THE FINANCE BILL 2021

EK SAMIKSHA...

Six Pillars of Budget Proposal

1. Health and Well Being
2. Physical Infrastructure
3. Innovation and R&D
4. Inclusive Growth
5. Min. government & Max. Governance
6. Human Capital

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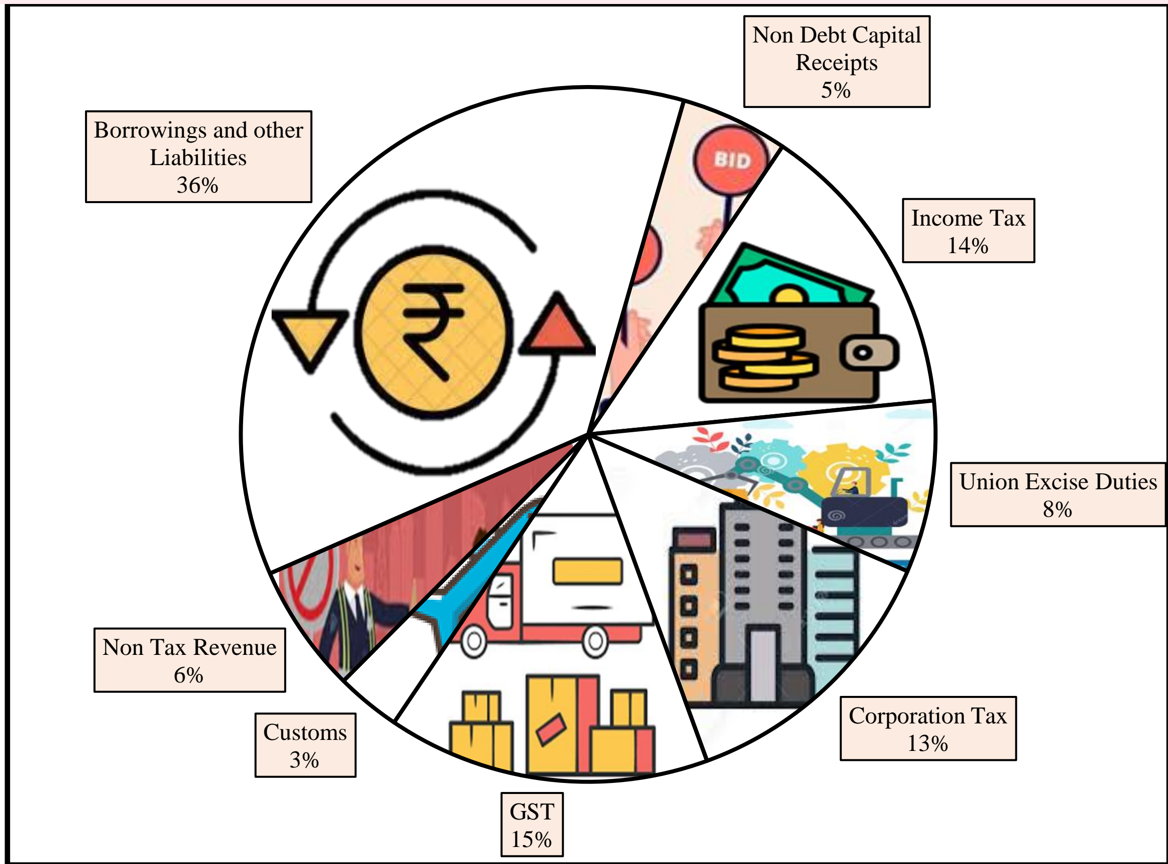
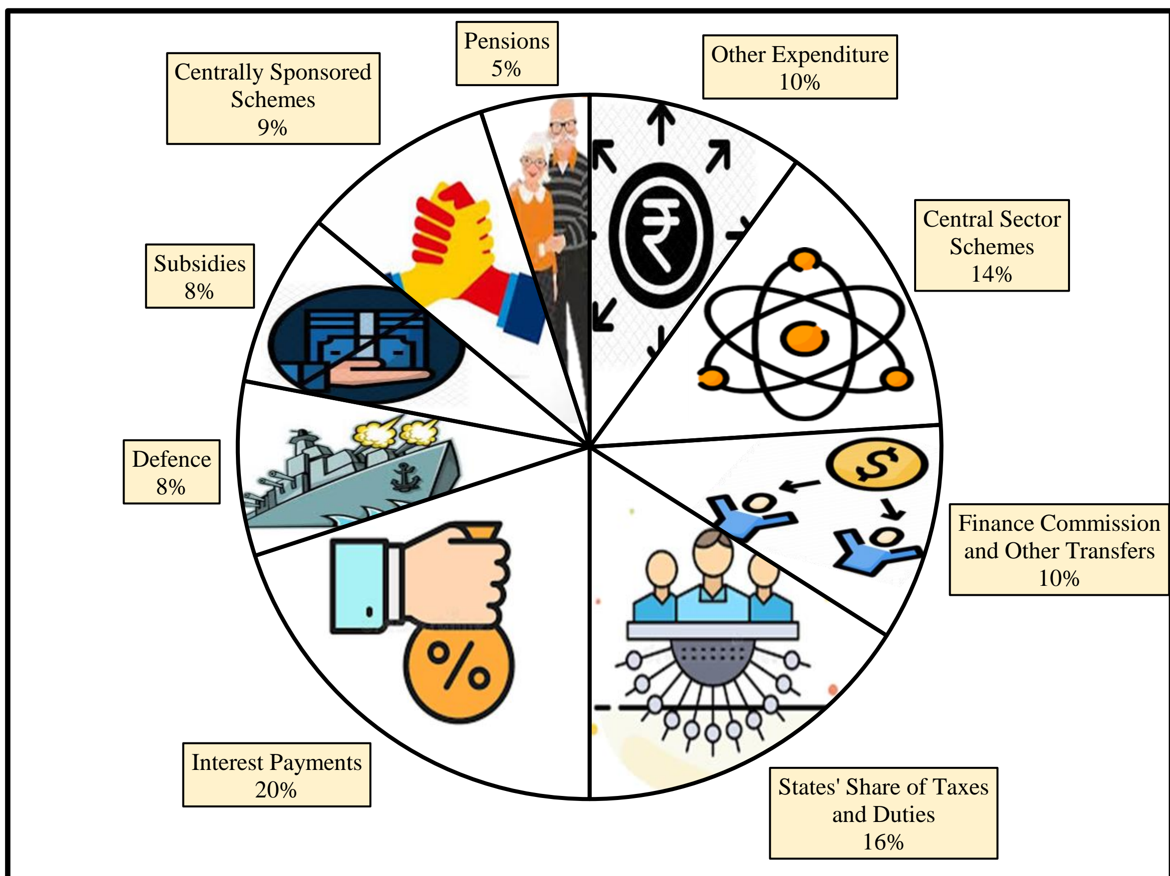
Rupee comes in



Rupee goes out



Date: 5th February, 2021

Dear Madam/Sir,

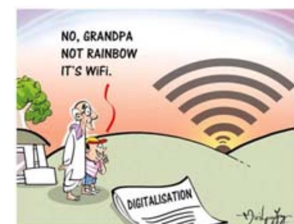
Namaste!!

Computer, Laptop, Tab, Apps, Technology development, digitalization, artificial intelligence……. are the new words, which are getting added on daily basis in our vocabulary. Thanks to our Late Prime Minister Shri Rajiv Gandhi, who in his short tenure as a Prime Minister, had visualized and brought computers to India in late 1980's.

And today, within 30 years, we are no less than any developed country in terms of technology. Thanks to genius and creative minds of our country, government support and support of public at large. This technology alone has kept us together during this un-precedent pandemic times. We all have learnt that cloud has another meaning other than giving us rain. It can shower us with accessibility to our data as well.

Be it so, this is getting reflected in our tax reforms as well. To give few examples, Form 26AS has become Annual Information Statement, giving details of all our investments made during the year, amount spent, taxes paid, prefilled returns, e-filings, extending to e-assessments, faceless assessments, e-appeals, faceless appeals and now faceless appeals before the Appellate Tribunal, preponing of due dates for the reasons that due to ready access to the available data more time is not required and so on. We will be discussing in the notes, the proposals made during the year in the Finance Bill 2021 in this respect.

The point for consideration is that with integration of technology, the data mining, data collection and Artificial Intelligence, it has reached to a stage where it is not possible for anyone to hide anything. It is a very good move and at the same time it requires change in mind set to keep the data updated on daily basis, no adjustments, no 'chalta hei attitude' and do the compliances in time. Everyone now needs to update in technology along with update on tax laws and accounting. The days of excuses and extensions are now gone. If we change our mind set, it is not that difficult to achieve this. With the change in the way we have been working and also the way we have been conditioned to think, it may be difficult in the beginning to match up with the changes. But, as they say, change is inevitable, one must go with the flow.



The Hon'ble Finance Minister deserves a round of loud applause for not tinkling with rates of taxes in Finance Bill 2021. It is always good to have consistency in tax policies.

Let us all come together and do our best to revive our businesses, profession and economy as well as carry out the compliances in time without seeking any extension.

As like all these years we restrict our Notes on Finance Bill, 2021- Direct Tax Proposals. In these Notes we have also included a summary notes on changes in Company Law as compiled by our CS Team and a summary notes on changes under GST Law. Also, we are enclosing herewith an Article on "Implication of Proposed Amendments applicable to a Charitable Trust" as contributed by Ms. Sonakshi Jhunjhunwala.

This Study Note of ours titled "The Finance Bill, 2021 – Ek Samiksha" is enclosed herewith. After you had an opportunity to go through the same, we may discuss this further at your convenience. We welcome any feedback / suggestions for improvement.

Happy Reading!

With Regards,

Yours Truly,

Team – S. S. Jhunjhunwala & Co.

Todays
Forecast .....

Happiness

<u>C O N T E N T S</u>

Particulars		Page Nos.
♦	Tax Receipts	7
♦	Income Tax Provisions:	
1)	Effective Dates	8
2)	Rates of Taxes	8
3)	Depreciation on Goodwill [Sections 2(11), 32, 50 and 55]	18
4)	Unit Link Insurance Policy – Capital Asset [Sections 2(14), 10(10D), 45(IB) and 112A]	21
5)	Strategic disinvestment of public sector company [Sections 2(19AA), 72A]	23
6)	Definition of liable to tax [Section 2(29A)]	25
7)	Slump Sale [Section 2(42C)]	25
8)	Zero Coupon Bond [Sections 2(48) and 194A]	26
9)	Tax incentives for units located in International Financial Services Centre (IFSC) [Sections 9A, 10(4D), (10(4E), 10(4F), 47(viiac), 47(viiad), 49, 56, 79, 80LA and 115AD]	26
10)	Exemption for LTC Cash Scheme [Section 10(5)]	29
11)	Taxability of Interest on various funds where income is exempt [Sections 10(11) and 10(12)]	30
12)	Provisions relating to Charitable Trusts and Institutions [Sections 10(23C) and 11]	31
13)	Provisions related to Sovereign Wealth Fund (SWF) and Pension Fund (PF) [Section 10(23FE)]	33
14)	Equalization Levy and Exemption from Income Tax for the same [Section 10(50) and Finance Act, 2016]	34
15)	Employee contribution to a fund on or before due date [Sections 36(1)(va) and 43B]	36
16)	Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units [Section 43CA and 56(2)(x)]	38
17)	Increase in limit for Tax Audit [Section 44AB]	39
18)	Presumptive taxation for professionals [Section 44ADA]	40
19)	Rationalization of provision of transfer of capital asset to partner on dissolution or reconstitution [Section 45]	40
20)	Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up [Section 54GB and 80-IAC]	43
21)	Interest on loan taken for house property [Section 80EEA]	44
22)	Deduction in respect of Profit and Gains from Housing Project [Section 80-IBA]	44
23)	Mismatch in taxation of income from notified overseas retirement fund [Section 89A]	44
24)	Rationalization of provisions of Minimum Alternate Tax (MAT) [Section 115JB]	45
25)	Return of income [Sections 139 and 194P]	46

26)	Allowing prescribed authority to issue notice under section 142(1) [Section 142(1)]	48
27)	Processing of Return and time limit for issue of Notice [Section 143]	49
28)	Income Escaping Assessment and Search Assessments [Section 147, 148, 148A, 149, 151, 151A, 153A and 153C]	49
29)	Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt [Section 194]	54
30)	TDS/TCS on non-filer at higher rates [Sections 194-IB, 206AB and 206CCA]	54
31)	Tax Deduction at Source (TDS) on purchase of goods [Section 194Q]	56
32)	Rationalization of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs) [Section 196D]	56
33)	Interest under section 234C [Section 234C]	57
34)	Discontinuance of Income-tax Settlement Commission [Sections 245A to 245M – Chapter XIX-A]	58
35)	Constitution of Dispute Resolution Committee (DRC) [Section 245MA]	60
36)	Constitution of the Board for Advance Ruling [Section 245N, 245-O, 245-OB, 245P, 245Q, 245R, 245S, 245T, 245U, 245V and 245W]	61
37)	Faceless proceedings before the Income Tax Appellate Tribunal (Tribunal) [Section 255]	65
38)	Provisional attachment in Fake Invoice cases [Section 281B]	66
39)	Clarification regarding the scope of Vivad se Vishwas Act, 2020	66
♦	Summery Notes on Changes in Company Law	68
♦	Summery Notes on Changes in GST Law	69
♦	Food for Thought - Implication of proposed amendment applicable to Charitable Trust	71

In this note an attempt has been made to summarize various proposals of The Finance Bill, 2021 Direct Tax Proposals. Specific guidance may be obtained before acting on the proposals and provisions.

It should be noted that the Finance Bill, 2021 will be discussed in the Parliament and is subject to any amendments that may be made pursuant to such discussion.

Now a days, two trends are seen, roll back of certain proposals and putting some new proposals at the time of enactment of the Bill. So when the Bill is enacted please have a relook at it to see changes between “Bill” and “Act”

TAX RECEIPTS

The statement below summarized, by broad categories, the estimates of tax revenue receipt over a period. The estimates include the effect of budget proposals.

(Rs. in Crores)

	2019-20 Actual	2020-21 Budget	2020-21 Revised	2021-22 Budget
Gross Tax Revenue	**20,10,059**	**24,23,020**	**19,00,820**	**22,17,059**
Corporation Tax	5,56,876	6,81,000	4,46,000	5,47,000
Taxes on Income	4,92,654	6,38,000	4,59,000	5,61,000
Wealth Tax	---	---		---
Customs	1,09,283	1,38,000	1,12,000	1,36,000
Union Excise Duties	2,40,615	2,67,000	3,61,000	3,35,000
Service Tax	6,029	1,020	1,400	1,000
GST	5,98,750	6,90,500	5,15,100	6,30,000
Centre's Net Tax Revenue	**13,56,902**	**16,35,909**	**13,44,501**	**15,45,397**

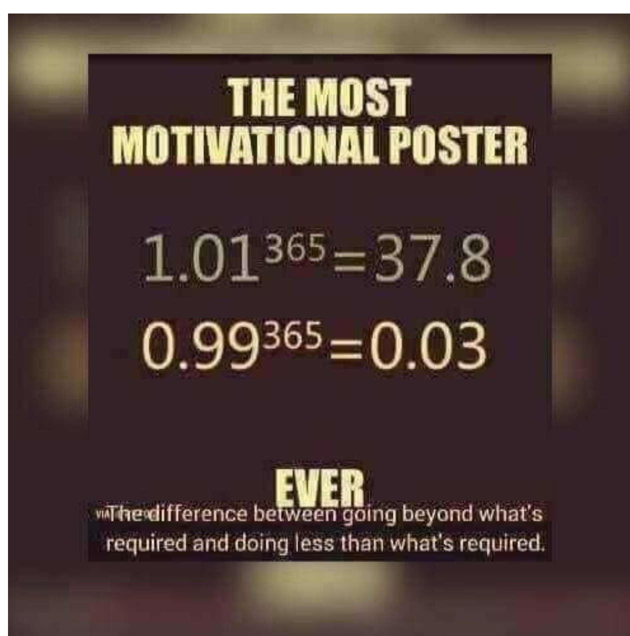
Considering the prevailing situation, in budgeted tax revenue for financial year 2021-22 a moderate increase has been considered from actuals of financial year 2019-20

If my duty is One,

Whether I do something more than my duty (One);

Or I do slightly less than my duty (One);

Will eventually make a huge difference.



FINANCE BILL, 2021 – AN INTRODUCTION

Finance Bill

The proposal of the government for levy of new taxes, modification of the existing tax structure or continuance of the existing tax structure beyond the period approved by the Parliament are submitted to the Parliament through this bill. It is the key document as far as taxes are concerned.

The provisions of Finance Bill, 2021 (hereafter referred to as "FB 21"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act') and the Direct Tax Vivad se Vishwas Act, 2020 to continue reforms in direct tax system through tax-incentives, removing difficulties faced by taxpayers and rationalization of various provisions.

INCOME TAX PROVISIONS

In this chapter, we have dealt with the proposed amendments to the Act by FB 21. We have made references from Notes on Clauses and Memorandum explaining the provisions of FB 21.

In this study note, we have made an attempt to put related amendments under one topic head and reference of the same is given at appropriate places.

1. Effective Dates:

- The amendments in income tax provisions are proposed to be effective from 1st April, 2022 relevant to the Assessment Year 2022–2023 unless otherwise specified.
- The amendments proposed in procedural section are effective for the proceedings taken on or after the date as specified.
- The amendments made in substantive sections are effective from the first day of the Assessment Year from which it is proposed to be effective.

2. Rates of Taxes:

a) Finance Act 2020 provided for alternate tax calculation regime (the new regime) for individuals and HUFs under section 115BAC of the Act. To avail the tax rates as per new regime certain conditions are required to be followed. This is applicable from assessment year 2021-22. Individual / HUF are given an option whether to follow old regime or go for the new regime (please refer Para (c) below for the tax slab and rate of tax under the new regime). There is no change in basic limit and/or slab rates for the financial year 2021-22 relevant to assessment year 2022-23.

b) **Under Old Regime**

For Individual and HUF:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 2,50,000	NIL	**No Change**	
Rs. 2,50,001 to Rs. 5,00,000	5% on amount exceeding 2,50,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 12,500/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,12,500/- + 30% on the amount exceeding Rs. 10,00,000/-		

Individual who is of the age of 60 years or more but less than 80 years:-

Existing		Proposed	
Taxable income	**Rate of tax**	**Taxable income**	**Rate of tax**
Upto Rs. 3,00,000	NIL	**No Change**	
Rs. 3,00,001 to Rs. 5,00,000	5% on amount exceeding 3,00,000		
Rs. 5,00,001 to Rs. 10,00,000	Rs. 10,000/- + 20% on amount exceeding Rs. 5,00,000/-		
Above Rs. 10,00,000	Rs. 1,10,000/- + 30% on the amount exceeding Rs. 10,00,000/-		

Individual who is of the age of 80 years or more:-

Existing		Proposed
Taxable income	**Rate of tax**	
Upto Rs. 5,00,000	NIL	**No Change**
Rs. 5,00,001 to Rs. 10,00,000	20% on amount exceeding Rs. 5,00,000/-	
Above Rs. 10,00,000	Rs. 1,00,000/- + 30% on the amount exceeding Rs. 10,00,000/-	

c) The slab-wise tax rate under the new regime as per Section 115BAC of the Act is as under:

Total Income (Rs.)	Rate
Upto 2,50,000/-	Nil
From 2,50,001/- to 5,00,000/-	5%
From 5,00,001/- to 7,50,000/-	10%
From 7,50,001/- to 10,00,000/-	15%
From 10,00,001/- to 12,50,000/-	20%
From 12,50,001/- to 15,00,000/-	25%
Above 15,00,000/-	30%

The applicable surcharge and cess will be added on the same.

d) The rate of surcharge on individual and HUF remain unchanged and they are same for financial year 2021-22 relevant to assessment year 2022-23. The rates of surcharge are as under:

Existing		**Proposed**	
Income at which surcharge is leviable	**Rate of Surcharge**	**Income at which surcharge is leviable**	**Rate of Surcharge**
Above Rs. 50 Lakhs but upto Rs. 1 crore	10%	**No Change**	
Above Rs. 1 crore but upto Rs. 2 crore	15%		
Above Rs. 2 crore but upto Rs. 5 crore	25%		
Above Rs. 5 crore	37%		

Please note in case the total income includes any income by way of dividend or income chargeable under section 111A and 112A of the Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed fifteen percent.

The above rate of surcharge is applied on the tax amount. Provisions for marginal relief are provided. The surcharge is leviable on the total tax on crossing of the threshold of the total income provided. Thus, if an individual has a total income above Rs. 5 crores, surcharge at the rate of 37% is on the total tax on the income irrespective of different slabs of surcharge at different level.

e) Surcharge will also be levied at the appropriate rates in cases where the tax is payable u/s 115JC of the Act (Alternate Minimum Tax – AMT is applicable to non-corporate taxpayers).

f) The Health and Education Cess shall continue to be levied at the rate of 4% of income tax and surcharge.

g) **Effective rate of tax for Individuals: Tax liability computed as per the slabs above would be increased by the following surcharge and cess:**

Individuals having Total Income	F.Y. 2020-21		F.Y. 2021-22	
	Rate of Surcharge	Effective tax rate	Rate of Surcharge	Effective tax rate
Above Rs. 10 lakhs upto Rs. 50 lakhs	Nil	31.20%	No Change	
Above Rs. 50 lakhs upto Rs. 1 crore	10%	34.32%		
Above Rs. 1 crore upto Rs. 2 crore	15%	35.88%		
Above Rs. 2 crore upto Rs. 5 crore	25%	39.00%		
Above Rs. 5 crore	37%	42.74%		

Note: The above calculation is under the old regime. The similar effective rate of tax will apply under the new regime for income above Rs. 15 lakhs. The effective rate of tax for income upto Rs. 10 lakhs under old regime will be as per slabs and also age of the Taxpayer and upto Rs. 15 lakhs under new regime it will be as per slabs.

h) Rate of tax for Co-operative Societies:

Like individual / HUF, even for Co-operative Societies, an alternate tax calculation regime has been enacted by Finance Act 2020 under section 115BAD of the Act.

Co-operative Societies are given an option whether to follow old regime or go for new regime. There is no change in basic limit and/or slab rates for the financial year 2021-22 relevant to assessment year 2022-23.

Total Income	Income tax	Surcharge	Health Education cess	Proposed Effective Rate	Existing effective rate
	%	%	%	%	%
Co-operative Societies not opting for Section 115BAD: (As existing)					
i) For income upto Rs. 10,000/-	10	Nil	4	10.40	10.40
ii) For income exceeding Rs. 10,000/- but not exceeding Rs. 20,000/-	20	Nil	4	20.80	20.80
iii) For income exceeding Rs. 20,000/- but not exceeding Rs. 1 crore	30	Nil	4	31.20	31.20
iv) For income exceeding Rs. 1 crore	30	12	4	34.94	34.94

Resident Co-operative Societies opting for Section 115BAD:					
i) For income not exceeding Rs. 1 crore	22	Nil	4	22.88	NA
ii) For income exceeding Rs. 1 crore	22	10	4	25.17	NA

Note: Subject to conditions referred to in Section 115BAD of the Act.

i) **Rate of tax for Firms, LLP, Local authorities continues to be the same. The effective rates for Financial Year 2020-21 (Assessment Year 2021-22) are as under:**

	Income tax %	**Surcharge %**	**Health and Education cess %**	**Proposed Effective Rate %**	**Existing effective rate %**
Firm, LLP and Local authorities:					
For income upto Rs. 1 crore	30	Nil	4	31.20	31.20
For income exceeding Rs. 1 crore	30	12	4	34.94	34.94

j) **Rate of tax for Company - domestic and Company – foreign: The effective rates for Financial Year 2021-22 (Assessment Year 2022-23) are as under:**

Company – Domestic:					
	Income tax %	**Surcharge %**	**Health and Education cess %**	**Proposed Effective Rate %**	**Existing effective rate %**
i) For Companies incorporated on or after 01.03.2016 subject to conditions by Finance Act, 2016 specified u/s 115BA [refer note (A) and (B) below]					
a) For income upto Rs. 1 crore b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	25 25	Nil 7	4 4	26.00 27.82	26.00 27.82

c) For income exceeding Rs. 10 crore	25	12	4	29.12	29.12
ii) Option of reduced rate of tax on giving up prescribed exemptions/deduction / benefits as per section 115BAA as inserted by Taxation Laws (Amendment) Act, 2019 [refer note (A) and (C) below]	22	10	4	25.168	25.168
iii) Manufacturing company set up and registered on or after 1st October, 2019, as per conditions laid down by Taxation Laws (Amendment) Act, 2019 specified u/s 115BAB [refer note (A) and (D) below]	15	10	4	17.16	17.16
iv) For Companies where total turnover or gross receipts of the **previous year 2018-19 does not exceed Rs. 400 crore** a) For income upto Rs. 1 crore b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore c) For income exceeding Rs. 10 crore	 25 25 25	 Nil 7 12	 4 4 4	 26 27.82 29.12	 N.A. N.A. N.A.
v) Others a) For income upto Rs. 1 crore b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	 30 30	 Nil 7	 4 4	 31.20 33.38	 31.20 33.38

c) For income exceeding Rs. 10 crore	30	12	4	34.94	34.94

	Income tax **%**	**Surcharge** **%**	**Health and Education cess** **%**	**Proposed Effective Rate** **%**	**Existing effective rate** **%**
<u>Company – Foreign</u>					
For income upto Rs. 1 crore	40	Nil	4	41.60	41.60
For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	40	2	4	42.43	42.43
For income exceeding Rs. 10 crore	40	5	4	43.68	43.68

k) In case of Firm, LLP, Companies, applicable tax rate will be applied on total income and no slab wise calculation is required to be made.

l) Company claiming benefit of reduced rates under sections 115BA, 115BAA and 115BAB of the Act has to fulfill following conditions while computing total income

(A) Cannot claim the following deductions (common for all the three sections):

i) Section 10AA - Special provisions in respect of newly established Units in Special Economic Zones
ii) Section 32(1)(iia) – Additional Depreciation
iii) Section 32AD - Investment in new plant or machinery in notified backward areas in certain States
iv) Section 33AB - Tea development account, coffee development account and rubber development account
v) Section 33ABA – Site Restoration Fund
vi) Section 35(1)(ii)/35(1)(iia)/35(1)(iii)/35(2AA)/35(2AB) – Expenditure on Scientific Research
vii) Section 35AD – Deduction in respect of expenditure on specified business
viii) Section 35CCC – Expenditure on Agricultural Extension Project
ix) Section 35CCD - Expenditure on Skill Development Project
x) Chapter VI-A – Part C – Other than provisions of section 80JJA

Depreciation under section 32, other than clause (iia) of sub-section (1) of the said section, is determined in the manner as may be prescribed.

(B) Company claiming benefit of reduced rates under section 115BA of the Act has to fulfill following additional conditions while computing total income:

✓ cannot claim the following deductions:

i. Section 32AC – Investment in new plant and machinery
ii. Section 35AC – Expenditure on eligible projects or schemes

✓ without set off of any loss carried forward from any earlier assessment year, if such loss is attributable to any of the deductions referred to in clause (i);

(C) Company claiming benefit of reduced rates under section 115BAA of the Act has to fulfill following additional conditions while computing total income:

✓ cannot claim deduction under any Part of Chapter VI-A other than section 80JJA and 80M

✓ without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

✓ without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

(D) Company claiming benefit of reduced rates under section 115BAB of the Act has to fulfill following additional conditions while computing total income:

✓ cannot claim deduction under any Part of Chapter VI-A other than section 80JJA and 80M

✓ without set off of any loss or allowance for unabsorbed depreciation deemed so under section 72A, if such loss or depreciation is attributable to any of the deductions referred to in clause (i);

Thus, a domestic company has to answer following check list in order to determine applicable rate of tax to it.

Sr. No.	**Particulars**	**Do you comply with this – Yes / No**	**Basic Rate of Tax**
i)	Are you a new manufacturing company set up and register on or after 1st October, 2019 (u/s 115BAB)		15%
ii)	Are you willing to give up all exemptions / deduction / benefits under the tax (u/s 115BAA)		22%
iii)	Whether your gross turnover / receipt for the financial year 2018-19 was upto Rs. 400 crores		25%
iv)	Any other		30%

m) In other cases (including sections 92CE, 115-O, 115QA, 115R, 115TA or 115TD), the surcharge shall be levied at the rate of twelve percent.

n) **Rate of MAT / AMT**

The existing MAT of 15% and AMT of 18.5% continues to be same for Financial Year 2021-22. The effective rates under the MAT and AMT for the Financial Year 2021-22 relevant to Assessment Year 2022-23 would be as under:

Particulars	Basic Rate %	Sur-charge %	Cess %	Proposed Effective Rate %	Existing effective rate %
Firm, LLP, Local Authority (AMT)					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.24
For income exceeding Rs. 1 crore	18.5	12	4	21.55	21.55
Domestic Company (MAT) not opting for provisions of section 115BAA or 115BAB					
For income upto Rs. 1 crore	15	Nil	4	15.6	15.6
For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	15	7	4	16.692	16.692
For income exceeding Rs. 10 crore	15	12	4	17.472	17.472
Company – Foreign (MAT)					
For income upto Rs. 1 crore	15	Nil	4	15.6	15.6
For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	15	2	4	15.912	15.912
For income exceeding Rs. 10 crore	15	5	4	16.38	16.38

If the Company is opting for rate of tax u/s 115BAA or 115BAB of the Act, then provisions of MAT are not applicable.

Co-operative Society not opting for provisions of Section 115BAD					
For income upto Rs. 1 crore	18.5	Nil	4	19.24	19.24
For income exceeding Rs. 1 crore	18.5	12	4	21.55	21.55

If the Co-operative Society is opting for rate of tax u/s 115BAD of the Act, then provisions of AMT is not applicable.

Individual, HUF, AOP, BOI, Artificial Juridical Person (AMT) not opting for provisions of section 115BAC					
For income upto Rs. 50 lakhs	18.5	Nil	4	19.24	19.24
Above Rs. 50 Lakhs but upto Rs. 1 crore	18.5	10	4	21.16	21.16
Above Rs. 1 crore but upto Rs. 2 crore	18.5	15	4	22.12	22.12
Above Rs. 2 crore but upto Rs. 5 crore	18.5	25	4	24.05	24.05
Above Rs. 5 crore	18.5	37	4	26.36	26.36

Individual and HUF opting for rate of tax u/s 115BAC of the Act, then provisions of AMT are not applicable.

o) **Rate of Tax Deduction at Source ('TDS'):**

Under the scheme of deduction of tax at source provided in the Act, every person responsible for payment of specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limit.

Below are the sections which are proposed to be newly inserted:

Sr. No.	Section	TDS to be deducted by	Rates
1.	194P (refer para 25 below)	Specified Bank on income of specified senior citizen	As per slab rates
2.	194Q (w.e.f. 01st July, 2021) (refer para 31 below)	A buyer who is responsible for paying any sum for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees has to deduct TDS such sum exceeding fifty lakh rupees at the time of credit or payment whichever is earlier.	0.1% OR 5% (If PAN is not available)

There is no other change in rate of TDS and/or threshold limits. Also for other changes in TDS provisions refer paras 29 to 32 below.

p) In case of a resident taxpayers including domestic company, no surcharge and cess would be levied on the amount of tax deducted at source. However, surcharge and health and education cess would be applicable on tax deducted at source in the case of salary payments.

q) The surcharge and cess would continue to be payable on payments to the Non-resident tax payers.

r) During the financial year 2020-21 the rate of TDS was reduced by 25% during the period 14th May, 2020 to 31st March, 2021 considering the ongoing recession

period vide Press Release dated 13th May, 2020. As of now no such reduction has been proposed for the financial year 2021-22 and therefore the TDS at full rate, as prescribed under the Act, will be applicable for the financial year 2021-22.

Replying to a question during post presentation of budget with media, Hon'ble Finance Minister said that-

Question: *There were expectations of a cess. Did you consider it?*

Answer: *It was never considered. I was surprised media kept saying it. No raising of tax, no raising of cesses. Not a single paisa new tax.*

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

3. Depreciation on Goodwill [Sections 2(11), 32, 50 and 55]:

Whether, depreciation is allowable on the amount of goodwill or not has always been a bone of contest. The reason being "goodwill" is not specifically included in the definition of block of asset and also not included in section 32 which provides for depreciation. However, when this issue came up before the Hon'ble Supreme Court in the case of Smiff Securities Ltd. reported in 348 ITR 302, the Hon'ble Supreme Court held that goodwill of a business or profession is a depreciable asset under section 32 of the Act. Similar view has been taken by the Jurisdictional High Court in the case of Toyo Engineering India Limited

The tax department holds a different view. According to the department goodwill is not a depreciable asset. Depending upon how the business runs, goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification in providing depreciation on the same. To overcome the decision of the Hon'ble Supreme Court, the amendments are proposed in sections 2(11) – block of asset, 32 – depreciation, 50 – computation of capital gain on depreciable asset and section 55 – meaning of cost.

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

It is proposed to amend the said sub-section so as to exclude goodwill of a business or profession from the purview of block of asset. In the definition of "block of asset" in sub-clause (b) following words are proposed to be inserted:

"not being goodwill of a business or profession,"

b) Section 32(1) of the Act provides for deduction on account of depreciation on tangible assets (building, machinery, plant and furniture) and intangible assets (knowhow, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998, and are owned, wholly or partly by the assessee and are used wholly and exclusively for the purpose of business and profession while computing the income under the head 'Profits and gains of business or profession'.

It is proposed to amend clause (ii) of sub-section (1) so as to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of this clause and, hence, not eligible for depreciation.

Explanation 3 to the sub-section defines the expression "assets" to mean tangible assets, being buildings, machinery, plant or furniture; and intangible assets, being knowhow, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

It is proposed to amend the Explanation 3 so as to provide that goodwill of a business or profession shall not be considered as an asset for that purposes of the said subsection.

c) Section 50 of the Act deals with computation of capital gains in case of depreciable asset. The said section, inter alia, provides for certain conditions, for the applicability of provisions of Sections 48 and 49 of the Act for computation of capital gains in case of depreciable assets, where the capital asset is an asset forming part of a block of asset, in respect of which depreciation has been allowed under the Act.

It is proposed to insert a proviso in the said section so as to provide that in a case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in such manner as may be prescribed.

d) Section 55 of the Act deals with meaning of "adjusted", "cost of improvement" and "cost of acquisition".

Clause (a) of sub-section (2) of the said section provides that for the purposes of sections 48 and 49 of the Act, "cost of acquisition" in relation to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business or profession, tenancy rights, stage carriage permits or loom hours,-

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in any other case [not being a case falling under sub-clauses (i) to (iv) of sub-section (1) of section 49], shall be taken to be nil ;

It is proposed to substitute this clause so as to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,-

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be nil.

It is also proposed to provide therein that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the said Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st day of April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to the assessment year commencing on the 1st day of April, 2021.

Thus, post these proposed amendments –

- Now, block of asset shall not include goodwill of a business or profession.
- No depreciation will be provided / allowed on the same.
- Manner of determination of capital gain under section 50 of the Act, if depreciation on goodwill has already been allowed will be prescribed and
- In case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so

obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.

What is goodwill? It is a bundle of intangibles comprising of knowhow, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. Individually, on each sub-set of goodwill depreciation is allowable and continuous to be allowable. But when it comes to whole set it is now not allowable. The reason is given is that goodwill never depreciates, so no depreciation be allowed on the same. Is this proposition true! Not sure, this is what is proposed and that to effective from financial year 2020-21 assessment year 2021-22, which is almost coming to an end. During this pandemic year, if one has reorganize his business structure and has considered depreciation on goodwill in its calculation, they have to relook at their calculation.

Mode of acquisition referred to in section 49(1)(i) to (iv) are the instances where cost to the previous owner is taken as a cost such as distribution of assets on partition of HUF, gift, will, succession, amalgamation, demerger, etc.

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

4. Unit Link Insurance Policy [Sections 2(14), 10(10D), 45(IB) and 112A]:

a) Section 2(14) of the Act defines the term "Capital Asset".

It is proposed to amend sub-section (14) of section 2 of the Act by inserting sub-clause (c) so as to include any unit linked insurance policy as capital asset to which exemption under sub-section (10D) of section 10 of the Act does not apply, on account of the applicability of the fourth and fifth proviso thereof.

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

It is proposed to insert fourth, fifth, sixth and seventh proviso to the clause.

i) Proposed fourth proviso seeks to provide that the exemption under this clause shall not apply with respect to any unit linked insurance policy, issued on or after the 1st day of February, 2021, if the amount of premium payable for any of the previous year during the term of such policy exceeds two lakh fifty thousand rupees.

ii) Proposed fifth proviso seeks to provide that if the premium is payable, by a person, for more than one unit linked insurance policies, issued on or after the 1st day of February, 2021, the provisions of this clause shall apply only with respect to those insurance policies, where the aggregate amount of premium does not exceed the amount referred to in fourth proviso in any of the previous year during the term of any of those policies.

iii) Proposed sixth proviso seeks to provide that the provisions of the fourth and fifth provisos shall not apply to any sum received on the death of a person.

iv) Proposed seventh proviso seeks to provide that if any difficulty arises in giving effect to the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and every guideline issued by the Board under this proviso shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and the assessee.

v) It is further proposed to insert Explanation 3 so as to define the expression "unit linked insurance policy" as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 issued by Insurance Regulatory and Development Authority under the Insurance Regulatory Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999.

c) Corresponding changes have been proposed in section 45 of the Act by inserting sub-section (1B). It provide for the deemed taxation of profit and gains from the redemption of ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] as capital gains by inserting new sub-section (1B) in section 45 and to take power to prescribe rules for calculation of such capital gains.

d) Further the proposed amendment to section 112A of the Act include such ULIPs [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] in the definition of equity oriented fund in section 112A of the Act so as to provide them same treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

Thus, the amount received under ULIP policy if not covered under exemption u/s 10(10D) of the Act, it will be treated as a capital asset and accordingly calculations will be made allowing cost / indexed cost as the case may be in calculation of capital gains.

In a bid to bring taxation of ULIPs on a par with that of equity oriented mutual fund, it is proposed that there will be no tax exemption on the maturity proceeds of ULIPs with an annual premium above Rs. 2.5 lakhs. The rule will apply on ULIPs issued on or after 1st February, 2021. However, the claim received from such ULIPS on the death of the policyholder will remain tax exempt.

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

5. Strategic disinvestment of public sector company [Sections 2(19AA), 72A]:

Hon'ble Finance Minister in her budget speech has given detailed programme for disinvestment of public sector companies. The extracts of the budget speech is reproduced hereinbelow:

> "In spite of COVID-19, we have kept working towards strategic disinvestment. A number of transactions namely BPCL, Air India, Shipping Corporation of India, Container Corporation of India, IDBI Bank, BEML, Pawan Hans, Neelachal Ispat Nigam limited among others would be completed in 2021-22. Other than IDBI Bank, we propose to take up the privatization of two Public Sector Banks and one General Insurance company in the year 2021-22. This would require legislative amendments and I propose to introduce the amendments in this Session itself."
>
> "Idle assets will not contribute to Atma Nirbhar Bharat. The non-core assets largely consist of surplus land with government Ministries/Departments and Public Sector Enterprises. Monetizing of land can either be by way of direct sale or concession or by similar means. This requires special abilities and for this purpose, I propose to use a Special Purpose Vehicle in the form of a company that would carry out this activity."
>
> "I have estimated Rs. 1,75,000 crores as receipts from disinvestment in BE 2021-22."

In this background, couple of amendments have been proposed in the Act.

Under section 2(19AA) of the Act the term "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions provided by rules in the section.

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

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

- It is proposed to amend Section 2(19AA) of the Act by inserting Explanation so as to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and such resulting company-

(i) is a public sector company on the appointed date indicated in such scheme as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 or any other law for the time being in force governing such public sector companies in this behalf; and

(ii) fulfills such other conditions as may be notified by the Central Government in the Official Gazette in this behalf.

- It is proposed to amend sub-section (1) of section 72A of the Act,

(a) to substitute clause (c) to provide that the provision of subsection (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.

(b) to insert clause (d) to provide that the provision of sub-section (1) of section 72A shall also apply in case of amalgamation of an erstwhile public sector company with one or more company or companies, if

- the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and

- the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

(c) to insert a proviso to sub-section (1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment;

(d) to insert an Explanation to sub-section (1) to define the followings:-

(A) “Control” shall have the same meaning as assigned to in clause (27) of Section 2 of the Companies Act, 2013;

(B) “Erstwhile public sector company” means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.

(C) "Strategic disinvestment" shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

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

6. Definition of liable to tax [Section 2(29A)]:
The term "liable to tax" is not defined under the Act. It is used in section 6, 10(23FE) and various agreements entered into under section 90 or 90A of the Act. It is now proposed to define the term by inserting sub-section 2(29A) in the Act, as under:

> "(29A) "liable to tax", in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided."

In a question and answer session, post presentation of budget, the Chairman of CBDT Mr. Modi said that definition of "liable to tax" has been given since sometimes taxpayers may be liable to tax but by a supplementary position or later on, they may be exempted. There is a very fine distinction between the two situation. You are obliged to file but you are exempt and that is why you are not liable. But the original liability still remains. It's not that I was originally not liable to tax and that that's a very subtle distinction.

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

7. Slump Sale [Section 2(42C)]:
Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines "slump sale" to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word "transfer" in relation to capital asset like exchange, relinquishment etc., are excluded.

It is stated that this was not the intention and therefore it is proposed to widen the scope of the term "slump sale".

Currently, slump sale is defined as the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

It is proposed to expand the scope of the definition of the term "slump sale" so as to mean the transfer of one or more undertakings, by any means, for lump sum

consideration without value being assigned to individual assets and liabilities in such cases.

It proposes to substitute the words-
‘undertaking as a result of the sale’
for
‘undertaking by any means’

It is also proposed to insert an Explanation to the section so as to provide that the word “transfer” shall have the meaning assigned to it in sub-section (47) of section 2 of the Act.

Effective Date:
These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

8. Zero Coupon Bond [Sections 2(48) and 194A]:

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

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

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

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

9. Tax incentives for units located in International Financial Services Centre (IFSC) [Sections 9A, 10(4D), (10(4E), 10(4F), 47(viiac), 47(viiad), 49, 56, 79, 80LA and 115AD]:

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

(i) It is proposed to amend section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of sub-section(3) or clauses (a) to (d) of sub-section (4) of section 9A of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund

manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before the 31st day of March, 2024.

(ii) It is also proposed to amend clause (4D) of section 10 of the Act so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.

(iii) It is also proposed to amend the expression "specified fund" to include under the purview the investment division of offshore banking unit which has been granted a category III AIF registration and fulfils other conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a nonresident located in an International Financial Services Centre and which has commenced operation on or before the 31st day of March, 2024.

(iv) It is also proposed to insert new clause (4E) in of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of International Financial Services Centre which commenced operations on or before the 31st day of Mach, 2024 and fulfils prescribed conditions.

(v) It is also proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA of the Act for that previous year and has commenced operation on or before the 31st day of the March, 2024.

(vi) It is also proposed to insert new clause (23FF) in section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

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

(a) the fund is not a person resident in India;

(b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1)

of section 90A has been entered into or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf;

(c) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and

(d) fulfils such other conditions as prescribed;

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

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

(a) has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and exchange Board of India Act, 1992 (15 of 1992); and

(b) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA.

(vii) It is also proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.

(viii) Consequential amendments are proposed in section 49, 56 and 79 of the Act on account of such relocation.

(ix) It is also proposed to amend the section 80LA of the Act to:

- provide that deduction under said section is also available to a unit of International Financial Services Centre if it is registered under the International Financial Services Centre Authority Act, 2019 and

thereby removing the earlier requirement of obtaining permission under any other relevant law.

- provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.

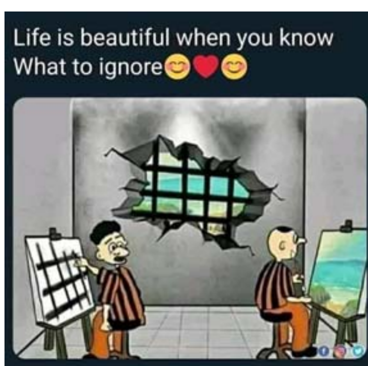
- to provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.

(x) It is proposed to amend section 115AD of the Act to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

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

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

10. Exemption for LTC Cash Scheme [Section 10(5)]:
Under the existing provisions of the Act, clause (5) of section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India.



In view of the situation arising out of outbreak of COVID-19 pandemic, the Government had announced tax exemption on cash allowance in lieu of LTC by way of a Press Release dated 12th October, 2020, Office Memorandum No. 12(2)/2020-E.II(A), dated 20th October, 2020, Press Release dated 29th October, 2020. This is now proposed to be enacted and made part of the Act.

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

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

(a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;

(b) “specified expenditure” means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;

(c) “specified period” means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;

(d) the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;

(e) the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;

(f) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the proposed amendment would be available only to the extent of exemption admissible under above listed provisions.

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

11. Taxability of Interest on Provident Fund [Sections 10(11) and 10(12)]:

Section 10(11) of the Act provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette. Similarly, sub-section (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an

employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule.

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

In a question – answer session with media post presentation of the budget, Hon'ble Finance Minister stated that

Question: *A new tax provision has been brought in on provident fund. Is there an assessment of how many people will be covered?*

Answer: *It is less than 1%. There are only a few who will be impacted. But there are people who contribute Rs. 1 crore a month as their own contribution. He gets tax exemption. He gets interest at 8%. Is he a worker?*

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

12. Provisions relating to Charitable Trusts and Institutions [Sections 10(23C) and 11]:

Section 11 of the Act provides for grant of exemption in respect of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in sections 11, 12, 12A, 12AA and 13 of the Act. Similarly, Sub clause (iv), (v), (vi) and (via) of sub-section (23C) of section 10 of the Act contains provisions related to registration of certain university or other educational institutions, hospitals and/or other institutions. Section 12A of the Act, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from the 1st April, 2021.

A charitable institution can avail exemption either under section 10(23C) (if it is eligible for the same) or under section 11 to 13 of the Act which applies to all charitable institutions. A charitable institution has to opt for one and it cannot be either or.

FB 21 contains two sets of proposed amendments, one which is applicable only to institution covered under section 10(23C) of the Act and other which is applicable to

both institutions covered under section 10(23C) of the Act or sections 11 to 13 of the Act.

A. Under the first set, following amendments are proposed:

a) Sub-clause (iiiad) of sub-section (23C) of section 10 of the Act provides for exemption for the income received by any person on behalf of university or educational institution as referred to in that sub-section. The exemptions under the sub-section are available subject to the condition that the annual receipts of such university or educational institution do not exceed the annual receipts as may be prescribed.

b) Similarly, sub-clause (iiiae) of the said sub-section provides for exemption for the income received by any person on behalf of hospital or institution as referred to in that sub-section. The exemptions under the sub-section are available subject to the condition that the annual receipts of such hospital or institution do not exceed the annual receipts as may be prescribed.

c) Presently, the amount prescribed for clause (iiiad) as well as (iiiae) is one crore rupees. It is proposed to increase the limit of annual receipts, for exemption under clauses (iiiad) and (iiiae), to five crore rupees and provide that such limit shall be applicable for an assessee with respect to the aggregate receipts from university or universities or educational institution or institutions as referred to in clause (iiiad) as well as from hospital or hospitals or institution or institutions as referred to in clause (iiiae).

B. The second set of proposals provides as under:

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

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

b) Clause (d) of sub-section (1) of Section 11 of the Act provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.

These entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose up to 5 years, other than corpus donations referred above. It is stated that instances have come to the notice where the these entities claim the corpus donations to be exempt and at the same time claim their application as part of the mandatory 85% application from income other than such corpus. This results in a situation where the corpus income has been exempted and its application has been claimed as application against the mandatory 85% application of non-corpus income.

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

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

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

a) Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.

b) Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11 of the Act. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 of the Act maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.

c) Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

d) Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed.

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

Please also refer article titled as "Implication of Proposed Amendments applicable to a Charitable Trust" under Food for Thought section.

13. Provisions related to Sovereign Wealth Fund (SWF) and Pension Fund (PF) [Section 10(23FE)]:

Section 10(23FE) of the Act was introduced by the Finance Act, 2020 to provide exemption to certain specified persons from the income in the nature of dividend, interest, long term capital gains from an investment made in India. Section 10(23FE) is further proposed to be amended to provide the following:

a. Allowing Category-I or Category-II AIF to invest between 50% to 100% in eligible investments. However, exemption shall be calculated proportionately, in case if the aggregate investments in AIFs is less than 100%.

b. Investment through holding company is now permitted, provided the investment holding company is a domestic company, set up or registered on or after 01st April, 2021, should have minimum 75% investments in eligible investments. Exemption shall be calculated proportionately, incase if the aggregate investments is less than 100%.

c. Investments in Non-Banking financial company, registered as an Infrastructure finance company or an Infrastructure debt fund, is now permitted, provided such companies should have minimum of 90% lending in one or more of the eligible investments. Exemption shall be calculated proportionately, incase if aggregate investments is less than 100%.

It is proposed to provide that for claiming exemption under this provision by the sovereign wealth funds or pension funds, there should not be any loan or borrowing for the purpose of making investments in India.

Presently, sovereign wealth funds / pension funds are not allowed to undertake any commercial activity. This condition is proposed to be removed and replaced with a condition that sovereign wealth funds / pension funds shall not participate in day to day operations of investee companies. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operations.

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

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

14. Equalization Levy and Exemption from Income Tax for the same [Section 10(50) and Finance Act, 2016]:

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

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

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

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

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

- Insert an Explanation to section 163 of the Finance Act, 2016, clarifying that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act.

- Insert an Explanation to clause (cb) of section 164 of the Finance Act, 2016, providing that for the purposes of defining e-commerce supply or service, "online sale of goods" and "online provision of services" shall include one or more of the following activities taking place online:

  (a) Acceptance of offer for sale;
  (b) Placing the purchase order;
  (c) Acceptance of the Purchase order;
  (d) Payment of consideration; or
  (e) Supply of goods or provision of services, partly or wholly

- Amend section 165A of the Finance Act, 2016, to provide that consideration received or receivable from e-commerce supply or services shall include:

  (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and

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

Sub-section (50) of section 10 of the Act provides for the exemption for the income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any ecommerce supply or services made or provided or facilitated on or after the 1st

day of April, 2021 and chargeable to equalization levy under that Chapter. It is proposed to change the said year to 2020.

It is proposed to substitute the Explanation to the said clause with Explanations 1 and 2. Explanation 1 proposes to clarify that the income referred to in this clause shall not include and shall never be deemed to have included any income which is chargeable to tax as royalty or fees for technical services in India under the said Act read with the agreement notified by the Central Government under section 90 or section 90A.

Explanation 2 proposes to define the expressions "e-commerce supply or services" and "specified service" for the purposes of the said clause.

Effective Date:
These amendments will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment year.

15. Employee contribution to a fund on or before due date [Sections 36(1)(va) and 43B]:

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

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

Clause (va) of sub-section 36(1) of the Act provides for deduction of any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that, for the purposes of this clause, "due date" to mean the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there-under or under any standing order, award, contract of service or otherwise.

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

It is now proposed to –

(i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the "due date" under this clause; and

(ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

Admittedly, on plain reading of section 36(1)(va) of the Act, it does not provide any extension of time for payment of employee's contribution to PF, ESIC and similar. The payment to these funds is required to be made on or before the due date under the respective Act. However, the objective of section 36(1)(va) and section 43B of the Act are similar i.e. payment in time of contribution to welfare funds of workers.

The Hon'ble Supreme Court in the case of Rajasthan State Beverages Corporation Limited reported in 250 Taxmann page 16 and in other cases has held that – "amount claimed on PF and ESI having been deposited on or before due date of filing of returns, same could not be disallowed under section 43B or under section 36(1)(va)."

The jurisdictional High Court in the case of Ghatge Patil Transport Ltd. reported in 368 ITR 749 has taken a similar view and allowed deduction on employee's contribution to PF, paid after PF Act due date but before the due date of filing of the return of income.

Now with one stroke of pen, all these decisions have been overruled.

Under section 43B of the Act, the deduction for Employer's contribution is allowed in the year in which contribution is made while under section 36(1)(va), employee's contribution once delayed (may be for as short period of one day), the same will be treated income of the taxpayer and the taxpayer has to pay tax on the same at the applicable rate of tax. No deduction or rectification is allowed when the contribution is actually paid. Once there is a delay, then whether the taxpayer pays or not or whenever it pays, the taxpayer is not entitled to any deduction or rectification of earlier additions made.

Well, it is understandable that employee's contribution should be paid in time. However, even for delay of one day or little more, to treat the whole amount of employee's contribution as income of the taxpayer is an excessive burden.

Amendment is proposed to be effective for the assessment year 2021-22 i.e. financial year 2020-21, which is full recession period due to global pandemic situation. In this period the businesses were struggling to pay salary and wages to their work force. The businesses are struggling to come back on recovery path and manage their cash flow, and in such a situation if there is a delay in payment of contribution of provident fund

or similar, to ask the taxpayer to pay tax on that amount at 30% plus is going to be a big blow.

A taxpayer does appreciate the concern of the government that Employee's contribution is employee's own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee's contribution, the employers get unjustly enriched by keeping the money belonging to the employees. To remedy this, when things reach new normal, levy some penalty by way of interest at the rate of 1.5% per month or so and that to non-tax deductible.

Further, although it is proposed to be effective from assessment year 2021-22, use of the words "deemed never to have been applied" in the amendment will open gate for litigation.

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

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

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

Clause (x) of sub-section (2) of section 56 of the Act, provides that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds ten per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

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

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

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

- The consideration received or accruing as a result of such transfer does not exceed two crore rupee.

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

The term "residential unit" is also proposed to be defined in Explanation to section to 43CA(4) of the Act as under:

> "Explanation. - For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household."

Please note –

- This is only for residential unit;

- It is only for sale by developer as sale of stock in trade. It does not cover transaction of sale of capital asset as per section 50C of the Act.

- This relaxation is only for transfer during 12th November 2020 to 30th June, 2021.

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

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

(i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; **and**

(ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

It is stated that in order to incentivize non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold from five crore rupees to ten crore rupees in cases listed above.

Please note that the increase in limit is only for business. For professional receipt, there is no change in the limit. Therefore, the gross professional receipt exceeding Rs. 50 lakhs will continue to be subject to tax audit.

Effective Date:
This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

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

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

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

19. Rationalization of provision of transfer of capital asset to partner on dissolution or reconstitution [Section 45]:
The existing provisions of section 45 of the Act provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place. Further sub-section (4) of the section, provides that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the transfer takes place. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48 of the Act.

It is stated that there is uncertainty regarding applicability of provisions of aforesaid sub-section to a situation where assets are revalued or self generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution. Hence, it is proposed to substitute the existing sub-section (4) of section 45 of the Act with a new sub-section (4) and also insert a new sub-section (4A) to this section. New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity. The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution. In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head “capital gains” and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person. For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

New proposed section sub-section (4A) of section 45 of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity. The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution. In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the money or other asset was received by the specified person. For the purposes of section 48 of the Act,

- value of the money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset; and

- the balance in the capital account of the specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

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

For the purposes of these two sub-sections,-

- "specified person" is proposed to be defined as a person who is partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society), in any previous year;

- "specified entity" is proposed to be defined as a firm or other association of persons or body of individuals (not being a company or a cooperative society);and

- "self-generated goodwill" and "self-generated assets" are proposed to be defined as goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

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

Currently, there is one sub-section (4) to section 45 of the Act which deals with taxation of capital gains at the time of distribution of a capital asset to a partner in case of dissolution or otherwise. This is now proposed to be substituted by two sub-sections (4) and (4A) to section 45.

- The proposed sub-section (4) deals with transfer of a capital asset. It provides that for the purposes of section 48 –

  i) Fair market value of the capital asset on the date of receipt shall be deemed to be full value of consideration.

  ii) The cost of acquisition of the capital asset shall be determined in accordance with the provisions of this chapter.

  The cost of capital asset may be the cost in the books of the firm and accordingly the difference between fair market value and the cost / indexed cost, as may be applicable, will be treated as capital gain.

- The proposed sub-section (4A) deals with transfer / receipt of money or other asset at the time of dissolution or reconstitution. Under this proposed sub-section for the purposes of section 48 –

  i) Value of money or the fair market value of other asset on the date of receipt shall be deemed to be full value of consideration.

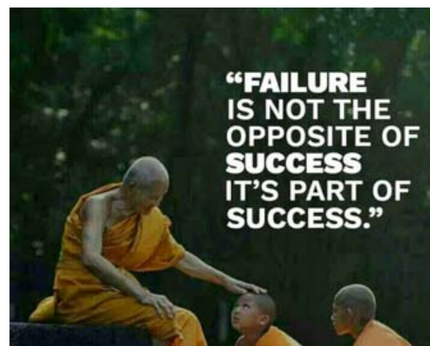
ii) The balance in the capital account of the partner in the books of the firm at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

A distinction is proposed to be made in calculation of cost for the purposes of computing capital gains between transfer / receipt of a capital asset and money / other asset. However, it is not clear as to what will be the difference under the existing law and proposed law.

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

20. Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up [Section 54GB and 80-IAC]:

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



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

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

(i) it is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022; and

(ii) it is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March 2022.

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

21. Interest on loan taken for house property [Section 80EEA]:

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

Effective Date:

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

22. Deduction in respect of Profit and Gains from Housing Project [Section 80-IBA]:

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

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

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

Effective Date:

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

23. Mismatch in taxation of income from notified overseas retirement fund [Section 89A]:

Representations have been received that there is mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries. At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India. In order to address this mismatch and remove this genuine hardship, it is proposed to insert a new section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and

in the year as prescribed by the Central Government. It is also proposed to define the expression "specified person", as a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. "Specified account" is proposed to be defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption. "Notified country" is proposed to be defined to mean a country notified by the Central Government for the purposes of this section in the Official Gazette.

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

24. Rationalization of provisions of Minimum Alternate Tax (MAT) [Section 115JB]:

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

It is stated that representations were made to the Government that the computation of book profit under section115JB of the Act does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE of the Act or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC of the Act. Also dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA). It is therefore, proposed to-

(i) provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 of the Act shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer. Thus, the Bill proposes to align calculation of book profit for the purposes of MAT with the year of taxability of income agreed in APA or on account of secondary adjustment.

(ii) to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in

calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back respectively, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

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

25. Return of income [Sections 139 and 194P]:
Section 139 of the Act contains provisions in respect of the filing of return of income for different persons or class of persons. Sub-section (1) of the section 139 of the Act provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

The said section also provides the due dates for filing of original, belated and revised returns of income for different classes of assessee.

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

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

It is proposed that the due date for the filing of original return of income be extended to 31st October of the assessment year in case of spouse of a partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, if the provisions of section 5A applies to them.

b) Further, in case of a partner of a firm which is required to furnish Transfer Pricing Report under section 92E of the Act, it is proposed that the due date of such partner be extended to 30th November of the assessment year.

c) Sub-sections (4) and (5) of section 139 of the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under sub-sections (4) and (5) of section 139 of the Act respectively at present could be filed before the end of the assessment year or

before the completion of the assessment whichever is earlier. With the massive technological upgrade in the Department where the processes under the Act are moving towards becoming faceless and jurisdiction-less, the time taken to conduct and complete such processes has greatly reduced. Therefore, it is proposed that the last date for filing of belated or revised returns of income, as the case may be, be reduced by three months. Thus the belated return or revised return could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

For a salaried taxpayer, the date of filing his income tax return for the financial year ending March 2021 will be 31st July, 2021. The belated or revised return which could earlier be filed by 31st March, 2022 now have a deadline of 31st December, 2021 or before completion of assessment, whichever is earlier.

The reduction of such time limits will impact taxpayers whose returns are due by 31st October (businessmen who need to get their audits accounted) or 30th November for companies having significant international transactions. Typically, mistakes in the original returns are discovered only after a few months. Not complying with the requirement by these dates could attract consequences – penalty for non-disclosure of income, besides potential prosecution. The returns may also be required to be revised for claiming differential TDS. For such type of a rectification, a period of one month or two months may not be sufficient.

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

e) Relaxation for certain category of senior citizens from filing return of income:

In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance for them, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-

(i) The senior citizen is resident in India and of the age of 75 or more during the previous year;

(ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;

(iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and

(iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

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

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

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

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

27. Processing of Return and time limit for issue of Notice [Section 143]:

Sub-clause (iv) of clause (a) of sub-section (1) of section 143 of the Act provides for adjustment on account of disallowance of expenditure indicated in the audit report but not taken into account in calculating the total income of the assessee.

It is proposed to amend the said sub-clause so as to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.

Sub-clause (v) of clause (a) of sub-section (1) of the said section provides that any deduction admissible under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, shall be allowed if the return of income is furnished on or before the due date specified under sub-section (1) of section 139 of the Act.

It is proposed to amend the said sub-clause so as to provide that any deduction admissible under section 10 AA or under any of the provisions of Chapter VIA under the heading "C-Deductions in respect of certain incomes" shall be allowed, if the return of income is furnished on or before the due date specified under the sub-section (1) of section 139 of the said Act.

More and more timely compliance is expected from the Tax Payers. Similarly, it is proposed to reduce certain time limits:

Particulars	Existing time limit	Proposed time limit
For sending intimation under section 143(1)	12 months from the end of the financial year in which the return is made.	9 months from the end of the financial year in which the return is made.
For selecting the case for scrutiny	6 months from the end of the financial year in which return is made	3 months from the end of the financial year in which return is made

Effective Date:

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

28. Income Escaping Assessment and Search Assessments [Section 147, 148, 148A, 149, 151, 151A, 153A and 153C]:

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

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases.

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

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

The Bill proposes a completely new procedure of assessment of such cases. The salient features of new procedure are as under:-

Section 147:

(i) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

(ii) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

Section 148:

(i) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

(ii) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.

(iii) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the

Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.

(iv) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

Section 148A:

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

Section 149:

(i) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

   a) in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.

   b) in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

   c) Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

   d) Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made

on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.

e) It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

Time Limit for reopening of an assessment:

Sr. No.	Particulars	Existing	Proposed
a)	Time limit for reopening where the income which has escaped assessment is less than Rs. 1 lakh	4 years from the end of the assessment year (i.e. 5 years from the end of the financial year)	3 years from the end of the assessment year (i.e. 4 years from the end of the financial year)
b)	Time limit for reopening where the income which has escaped assessment is Rs. 1 lakh or more but less than Rs. 50 lakhs	6 years from the end of the assessment year (i.e. 7 years from the end of the financial year)	3 years from the end of the assessment year (i.e. 4 years from the end of the financial year)
c)	Time limit for reopening where the income (represented in the form of asset) which has escaped assessment is Rs. 50 lakhs or more	6 years from the end of the assessment year (i.e. 7 years from the end of the financial year)	10 years from the end of the assessment year (i.e. 11 years from the end of the financial year)
d)	Cases where income escaped is in relation to any asset (including financial interest in any entity) located outside India and is chargeable to tax	16 years from the end of the assessment year (i.e. 17 years from the end of the financial year)	3 years or 10 years (depending on amount of income which has escaped assessment) from the end of the assessment year (i.e. 4 years to 11 years (as the case may be) from the end of the financial year)

Section 151:

(i) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be -

a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Section 151A:

(i) It is proposed to amend the said section to include the conducting of enquiries or issuing show-cause notice or passing order u/s. 148A (before issuance of notice u/s. 148 of the Act) under the faceless assessment scheme

Section 153A and 153C:

(i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

As can be inferred from the above, the crux of Section 147 of the Act has been revamped. Earlier, for re-assessment proceedings to be initiated, the pre-requisite was for the AO to have a 'reason to believe'. However, as per the revamped provisions, the pre-requisite now is for the AO to have 'information which suggests that income chargeable to tax has escaped assessment', which as discussed above, has been clearly defined. The earlier threshold of 'reason to believe' led to widespread litigation on the matter. The newly introduced threshold of 'information which suggests that income chargeable to tax has escaped assessment' has been defined, it is likely to reduce litigation in this regard. It can also be said that the discretion given to Assessing Officer has been removed. There is certainly lack of clarity as to what would constitute "information" in these cases. At the same time, it has widen the scope of re-opening.

The general time limit of 6 years are reduced to 3 years. While a 10 year limit has also been introduced, it is only restricted to certain cases of search, seizure or requisition, which generally are done in cases where there is a likelihood of a mala-fide intent of evading taxes. However, it can also be seen as expanding the time period of re-assessments from 6 years to 10 years in selected cases.

Another interesting and welcome move is the removal of a special time period of 16 years applicable in case of income in relation to any asset located outside India, escaping assessment in India. Thus, cases of indirect transfers would also get covered by the reduced period of 3 years or 10 years (as the case may be).

Procedure has been provided for providing an opportunity to the assessee to show cause as to why notice u/s. 148 should not be issued. The procedure as laid is principally in line with the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. (259 ITR 19)

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

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

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

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

30. TDS/TCS on non-filer at higher rates [Sections 194-IB, 206AB and 206CCA]:

Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly section 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN. As per tax department these provisions have served their purpose in ensuring obtaining and furnishing of PAN by various person and there is need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS.

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

Proposed section 206AB of the Act would apply on any sum or income or amount paid, or payable or credited, by a person (herein referred to as deductor) to a specified person. This section shall not apply where the tax is required to be deducted under sections 192 (salary), 192A (payment of accumulated balance due to an employee), 194B (winning from lottery / crossword puzzle), 194BB (winnings from horse race), 194LBC (income in respect of investment in securitization trust) or 194N (payment of certain amounts in cash) of the Act. The proposed TDS rate in this section is higher of the followings rates:-

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

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

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

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

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

The specified person is a person –

- who has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be.

- Further the time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years.

- The aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.

Specified person shall not include a non-resident who does not have a permanent establishment in India.

The deductor is now supposed to know whether the vendor has filed returns for last two years and whether his liability was Rs. 50,000/- or more in each of the two years. In the absence of data in public domain how the deductor is expected to comply with these conditions.

Is deductor supposed to obtain acknowledgements of return of income for earlier two years? If the payee does not agree to do so what is the remedy. Can the deductor rely on the certificate of the payee? All these practical difficulties will be there and besides these how much work load of the deductor will increase.

A clarification to this effect is necessary.

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

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

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

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

(i) a transaction on which tax is deductible under any provision of the Act; and

(ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

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

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

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

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

Effective Date:

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

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

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

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

SC ruled that payments made by PILCOM (assessee) to Non-Resident Sports Association of various countries taking part in the tournament [i.e. World Cup 1996], represented income which accrued/arose or was deemed to have accrued /arisen in India and accordingly, held that assessee was liable to deduct TDS u/s 194E of the Act on such payments. As regards applicability of DTAA, SC clarified that "The obligation to deduct Tax at Source under Section 194E of the Act is not affected by the DTAA and in case the exigibility to tax is disputed by the assessee on whose account the deduction is made, the benefit of DTAA can be pleaded and if the case is made out, the amount in question will always be refunded with interest."

The aforesaid SC ruling was rendered in context of section 194E of the Act which required tax deduction at a specified rate. It is to be noted that the present section 196D of the Act also requires TDS deduction @ 20% on FIIs income, however, an amendment is now proposed to provide for TDS deduction @ 20% or DTAA rate, whichever is lower, to get over the effect of PILCOM ruling.

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

33. Interest under section 234C [Section 234C]:

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

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

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

(d) income of the nature referred to in sub-section (1) of section 115BBDA.

Aforesaid relaxation is to insulate the taxpayers from payment of interest under section 234C of the Act in cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of the income. Therefore, after considering various representations, it is proposed to include "dividend income" in the above exclusion but not deemed dividend as per sub-clause (e) of clause (22) of section 2 of the Act. Thus, no interest under section 234C of the Act will be payable for deferment of advance tax on account of "dividend income".

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

34. Discontinuance of Income-tax Settlement Commission [Sections 245A to 245M – Chapter XIX-A]:

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

- ITSC shall cease to operate on or after 1st February, 2021

- No application under section 245C of the Act for settlement of cases shall be made on or after 1st February, 2021;

- All applications that were filed under section 245C of the Act and not declared invalid under sub-section (2C) of section 245D of the Act and in respect of which no order under section 245D(4) of the Act was issued on or before the 31st January, 2021 shall be treated as pending applications.

- Where in respect of an application, an order, which was required to be passed by the ITSC under section 245(2C) of the Act on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.

- The Central Government shall constitute one or more Interim Board for Settlement (hereinafter referred to as the Interim Board), as may be necessary, for settlement of pending applications. Every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.

- On and from 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply mutatis mutandi to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under sub-section (4) of section 245D of the

Act. However, where the time-limit for amending any order or filing of rectification application under section 245(6B) of the Act expires on or after 1st February, 2021, in computing the period of limitation, the period commencing from 1st February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to sixty days, if less than sixty days.

- With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal.

- Where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.

- The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board.

- Where the pending application is allotted to an Interim Board or transferred to another Interim Board subsequently, all the records, documents or evidences, with whatever name called, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes.

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

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

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

35. Constitution of Dispute Resolution Committee (DRC) [Section 245MA]:
In order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a new scheme under Chapter XIX-AA for preventing new disputes and settling the issue at the initial stage.

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

(i) The Central Government shall constitute one or more DRC.

(ii) This committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.

(iii) Only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC.

(iv) If the specified order is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A,of the Act, such specified order shall not be eligible for being considered by the DRC.

(v) Specified Order includes draft assessment order, as maybe specified by the Board.

(vi) Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.

(vii) Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision.

(viii) The DRC, subject to such conditions as may be prescribed, shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.

(ix) The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution under this provision. This scheme will be faceless. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

It needs to be seen how this will work.

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

36. Constitution of the Board for Advance Ruling [Section 245N, 245-O, 245-OB, 245P, 245Q, 245R, 245S, 245T, 245U, 245V and 245W]:

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

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

(i) The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).

(ii) It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.

(iii) Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.

(iv) Advance Ruling shall now be imparted by the Board for Advance Ruling, which shall consist of two members, each being not below the rank of Chief Commissioner. Section 245N is proposed to be amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.

(v) Section 245-O is proposed to be amended to provide that the Authority constituted under the said section shall cease to operate on or after the notified date.

(vi) Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings.

(vii) Section 245P is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted;

(viii) Section 245Q (which deals with filing of application) is proposed to be amended to provide that the pending application with the Authority i.e. in respect of which order under section 245R(2) or section 245R(4) has not been passed before the notified date shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.

(ix) Section 245R (which deals with the procedure) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.

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

(xi) Section 245S (which deals with the applicability of advance ruling and makes it binding on the assessee and the Department) is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date.

(xii) Section 245T (which deals with advance ruling to be void in certain situation) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words "Authority", the words "Board for Advance Rulings" had been substituted. Also, a specific reference to advance ruling pronounced by the Authority shall be amended to make it advance ruling pronounced under sub-section (6) of section 245R so that the Board for Advance Ruling can also exercise powers under the said section in respect of rulings pronounced by the present Authority.

(xiii) Section 245U is proposed to be amended to provide that on or from the notified date, the powers of the "Authority" under the said section shall be exercised by the "Board for Advance Rulings" and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.

(xiv) Section 245V is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date

(xv) A new section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. This appeal can be filed by the applicant as well as by the Department. Such appeal shall be filed within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal. The Central Government shall be empowered to notify a scheme for filing of appeal by the Assessing Officer so as to impart greater efficiency, transparency and accountability by optimizing utilization of the resources through economies of scale and functional specialization; introducing a system with dynamic jurisdiction. The

Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

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

(xvii) Grandfathering: It is proposed that all previous advance rulings pronounced under Section 245R will be been grandfathered and the amendments proposed in Finance Bill shall not apply to such rulings. This should cover both admission orders and final rulings.

In effect, the Finance Bill proposes to change the unique nature of the AAR where rulings were binding on the parties and delivered by a retired Judge into a one where rulings are non-binding and delivered by the Revenue.

This proposal is a major blow for existing taxpayers who have approached the AAR to obtain tax certainty on complex international tax questions with an expectation of a binding ruling by a tribunal. The relegation of the AAR to Board of Advance Ruling makes the system a lot less attractive to foreign taxpayers since the rulings are not binding and the process is no longer one which will be examined from the viewpoint of a fair and unbiased retired High Court / Supreme Court judge. This is especially concerning since the entire case load of the AAR is proposed to be transferred to the Board of Advance Ruling.

Importantly, it is proposed that there shall be no statutory provision stating that the ruling pronounced by the Board of Advance Ruling shall be binding on the parties. While this proposed omission may have been made to introduce an appeal mechanism, it may result in confusion. For e.g. if a taxpayer gets a favourable advance ruling, can the tax department initiate regular tax proceedings against the applicant? Logically, the tax department should respect the ruling of the BAR but in the absence of clear provisions, ambiguity remains.

Having said that, the advance ruling mechanism may still be a chosen mode of dispute resolution to resolve large tax disputes if it can enable them to directly approach the High Court after an unfavourable ruling from the Board of Advance Ruling, without having to go through the long and arduous regular tax assessment process which typically takes 10-15 years. Given that the time limit of six months for pronouncement of ruling is proposed to be applicable to the Board of Advance Ruling, it is hoped that the objective of administrative efficiency is met and the timeline is strictly followed going forward.

Further to enable taxpayers to get fair and impartial rulings, it would have been advisable to provide for the members of Board of Advance Ruling to be independent tax experts or retired Tribunal members.

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

37. Faceless proceedings before the Income Tax Appellate Tribunal (Tribunal) [Section 255]:

Government proposes to introduce Faceless Tribunal Scheme pursuant to Faceless assessment and Faceless appeals schemes.

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

(a) eliminating the interface between the Tribunal and parties to the appeal in the course of proceedings to the extent technologically feasible;
(b) optimizing utilization of the resources through economies of scale and functional specialization;
(c) introducing an appellate system with dynamic jurisdiction.

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March, 2023. It is proposed that every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Thus, as stated by the Hon'ble FM in her speech, Income tax Appellate Tribunal to go Faceless, communication between Tribunal and Appellants to be electronic, hearing allowed only through video conferencing in selected cases. Finer details of the Scheme will be needed to be seen as this is very significant change proposed by Government. Further, this seems to go against the principles of natural justice of giving a taxpayer an opportunity of physical hearing before the Tribunal. Considering the complexity of the disputes and the challenges of shifting away from a historical manner of seeking justice – both in the mindset as well as physical reality; the proposal does seem a little ambitious. This is not to doubt the time efficiency that a faceless scheme of disposing appeals can bring in, but is just an honest introspection on the challenges of faceless appeal process like ability to understand the other person's mindset through observation and steering the discussion accordingly, the digital infrastructure required for faceless appeals etc. The inherent limitations of technology, could result in the move being counter-productive and complicating tax litigation.

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

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

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

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

Effective Date:

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

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

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

On the eve of presentation of Budget, CBDT issued Notification No. 4 of 2021 dated 31st January, 2021 extending the due date of filing Application under Vivad se Vishwas Scheme 2020 to 28th February, 2021 (from earlier extended date of 31st January, 2021).

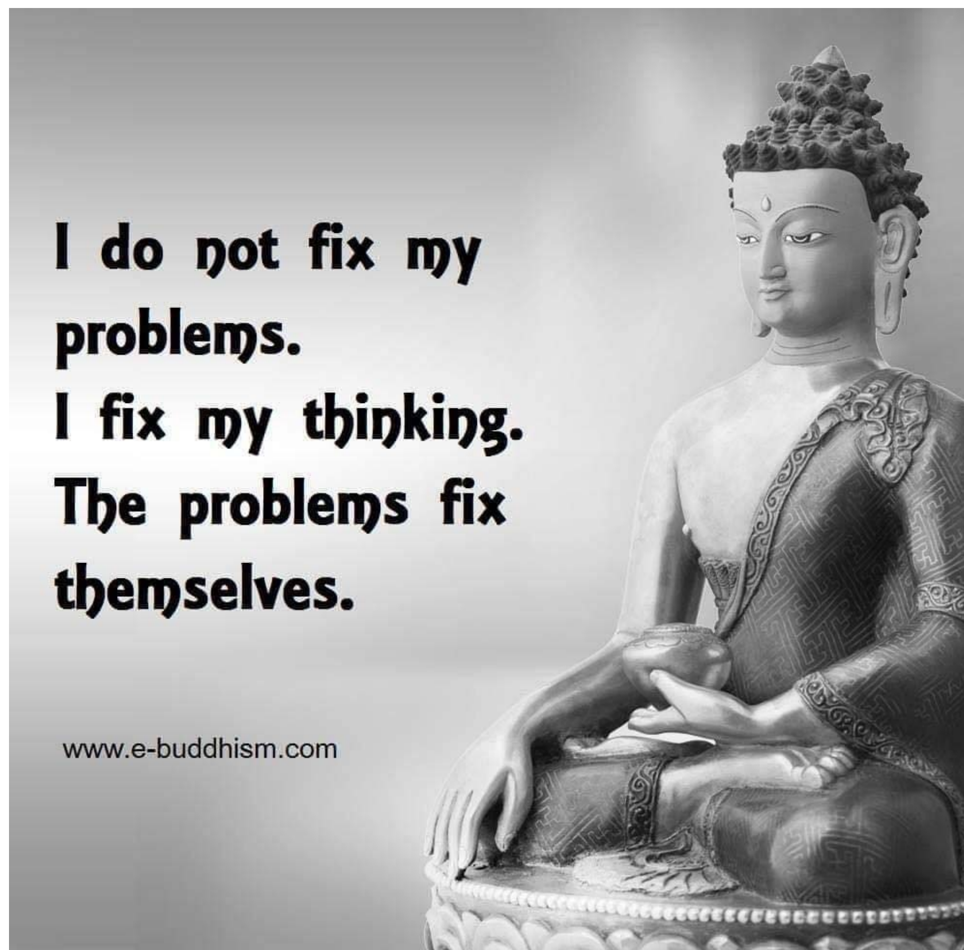
Further following amendments are proposed in FB 21.

The settlement provisions under the Act provide for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted into determination of tax liability and instead approached the Income Tax Settlement Commission (ITSC) for settlement of his case under Chapter XIX-A of the Act. It is stated in the Memorandum that the VsV was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Act, such cases as are covered by Chapter XIX-

A of the Act (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.

It is proposed to amend the definitions of "appellant" in section 2(1)(a), "disputed tax" in section 2(1)(j) and "tax arrear" in section 2(1)(o), of the VsV to provide that any sum payable qua proceedings before the Settlement Commission / writs pertaining to orders passed by Settlement Commission cannot be settled under VsV.

Effective Date:
The said amendments are proposed to take effect retrospectively from the 17th March 2020.



Summary Notes on Changes in Company Law –

- Compiled by CS Swati Gupta and CS Samiksha Adukia

A. AMENDMENTS TO COMPANIES ACT 2013

1. Definition of Small Companies revised to mean companies having

Pursuant to declaration in Budget Speech, MCA issued a circular dated 2nd February, 2021 amending the provisions of the Section 2(85) of the Companies Act 2013.

Earlier Provision	New Provision
Paid up Capital < Rs. 50lakh Turnover < Rs. 2 Cr “small company” means a company, other than a public company,— (i) **paid-up share capital of which does not exceed fifty lakh rupees** or such. higher amount as may be prescribed which shall not be more than five crore. rupees; or. (ii) **turnover** of which as per profit and loss account for the immediately preceding financial year **does not exceed two crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.	The limits are raised for a small company – • The paid up capital criteria raised upto Rs. 2 crores. • Turnover criteria raised upto Rs. 10 crores.

The Government has increased the bracket for including companies as small companies thereby now more small companies can enjoy the benefits of being a Small company. Some of them are:

i) Every company is required to hold 4 Board Meetings in a year. While a Small Company needs to hold only 2 Board meetings in a calendar year i.e. one board meeting in each half of the calendar year. However the gap between the two board meetings should not be less than 90 days.

ii) In case of Small Company, the Annual Return can be signed by Company Secretary alone or if there is no Company Secretary, by a single Director only.

iii) A Small company does not require to maintain a Cash flow statement as a part of its Financial Statements.

iv) Small companies are exempted from the requirement from mandatory rotation of statutory auditor as per Section 139(2) of the Act, 2013 (read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014).

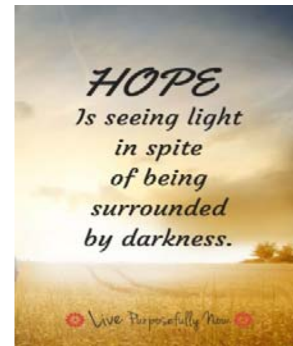
v) A Small Company does not require to report in its Audit Report regarding Internal Financial controls and the operating effectiveness of the company.

vi) In case of Small Company, Companies Act prescribes lesser penalties as compared to every other company.

vii) Small companies do not require certain certifications from the professional while submitting their forms to MCA.

2. MCA version 3 expected soon

By updating the MCA Portal, the government will launch a data analytics, artificial intelligence, machine learning driven MCA21 Version 3.0. This version of MCA 3.0 will have additional modules for e-scrutiny, e-adjudication, e-consultation, and compliance management, all aimed at improving the authenticity and comprehensiveness of corporates. It may also make the current registrar of companies (RoC) appear obsolete.



3. Relaxation for One Person Companies:

Key changes proposed are:

- NRIs can also incorporate OPC;
- Restriction on capital and turnover applicable to OPC have been removed;
- An individual needs to be in India for only 120 days as against 182 prescribed earlier for the director of the OPC and OPC can be covered to other format at any stage.

B. LLP decriminalization soon:
Following the decriminalizing of procedural and technical compoundable offences under the Companies Act, 2013, which is now complete, the MCA has announced decriminalization under the Limited Liability Partnership Act 2008.

Summary Notes on Changes in GST Law:

1. CGST Amendments

1.1 Scope of supply to include supply of goods or services by any person other than an individual to its member or constituent or vice-a-versa for cash, deferred payment or other valuable consideration retrospectively from 1st July, 2017. Consequently, all mutual associations like co-operative housing societies, Member's clubs, trade

associations, professional associations etc. will be liable to GST on supply of goods or services to its members.

1.2 Insertion of new clause under section 16(2) restricting claim of input tax credit only when details of such invoices have been furnished by the supplier. That is to say taxpayer will be eligible to claim ITC on vendor's invoices or debit Notes only if such invoice or debit note is declared by the vendor in its statement of outward supply in Form GSTR-1.

1.3 Amendments have been proposed to clarify that "self-assessed tax" shall include transactions declared as tax payable on any outward supplies in respective statements [i.e. FORM GSTR-1] but actually not paid [i.e. in FORM GSTR-3B].

1.4 Interest to be paid on net cash liability i.e. to say (Net Liability = Gross Liability (-) Input Tax Credit Utilized) under section 50(1) with effect from 1 July 2017.

1.5 Section 74, now provides for seizure and confiscation of goods or conveyances as a separate proceeding for recovery of tax.

1.6 It is proposed to omit the requirement of certifying reconciliation statement in Form GSTR 9C ('GST Audit') by a Chartered Accountant or Cost Accountant. So no dealer is required to get its accounts audited under GST. It is clarified on official twitter that GST audit for the year 2019-20 shall be carried out.

1.7 It is proposed to delink the proceedings pertaining to detention, seizure and release of goods and conveyances in transit from proceedings relating to confiscation of goods or conveyances and levy of penalty.

1.8 The tax payer is required to pay 10% as pre-deposit of the disputed tax liability subject to maximum of Rs 25 cr before filing any appeal before the appellate authority. Appropriate amendments 14 has been proposed wherein the taxpayer is required to pay 25% of the penalty as pre-deposit in cases where an appeal is filed for cases pertaining to detention or seizure of goods or conveyance.

2. IGST Amendments

2.1 Supply of goods or service to SEZ unit or SEZ Developer shall be considered as zero-rated supplies only when the said supplies are for the authorized operations.

2.2 Zero rated supplies on payment of IGST shall be restricted only to notified class of taxpayers or notified supplies of goods or service.

2.3 Linkage of foreign exchange remittance in case of export of goods with refund claimed. Hence , In case of zero-rated supply of export of goods, non-realization of sale proceeds within time limit prescribed by Foreign Exchange Management Act, 1999 will attract deposit of refund and interest

Food for Thought:

Implication of proposed amendment applicable to Charitable Trust:

- By Ms. Sonakshi Jhunjhunwala

[This is in continuation of summary of notes on proposed amendments related to a Charitable Trust, discussed in para 12]

Section 11 of the Income Tax Act, 1961 (the Act) provides that income derived from property held under the trust wholly for charitable or religious purposes shall not be included in the total income for the previous year of the person in receipt of such income, <u>to the extent to which such income is applied to such purposes in India</u>.

The scheme of taxation of a Charitable Trust is based on "Principle of Application of income for charitable objects". The emphasis, the focus, the purpose, the objective is to spend money for charitable purposes.

Having said that, let us consider in any organization (be it a profit making business entity or a charitable institution) what are the sources of funds to spend the same:

a) Income of the year including voluntary contribution / donation;
b) Accumulated income over the year;
c) Loans taken; and
d) Capital / corpus of the entity.

It is stated in the Memorandum that the Taxpayer are taking double benefit and to curb the same, the amendments have been proposed. *This is absolutely right. Nobody should be allowed to take double benefit, even if, it is a charitable organization.* The point for consideration is the way the amendments are proposed whether, it is in line with the very basis of taxation of a Charitable Trust i.e. application of income for charitable purposes.

1. It is proposed to amend section 11(1) (d) of the Act to provide that the exemption in respect of corpus donation will be allowed only when amounts are invested in a specified mode of investment prescribed under section 11(5) of the Act. In effect, if the funds are used for application on charitable object, it cannot be applied for investment. To that extent corpus donation will not be exempted and will be treated as income.

   Further, Explanation 4 provides that the application for charitable purposes from the corpus shall not be treated as application for charitable purposes.

   So, in the year when a charitable trust receives corpus donation of say Rs. 100/-, out of that the charitable trust has spent Rs. 60/- for a charitable object and Rs. 40/- is put

in prescribed investment. Out of corpus donation of Rs. 100/-, only Rs. 40/- will be allowed as exempt and Rs. 60/- will not be allowed as an application of income. So the net – net the charitable trust has to pay tax on income of Rs. 60/- in this year. We have elaborated this by taking another example little later.

In the subsequent year / years when the charitable trust puts in the money in the prescribed investment, it will be treated as application of income for charitable purposes and allowed as such. In conclusion, in year one when the corpus donation is received and used partly or fully for charitable purposes, the trust is hit from both the sides. On one side income is not exempt and on the other side the application for charitable purpose is not allowed as a deduction. *It seems this is an unintended outcome and will be considered by the authority.*

Further, when the funds are put in prescribed investment, it is allowed as an application of income. So what are we trying to do, the focus from application of income for charitable purposes is shifted to putting in the funds in the prescribed investment which is not in line with the very basis of taxation of a charitable trust.

2. Similarly, the same logic is applied to application for charitable objects out of loan taken. Again in the year in which the money is applied for charitable object, it is not treated as application. But when loan is repaid, it is treated as application of income. Again this is shifting of focus from spending the money for charitable objects to repayment of loan.

3. The simple solution could have been –

a) If the amount of corpus donation received during the year is not invested in the prescribed mode of investment under section 11(5) of the Act and used for the charitable purposes, do not treat that portion as exempt income and treated as normal income of the charitable trust. Then allow the amount used for charitable purposes as application of income and that is the end of the matter. No further adjustment be made in the year in which the funds are put in specified investment.

   By doing this the objective of avoiding double deduction is met and focus of spending on charitable purposes remains intact.

b) Same way, when income out of loan fund is applied for charitable purposes, allowed it as application of income and when loan is repaid no further adjustment be allowed.

4. There is another proposed amendment that if a charitable trust happens to spent more on charitable objects, than it is current year's income, the excess of expenditure over income will not be allowed to be carry forward and treated as application of income

of subsequent year / years. If the trust has a project in this year, carry out the same and it spends more than the current year's income, how it is prejudicial to anyone. The object of spending on charitable purpose is getting fulfilled. In the subsequent year, the trust may not have that opportunity to fulfill that objective.

Even the Hon'ble Supreme Court has allowed this proposition and there are various decisions of High Courts and Appellate Tribunals supporting this view. It is not understood by making such proposal what will be achieved.

As stated above, the sources of funds includes income of the year, accumulated surplus, loan funds and corpus. The specific provisions are proposed for spending out of corpus and loan funds. There is no proposals for spending out of accumulated funds. But by virtue of proposed amendment of not allowing carry forward of excess of expenditure over income even when the amount is spent out of accumulated profit, it is not allowed to be carried forward to subsequent year for set off against income of subsequent year / years.

5. Let us understand it with another example:

Facts of the example are:

Particulars of source of fund	**Amount (Rs.)**
Current year's income	1,000/-
Corpus donation received during the year	700/-
Amount invested in specified investment as per section 11(5) out of corpus donation received	250/-
Loan taken during the year	500/-
Accumulated surplus in the beginning of the year	600/-
Amount spent on the charitable objects during the year	2,600/-

The computation of income under the existing law and proposed law would be as under:

Particulars	**Under Existing Law (Rs)**	**Under Proposed Law (Rs.)**	
Computation of total income			
Corpus donation received during the year	700/-		700/-
Current year's income	1,000/-		1,000/-
Sub-total	**1,700/-**		**1,700/-**
Less: Corpus donation treated as exempt u/s 11(1)(d)	700/-		250/-
Sub-Total	**1,000/-**		**1,450/-**
Less: amount spent on charitable objects		2,600	
Less: Amount not treated as application of income out of – a) Corpus donation b) Loan Fund		 450/- 500/-	
Amount to be deducted as application of income	2,600/-		1,650/-
Total Income	**(1,600/-)**		**(200/-)**

In this example, as per existing law, excess of expenditure of Rs. 1,600/- is claimed as carry forward, which admittedly has double benefit to the extent of Rs. 450/-. It should be avoided.

So, restrict that exemption in respect of corpus donation at Rs. 250/-. But the amount spent out of it be allowed as application for charitable purposes.

Under the proposed law, the total income is calculated at excess of expenditure over income of Rs. 200/- and even this Rs. 200/- will not be allowed to be carried forward.

6. So far as the restriction to treat application of income out of loan fund is concerned (though it is not desired) it generally may not result in taxable income and rather is same cases prove to be beneficial to Taxpayer.

But so far as application out of corpus donation is concerned, if the amount of corpus donation is large, and is used for charitable purposes, it may result in determination of taxable income of the charitable trust in that year. If the amount of corpus donation is small, it may or may not affect determination of taxable total income of the charitable trust. Let us take another hypothetical example to understand this.

Facts of the example are:

Particulars of source of fund	**Amount (Rs.)**
Current year's income	1,000/-
Corpus donation received during the year	5000/-
Amount invested in specified investment as per section 11(5) out of corpus donation received	500/-
Loan taken during the year	nil
Accumulated surplus in the beginning of the year	1,000/-
Amount spent on the charitable objects during the year	6,000/-

The computation of income under the existing law and proposed law would be as under:

Particulars	**Under Existing Law (Rs)**	**Under Proposed Law (Rs.)**	
Computation of total income			
Corpus donation received during the year	5,000/-		5,000/-
Current year's income	1,000/-		1,000/-
Sub-total	**6,000/-**		**6,000/-**
Less: Corpus donation treated as exempt u/s 11(1)(d)	5,000/-		500/-
Sub-Total	**1,000/-**		**5,500/-**

Less: amount spent on charitable objects		6,000/-	
Less: Amount not treated as application of income out of – c) Corpus donation d) Loan Fund		 4,500/- Nil/-	
Amount to be deducted as application of income	6,000/-		1,500/-
Total Income	**(5,000/-)**		**4,000/-**

In this example, as per existing law, excess of expenditure of Rs. 5,000/- is claimed as carry forward, which admittedly has double benefit to the extent of Rs. 4,500/-. It should be avoided and total income be computed at excess of expenditure over income of Rs. 500/-.

Restrict the exemption in respect of corpus donation at Rs. 500/-. But the amount spent out of it be allowed as application for charitable purposes.

Under the proposed law, the total income is calculated at excess of income over expenditure of Rs. 5,000/-. The charitable trust has to either pay tax on this Rs. 4,000/- or make application u/s 11(2) of the Act for spending out on charitable objects within a period of five years. The point for consideration would be the money is already spent, so from where the Charitable Trust will bring money to spent out of accumulation u/s 11(2) of the Act.

7. It will all depends on facts of each case. The point is not who is benefitted or who has lost. The point is –

- Unintended double benefit should be curbed;
- The focus should continue to be on spending for charitable purposes.

8. These proposed amendments has raised some more doubts, such as:-

a) Within how much time corpus donation should be put in specified investment.

In a fact situation, where the corpus donation is received on 28th of March of the year, deposited in bank on 29th of March of the year, cleared by bank on 3rd April of the year and put in specified investment on 10th of April of the year.

In the year one, will the trust get the exemption in respect of corpus donation or not? Will it be income of the year one and in year two it will be allowed as application?

b) For how much time the corpus donation should remain invested in specified investments – perpetual or is there a time limit.

A clarification on this will be a welcome move to avoid any future litigation.

9. The Charitable Trusts may take following precautions:

i) All the charitable trust should ask their bankers to put their balance in bank account in "sweep account facility" so that the moment a donation is received, it is kept as deposit which is one of the prescribed mode of investment under section 11(5) of the Act.

ii) Try and take donation cheques in smaller denomination, meaning, if someone is giving donation of Rs. 100 lacs, instead of taking one cheque of Rs. 100 lacs , try and take four and five cheques of smaller denominations totaling to Rs. 100 lacs.

iii) Out of this, whatever funds are used for charitable purposes, treat then as regular donation, instead of Corpus donation and whatever, amount is put in specified investments, those amounts only be treated as corpus donations and take supporting for the same.

10. Also, one should remember, barring the bigger charities, the smaller one donot have administrative staff to handle all these activities. To keep track of all these provisions make budgets, keep monitoring and matching amounts – how will it be possible! The result is sizeable portion of income of the smaller charities has to be kept aside for accounting, administrative and tax compliance and to that extent amount available for charitable activities will reduce.

11. Admittedly, some people have misused the provisions of charitable trust. But for the sake of that all the charitable organization cannot be punished.

We hope and pray that this proposition of not allowing application of income out of corpus and loan fund is not extended to business organization tomorrow and a law is amended to say that any amount spent out of capital or loan funds will not be allowed as a deduction in computation of profit and gains of business.

FINDING HELP IN THE BHAGAVAD GITA

Do you find yourself in any of the situations below?

ANGER

Chapter 2 - Text 56
Chapter 2 - Text 62
Chapter 2 - Text 63
Chapter 5 - Text 26
Chapter 16 - Text 1
Chapter 16 - Text 2
Chapter 16 - Text 3
Chapter 16 - Text 21

PRIDE

Chapter 16 - Text 4
Chapter 16 - Text 13
Chapter 16 - Text 15
Chapter 18 - Text 26
Chapter 18 - Text 58

LUST

Chapter 3 - Text 37
Chapter 3 - Text 41
Chapter 3 - Text 43
Chapter 5 - Text 22
Chapter 16 - Text 21

DISCRIMINATED

Chapter 5 - Text 18
Chapter 5 - Text 19
Chapter 6 - Text 32
Chapter 9 - Text 29

DEPRESSION

Chapter 2 - Text 3
Chapter 2 - Text 14
Chapter 5 - Text 21

GREED

Chapter 14 - Text 17
Chapter 16 - Text 21
Chapter 17 - Text 25

FORGETFULNESS

Chapter 15 - Text 15
Chapter 18 - Text 61

FEELING SINFUL

Chapter 4 - Text 36
Chapter 4 - Text 37
Chapter 5 - Text 10
Chapter 9 - Text 30
Chapter 10 - Text 3
Chapter 14 - Text 6
Chapter 18 - Text 66

DEATH OF A LOVED ONE

Chapter 2 - Text 13
Chapter 2 - Text 20
Chapter 2 - Text 22
Chapter 2 - Text 25
Chapter 2 - Text 27

UNCONTROLLED MIND

Chapter 6 - Text 5
Chapter 6 - Text 6
Chapter 6 - Text 26
Chapter 6 - Text 35

LAZINESS

Chapter 3 - Text 8
Chapter 3 - Text 20
Chapter 6 - Text 16
Chapter 18 - Text 39

CONFUSION

Chapter 2 - Text 7
Chapter 3 - Text 2
Chapter 18 - Text 61

DEMOTIVATED

Chapter 11 - Text 33
Chapter 18 - Text 48
Chapter 18 - Text 78

LOSING HOPE

Chapter 4 - Text 11
Chapter 9 - Text 22 & 34
Chapter 18 - Text 66 & 78

PRACTISING FORGIVENESS

Chapter 11 - Text 44
Chapter 12 - Text 13
Chapter 12 - Text 14
Chapter 16 - Text 1
Chapter 16 - Text 2
Chapter 16 - Text 3

SEEKING PEACE

Chapter 2 - Text 66
Chapter 2 - Text 71
Chapter 4 - Text 39
Chapter 5 - Text 29
Chapter 8 - Text 28

DEALING WITH ENVY

Chapter 12 - Text 13
Chapter 12 - Text 14
Chapter 16 - Text 19
Chapter 18 - Text 71

LONELINESS

Chapter 6 - Text 30
Chapter 9 - Text 29
Chapter 13 - Text 16
Chapter 13 - Text 18

FEAR

Chapter 4 - Text 10
Chapter 11 - Text 50
Chapter 18 - Text 30

TEMPTATION

Chapter 2 - Text 60
Chapter 2 - Text 61
Chapter 2 - Text 70
Chapter 7 - Text 14

Gup Shup

Rasgulla:	What are these pillars on which budget proposals are made?
Khush:	These are the basic theme around which the budget proposals are drafted. This year Hon'ble Finance Minister presented her budget on Six pillars to make India Atma Nirbhar.
Rasmalai:	Is rural development and agriculture not part of it?
Taniji:	It is always a focus point in every budget.
Anay:	Then why the issues of our Kisan – 'the अन्नदाता' is not getting resolved?
Chulbul:	Please note earlier there were news every day for suicide of farmers and now we see for more than 90 days the farmers in this cold and windy weather sitting for a morcha. Haven't they become stronger now!
Barbie:	The 'अन्नदाता' has to fight for his own 'share of अन्न'. Should it not be resolved?
Champ:	Definitely Yes, and it will be resolved. Let's hope for the best.

Jai Ho – सब का मंगल हो