set apart.

E) It is proposed to insert an Explanation (Explanation 5) to third proviso to clause (23C) of section 10 of the Act to enable the Assessing Officer to allow trusts or institutions under the first regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions. These other purposes are required to be in conformity with the objects for which the trust or institution under the first regime is established. If it is done, the provisions of Explanation 4 to third proviso to clause (23C) of section 10 shall apply as if the purpose specified by such person in the application under this Explanation were

a purpose specified in the notice given to the Assessing Officer under clause (a) of the proposed Explanation 3 of the third proviso to clause (23C) of section 10.

F) It is proposed to insert a proviso to proposed Explanation 5 to third proviso to clause (23C) of section 10 of the Act to provide that the Assessing Officer shall not allow the application of any accumulated income, as referred to in the proposed Explanation 3, to be credited or paid to any trust or institution under the first or second regime, as referred to in clause (d) of proposed Explanation 4 to the third proviso to clause (23C) of section 10.

a) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Bringing consistency in the provisions relating to payment to specified person

i) Under section 13 of the Act, trusts or institutions under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. It is proposed to insert twenty first proviso in clause (23C) of section 10 of the Act to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be the income of such person of the

previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to trust or institution under the first regime.

ii) This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

The provisions of section 115TD to apply to any trust or institution under the first regime.

i) Chapter XII-EB was introduced by the Finance Act, 2016. It provides for the taxation of accreted income of the trust in certain cases. A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was brought about for imposing a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation. Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act.

ii) The provisions of the Chapter XII-EB have been made applicable to only the trusts or institutions under the second regime. However, the provisions are not applicable to any trust or institution under the first regime.

iii) Hence, it is proposed to amend the provisions of section 115TD, 115TE and 115TF of the Act to make them applicable to any trust or institution under the first regime as well.

iv) These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Filing of return by person claiming exemption under clause (23C) of section 10 of the Act

i) According to clause (ba) of sub-section (1) of section 12A of the Act, If a trust or institution under the second regime does not furnish return of income in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section, then provisions of sections 11 and 12 are not applicable. There is no similar provision in the other regime.

ii) Hence, it is proposed to insert twentieth proviso to clause (23C) of section 10 of the Act to provide that for the purpose of exemption under this clause, any trust or institution under the first regime is required to furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under that section.

This amendment will take effect from the 1st April, 2023, and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Providing clarity on taxation in certain circumstances

There are various conditions prescribed for availing exemption under the two regimes. There is a need for clear provisions in the Act listing out how income is to be computed in case of non-compliance. Hence, it is proposed

to provide for the same so that there is no dispute and the law is applied consistently.

Allowing certain expenditure in case of denial of exemption

i) Different provisions mandate denial of exemption to the trusts or institutions under both the regimes. Some of the provisions under which exemption is not available for its violation are as follows:

   (a) Having commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to section 2(15);

   (b) Not getting the books of account audited;

   (c) Not filing the return of income presently specifically provided under the second regime only;

ii) There is presently lack of clarity on computation of taxable income in case of nonavailability of exemption in these cases. For example, if the exemption is denied to the trust or institution for the late submission of the audit report, its entire receipts may be subjected to taxation and no deduction for any application may be allowed.

iii) In order to bring clarity in the computation of the income chargeable to tax in such cases, the following amendments are proposed: -

   (a) It is proposed to insert sub-section (10) in section 13 of the Act to provide that where the provisions of sub-section (8) are applicable to any trust or institution under the second regime or such trust or institution violates the conditions prescribed under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely :-

(i) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

(ii) such expenditure is not from any loan or borrowing;

(iii) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

(iv) such expenditure is not in the form of any contribution or donation to any person.

(b) It is also proposed to insert an Explanation to sub-section (10) to section 13 of the Act to provide that for the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(c) It is also proposed to insert sub-section (11) to section 13 of the Act to provide that for the purposes of computing income chargeable to tax, under sub-section (10), no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

(d) Similarly, it is proposed to insert twenty second proviso to clause (23C) of section 10 of the Act to provide that where any trust or institution under the first regime violates the provisions of the eighteenth proviso or violates the conditions prescribed under tenth or twentieth proviso, its income chargeable to tax shall be

computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of such trust or institution, subject to fulfilment of the following conditions:

(i) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed ;

(ii) such expenditure is not from any loan or borrowing;

(iii) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

(iv) such expenditure is not in the form of any contribution or donation to any person.

(e) It is also proposed to insert an Explanation in the twenty second proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of expenditure under this proviso, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(f) It is also proposed to insert twenty third proviso in clause (23C) of section 10 of the Act to provide that for the purposes of computing income chargeable to tax under twenty second proviso, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Taxation of certain income of the trusts or institutions under both the regimes at special rate Following incomes of the trusts or institutions are chargeable to tax, under different provisions of the Act:-

(a) The trusts or institutions under the first or second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. For the trusts or institutions under the second regime, clause (c) of sub-section (1) of section 13 of the Act provides that the entire exemption shall be denied to the trust irrespective of the amount of benefit passed on. For trusts or institutions under the first regime similar provisions is proposed by way of insertion of twentieth proviso to clause (23C) of section 10 of the Act.

(b) It is mandatory for any trust or institution under the first regime, to keep their funds in the specified modes. Third proviso of clause (23C) of section 10 of the Act specifically provides that the funds of such trusts or institutions shall be maintained in these specified modes. For the trusts or institutions under the second regime, clause (d) of sub-section (1) of section 13 of the Act provides that the exemption shall be denied to the trust irrespective of the amount of investment in non-specified modes.

(c) Further, the trusts or institutions under both the regimes are required to apply at least 85% of their income during the year. Where the trust is not able to apply 85% of the income, it may accumulate such income for maximum 5 years. Sub-section (3) of section 11 of the Act specifically provides for the trusts or institutions under the second regime that such accumulated income, which could not be applied within the period of accumulation (maximum 5 years), shall be deemed to be the income of the trust. Similarly, for the trusts or institutions under the second regime, there is a specific provision under clause

(2) of Explanation 1 to sub-section (1) of section 11 of the Act providing for the accumulation of income for a period of one year. Subsection (1B) of section 11 of the Act provides that if the income accumulated under clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act could not be applied within the time allowed; it shall be deemed to be the income of the trust.

(d) The trusts or institutions under the first regime are also required to apply at least 85% of their income during the year. Where such trust is not able to apply 85% of its income during the year and does not accumulate such income, entire income of such trust shall be subjected to tax where the trust is approved under the second proviso to clause (23C) of section 10 of the Act since third proviso to clause (23C) of section 10 of the Act mandates minimum 85% application of income unless such income is accumulated.

Denying exemption to the trust, for small amount of income applied in violation to the provisions referred in clause (a) and (b) above creates difficulties to the trusts or institutions under both the regimes as there is ambiguity about the manner of taxation of such income. Further, there is need for special provision to ensure that the income applied in violation is taxed at special rate without deduction. Accordingly, in order to rationalise the provisions, the following amendments are proposed:-

(a) It is proposed to amend clause (c) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.

(b) It is also proposed to insert twenty first proviso in clause (23C) of section 10 to specifically provide that where the income of any trust under the first regime, or any part of the such income or property, has been applied directly or indirectly for the benefit of any person

referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to it.

(c) It is proposed to amend clause (d) of sub-section (1) of section 13 of the Act to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.

(d) It is proposed to insert Explanation 4 in third proviso to clause (23C) of section 10 of the Act to specifically provide that income accumulated which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.

(e) All the above income are also required to be taxed at special rate. Hence, it is proposed to insert new section 115BBI in the Act providing that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and

(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

(f) The sub-section (2) of this new section seeks to provide that no deduction in respect of any expenditure or

allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.

(g) Explanation to the proposed section defines "specified income" to mean:-

(i) income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions of the Act; or

(ii) deemed income referred to in Explanation 4 to third proviso to clause (23C) of section 10 or sub-section (3) of section 11 or sub-section (1B) of section 11;or (iii) any income which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of third proviso of clause (23C) of section 10 or not to be excluded from total income under the provisions of clause (d) of sub-section (1) of section 13; or

(iv) any income which is deemed to be income under the twenty first proviso to clause (23C) of section 10 or which is not excluded from total income under clause (c) of sub-section (1) of section 13; or

(v) any income which is not excluded from total income under clause (c) of subsection (1) of section 11.

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

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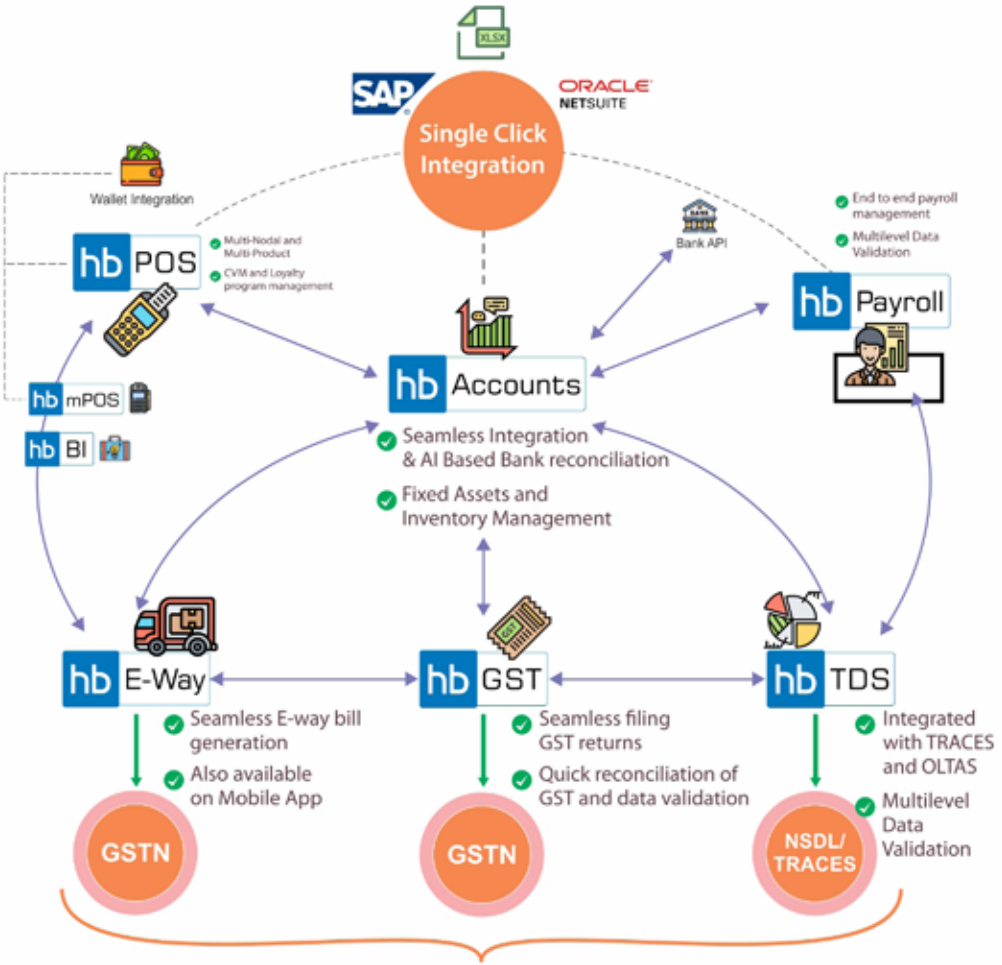

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