ANALYSIS OF FINANCE BILL, 2023

VAISH ASSOCIATES ADVOCATES ESTD. 1971

DIRECT TAXATION

VAISH ASSOCIATES ADVOCATES ESTD. 1971

RATES OF INCOME-TAX

Rates of Income-tax

[Clause 2]

- **Re: <u>Assessment year 2023-24</u>**

  No change in tax rates (normal or special), surcharge or education cess, **for any assessee**

- **Re: <u>Assessment year 2024-25</u>**

  Individuals/ HUF/ AOP/ BOI: No change proposed in tax rate, surcharge or education cess under the old regime - ***Change in new regime per section 115BAC***

  Other assessee including companies: No change proposed in tax rate, surcharge or education cess

  Co-operative societies: Changes under the proposed section 115BAE

Section 115BAC - New Regime

[Clause 50] **(w.e.f. 01.04.2024)**

- Section 115BAC was introduced vide Finance Act, 2020 (w.e.f 1.4.2021) to provide an option to individuals/ HUF to pay tax at concessional rates (as per slab) subject to conditions in sub-section (2) thereof. Same slab-rate irrespective of age
- Sub-section (2) provides for denial for various deductions/ disallowances including deduction under Chapter VI-A [except u/s 80CCD(2) and 80JJA], HRA [s.10(13A)], LTC [s.10(5A)], standard deduction for salaries [s.16], s.10AA, interest in respect of self-occupied or vacant house property [s.24(b)], etc
- It was provided that concessional regime shall not apply unless option is exercised in the form and manner as prescribed
- The aforesaid new regime of taxation of individuals/ HUF is proposed to amended as under:

Section 115BAC - New Regime

[Clause 50] **(w.e.f. 01.04.2024)**

- Section 115BAC is proposed to be made **default tax regime**
- Application is proposed to be extended to AOP (other than co-operative society), BOI, and artificial juridical persons
- The slab rates u/s 115BAC are proposed to be amended w.e.f 1.4.2024 [new sub-section (1A) inserted]:

Old regime (Age<60 years)		New Regime (115BAC) (AY 2023-24)		New Regime (115BAC) (AY 2024-25)	
Income (in Rs.)	**Rate**	**Income (in Rs.)**	**Rate**	**Income (in Rs.)**	**Rate**
Upto 2,50,000	Nil	Upto 2,50,000	Nil	**Upto 3,00,000**	**Nil**
From 2,50,001 to 5,00,000	5%	From 2,50,001 to 5,00,000	5%	**From 3,00,001 to 6,00,000**	**5%**
From 5,00,001 to 10,00,000	20%	From 5,00,001 to 7,50,000	10%	**From 6,00,001 to 9,00,000**	**10%**
Above 10,00,000	30%	From 7,50,001 to 10,00,000	15%	**From 9,00,001 to 12,00,000**	**15%**
Note: All deductions/ exemptions available as compared to new regime under section 115BAC wherein various deductions are denied as per sub-section (2) thereof		From 10,00,001 to 12,50,000	20%	**From 12,00,001 to 15,00,000**	**20%**
		From 12,50,001 to 15,00,000	25%	**Above 15,00,001**	**30%**
		Above 15,00,000	30%		
Note: Education cess @ 4% shall apply in all cases. Surcharge as prescribed also additionally applicable.					

Section 115BAC - New Regime

[Clause 50] **(w.e.f. 01.04.2024)**

❖ New regime applicable unless option to opt for old tax regime exercised [sub-section (6)] in prescribed form and manner:

Particulars	Conditions
Person having business income	• To opt on or before the due date under section 139(1) • Option to be exercised for AY 2024-25 and onwards • Option once exercised shall apply to subsequent assessment years • Option to opt back for new lower tax regime available only once
Person not having any business income	• To opt on or before the due date under section 139(1) • Option to choose/ opt for old/ new regime available every year

Section 115BAC - New Regime

[Clause 50] **(w.e.f. 01.04.2024)**

- The existing rate of surcharge for individuals having income exceeding Rs.5 crore has been restricted to maximum of 25% (as against 37% still applicable under old regime)
- Thus, **highest effective slab rate** for individuals falling in the highest slab of income has been **reduced from 42.744% to 39%**
- Following deductions which were earlier not allowed are proposed to be allowed while computing taxable income under section 115BAC:
  - ✓ standard deduction available under clause (ia) of section 16;
  - ✓ deduction in respect of income in the nature of family planning under clause (iia) of section 57; and
  - ✓ education for amount deposited in Agniveer Corpus Fund as per section 80CCH(2)

Rebate under section 87A

[Clause 43] **(w.e.f. 01.04.2024)**

- Under the existing provisions, rebate of hundred percent of tax liability or Rs.12,500 whichever is lower, is provided to all individuals having income not exceeding Rs.5 lacs

- It is proposed to increase the income threshold eligible for rebate from Rs.5 lacs to **Rs.7 lacs** for individuals not opting for taxation in old regime, i.e., individuals taxed under new regime under section 115BAC. Thus, rebate is proposed to be increased to maximum of **Rs.25,000**

Section 115BAC – New Regime

Comments/Observations

- Proposed amendments seem to have been introduced to lure taxpayers to opt for taxation under the new regime

- By increasing the threshold of income effectively not chargeable to tax to Rs.7 lacs, allowing standard deduction under section 16(ia) and lowering the highest surcharge rate, an attempt is made to bring tax liability under new regime at par or lower than the tax liability calculated under old regime after considering deduction under Chapter VI-A under ordinary circumstances

- Proposal to make new regime as the default tax regime buttress the intent to promote simplified taxation for individuals and reduce the disputes arising from claim of deduction(s)

New regime or old regime – which is beneficial?

Example 1

Particulars	Old Regime	New regime
Gross Total Income	7,00,000	7,00,000
Less: Deduction under Chapter VI-A		
- Section 80C	1,50,000	
Total Income	**5,50,000**	**7,00,000**
Tax on above	22,500	25,000
Less: Rebate under section 87A	(12,500)	(25,000)
Tax Liability	**10,000**	**0**

New regime or old regime – which is beneficial?

Example 2: Individual claims HRA of Rs.3,60,000

Particulars	(With HRA)		(Without HRA)	
	Old regime	New Regime	Old Regime	New regime
Income from salary	20,00,000	20,00,000	20,00,000	20,00,000
Less: HRA	3,60,000	--	--	--
Less: LTA	10,000	--	10,000	--
Less: Standard deduction [sec 16(1a)]	50,000	50,000	50,000	50,000
Taxable salary income	15,80,000	19,50,000	19,40,000	19,50,000
Income from savings bank interest	25,000	25,000	25,000	25,000
Taxable Income	16,05,000	19,75,000	19,65,000	19,75,000
Less: Deduction under Chapter VI-A				
- Section 80C	1,50,000	--	1,50,000	--
- Section 80D	50,000	--	50,000	--
-Section 80TTB	10,000	--	10,000	--
Gross Total Income	**13,95,000**	**19,75,000**	**17,55,000**	**19,75,000**
Tax on above (plus cess @ 4%)	2,40,240	3,04,200	3,52,560	3,04,200

New regime or old regime – which is beneficial?

Example 3: Salary income is more than Rs.5 crores

Particulars	(With HRA)		(Without HRA)	
	Old regime	New Regime	Old Regime	New regime
Income from salary	10,00,00,000	10,00,00,000	10,00,00,000	10,00,00,000
Less: HRA	1,50,00,000	--	--	--
Less: Standard deduction [sec 16(1a)]	50,000	50,000	50,000	50,000
Taxable salary income	8,49,50,000	9,99,50,000	9,99,50,000	9,99,50,000
Income from savings bank interest	5,00,000	5,00,000	5,00,000	5,00,000
Taxable Income	8,54,50,000	10,04,50,000	10,04,50,000	10,04,50,000
Less: Deduction under Chapter VI-A				
- Section 80C	1,50,000	--	1,50,000	--
- Section 80D	50,000	--	50,000	--
-Section 80TTB	10,000	--	10,000	--
Gross Total Income	**8,52,40,000**	**10,04,50,000**	**10,02,40,000**	**10,04,50,000**
Tax on above (**surcharge** + cess)	3,61,67,835	3,87,85,500	4,25,79,435	3,87,85,500

PERSONAL TAXATION

Valuation of residential accommodation provided to employees

[Clause 10] **(w.e.f. 01.04.2024)**

- As per existing provisions of section 17(2), perquisite, inter-alia, includes value of rent-free accommodation or value of any concession in rent provided to employees by the employer
- While value of rent-free accommodation is computed as per the method prescribed in Rule 3, the value of any concession in rent is prescribed under Explanation 1 to 4 to section 17(2)
- To make the method for computing the value of the two categories uniform, the existing method(s) of computation as provided in Rule 3/ Explanation 1 to 4 to section 17(2)(ii) are proposed to be amended and a new computation mechanism is to be prescribed in the Rules
- Further, Explanation 1 to amended section 17(2)(ii) is proposed to be amended to provide that the accommodation is deemed to be provided at concessional rate if value of accommodation computed as per prescribed rules exceeds the rent recoverable from ,or payable by the assessee employee

Rationalization of exempt income under life insurance policy

[Clauses 3, 5 and 32] **(w.e.f. 01.04.2024)**

- Under the existing provisions of section 10(10D), sums received under a life insurance policy in respect of any Unit Linked Insurance Policy (ULIP) issued on or after 01.02.2021, where the amount of premium/ aggregate premium payable during the term of such policy(ies) exceeds Rs.2.5 lakhs are not liable for exemption i.e., are taxable
- With the intent deny exemption benefit to HNIs, section 10(10D) is proposed to be amended to provide that any sum received in respect of policy(ies) (other than ULIP) issued on or after 01.04.2023, where the amount of premium/ aggregate premium payable during the term of one or more of such policy(ies) exceeds Rs.5 lakh shall not be exempt
- Amount/ sum received on death of a person continues to be exempt regardless of the premium paid/ payable

Rationalization of exempt income under life insurance policy

[Clauses 3, 5 and 32] **(w.e.f. 01.04.2024)**

- Correspondingly, a new clause (xiii) is proposed to be introduced to section 56(2)(x) for taxation of sum received in excess of the aggregate premium paid during the term of policy(ies) which are not covered under section 10(10D)

- Deduction for premium paid on such policy(ies) would be allowed from the sum received, if not claimed under any other section

TAXATION OF INCOME OF NON-RESIDENTS/ NOT ORDINARILY RESIDENTS

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

❖ Section 5, inter alia, specifies that the 'Total Income' of a resident shall include the following:

- Income received or deemed to be received in India, by or on behalf of the resident
- Income accruing or arising or deemed to be accruing or arising to the resident in India
- Income that accrues or arises to him outside India

❖ In the case of a person not ordinarily resident in India (RNOR) income which accrues or arises **to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India**

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- Section 9, inter alia, specifies that following incomes shall be deemed to accrue or arise in India:
  - all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or
  - through or from any property in India, or
  - through or from any asset or source of income in India, or
  - through the transfer of a capital asset situated in India

- Section 56(2)(x), inter alia, provides that where a person receives Rs. 50,000 or more without consideration, then such amount shall be taxable as income from other sources

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- Section 9(1)(viii) provides that any sum of money referred to in section 56(2)(x) received by **a non-resident** without consideration from a person resident in India, on or after 05.07.2019, shall be income deemed to accrue or arise in India

- Money gifted by a person resident in India to a RNOR at present are exempt from tax in India in the hands of the RNOR recipient considering those provisions as section 5 read with section 9(1)(viii) are applied only to non-resident recipient of gift and are not applicable to RNOR

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- To ensure that gifts made to RNOR are subject to tax in India in the hands of such recipient, Finance Bill, 2023 has now proposed to substitute clause section 9(1)(viii) to provide that income arising outside India, being any sum of money paid by a resident in India:
  - on or after the 05.07.2019 to a non-resident; or
  - on or after 01.04.2023 to a person **not ordinarily resident in India,** within the meaning of clause (6) of section 6;

  shall be deemed to accrue or arise in India

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- The proposed amendment appears to be wide and all pervasive and may include all kinds of transfer made in respect of:
  - money remitted by a person resident in India to a RNOR in accordance with the Liberalized Remittance Scheme
  - Any sum of money gifted by an Indian resident from his foreign bank account while travelling abroad to a RNOR would be caught within the sweep of the proposed amendment

- If the RNOR qualifies as a tax resident of another country by applying Article 4 of the Tax Treaty then whether, gift made by residents to persons outside India does not partake character of "income" for taxation under a Tax Treaty?

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- Whether applicability of the proposed amendment to section 9(1) in a situation where Treaty kicks in or would fail?

- Should the term "income" having not been defined under the Treaty, have the same meaning as under section 2(24), in view of Article 3(2) of the Tax Treaty which provides that any term not defined therein shall have the meaning which it has under the laws of that State?

- In terms of Article 3(2) of the Treaty, the term "income" as defined under section 2(24) may be considered for the purposes of the Treaty

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- In such a case, gift of money paid, or any property situate in India made by residents to persons outside India would be liable to tax in accordance with Articles 21/22 of the Treaty dealing with taxability of other income/ income not expressly dealt in Article 6 to Article 21 of the Treaty

- Certain treaties grant exclusive taxation rights to the residence country of the recipient of gift. For instance, Article 22 of India-UAE Tax Treaty provides that:

> "items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with other Articles (i.e. Article 6 to Article 21) of the Tax Treaty, **shall be taxable only in the state of residence of the income recipient**"

Deemed accrual of gift made to Not Ordinarily Resident (RNOR)

[Clause 4] **(w.e.f. 01.04.2024)**

- Accordingly, since there is no specific Article under the India-UAE Treaty which deals with taxability of gift, therefore in terms of Article 22 of the said Treaty, income arising in the hands of a donee resident in UAE on account of such gift shall be taxable only in UAE and not in India

- Accordingly, even after the proposed amendment in section 9, residents of Korea, Kuwait, Saudi Arabia, UAE and Philippines would not be liable to tax in India in respect of gifts received by them from a person resident in India

TAXATION OF START-UPS

Relief to Startups for Carry Forward and Set Off of Losses

[Clauses 35 and 41] **(w.e.f. 01.04.2023)**

- Section 79 provides that no loss incurred by a company, in which the public are not substantially interested, prior to the previous year in which a change in shareholding of such company took place, is allowed to be carried forward and set off against the income of that year unless, on the last day of the previous year, shares carrying not less than 51% of the voting power were beneficially held by the same persons who beneficially held not less than 51% of the voting power as on the last day of the previous year(s) in which the loss was sustained

Relief to Startups for Carry Forward and Set Off of Losses

[Clauses 35 and 41] **(w.e.f. 01.04.2023)**

- In terms of the proviso to section 79, in case of an eligible startup as referred to in section 80IAC, loss incurred in any year (prior to the previous year) is allowed to carried forward and set off against the income of the previous year if-
  - all the shareholders having voting power on the last day of the previous year in which loss was incurred continue to hold shares on the last day of the previous years in which income is to be set off, and
  - such loss is incurred during the period of 7 years from the year of incorporation

Relief to Startups for Carry Forward and Set Off of Losses

[Clauses 35 and 41] **(w.e.f. 01.04.2023)**

- In order to align the period of 7 years with the period of 10 years contained in section 80IAC (2), which provides an option to the assessee to claim deduction of 100% of the profits and gains derived from such business for any 3 consecutive assessment year out of the block of 10 years beginning from the year in which eligible startup is incorporated, the **time period for relaxation is proposed to be extended to 10 years**

- Sunset clause of section 80-IAC of the Act has been extended by one-year upto April 1, 2024

Relief to Startups for Carry Forward and Set Off of Losses

[Clauses 35 and 41] **(w.e.f. 01.04.2023)**

Comments/Observations

- Startups usually have long gestation period and to support the financial needs of the business the budding entrepreneur has to dilute the shareholding in favour of the investor

- The Government has taken series of steps to promote startups in the country

- The extension of relaxation period is a welcome move intended to catalyze startup culture and build a strong and inclusive ecosystem for innovation and entrepreneurship in India

TAXATION OF NEW MANUFACTURING CO-OPERATIVE SOCIETY

Section 115BAE – Concessional rate @15% to promote new manufacturing co-operative societies

[Clauses 45, 51 & 52] **(w.e.f. 01.04.2024)**

- Benefit of concessional tax rate regime of 15% (plus applicable surcharge and cess) available to companies under section 115BAB is now proposed to be extended to newly set up co-operative societies engaged in the business of manufacturing

- Such co-operative society has to be set-up and registered on or after 1st April, 2023 and commence manufacturing or production activity on or before 31st March, 2024

- The business must not be formed by splitting up, or the reconstruction of a business already in existence and must not use machinery or plant previously used for any purpose, subject to certain exceptions

- The section proposes a negative list to exclude applicability on certain businesses

Section 115BAE – Concessional rate @15% to promote new manufacturing Co-operative societies

[Clauses 45, 51 & 52] **(w.e.f. 01.04.2024)**

- Income has to be computed without claiming deductions, set-off of carried forward losses or depreciation from earlier assessment year

- The assessing officer is empowered to determine/ deem reasonable profits of such co-operative society

- Domestic transfer pricing provisions contained in section 92BA have been proposed by insertion of sub-section (vb) to Section 92BA

- Once lower rate of tax is opted under this section, the co-operative society shall **not be able to subsequently withdraw the option**

Section 115BAE – Concessional rate @15% to promote new manufacturing Co-operative societies

[Clauses 45, 51 & 52] **(w.e.f. 01.04.2024)**

- Surcharge in respect of income chargeable to tax under section 115BAE is prescribed @ 10%

- Alternate minimum tax provisions under section 115JC would not apply to co-operative society opting for taxation under section 115BAE

Section 115BAE – Concessional rate @15% to promote new manufacturing Co-operative societies

[Clauses 45, 51 & 52] **(w.e.f. 01.04.2024)**

❖ The tax rates for different streams of income earned by a domestic manufacturing co-operative society opting for taxation under section 115BAE, shall be as follows:

S.L. No.	Stream of Income	Tax Rate*
1.	Income from manufacturing business	15%
2.	Income from short term capital gains arising from transfer of non-depreciable assets	22%
3.	Income in excess of reasonable profits as determined by the assessing officer (In case transaction between closely related parties, the assessing officer is entitled to determine reasonable profits of a co-operative society which shall be taxed @15%)	30%
4.	Income of new co-operative society which: i) has neither been derived from nor is incidental to manufacturing or production of an article or thing; and ii) in respect of which no specific rate of tax is provided, shall be taxable on gross basis	22%

** The aforesaid tax rates are exclusive of applicable surcharge and cess*

Section 115BAE – Concessional rate @15% to promote new manufacturing Co-operative societies

[Clauses 45, 51 & 52] **(w.e.f. 01.04.2023)**

Comments/Observations

- This provision appears to benefit the taxpayers engaged in low capital incentive manufacturing/ production business in non-urban areas. Probable sectors which would be benefited are qgro, textile, handloom, dairy etc.

- The amendment aims to propel PM's vision of promoting a cooperative-based economic development model, especially for small and marginal farmers, and other marginalized sections.

- The slew of proposed measures would also boost the government's plan to establish new multipurpose cooperative societies, primary fisheries societies and dairy cooperative societies in every panchayat and make this sector more empowered.

ANGEL TAX

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

❖Section 56(2)(viib), inter alia, provides that where-

- a company, not being a company in which the public are substantially interested, receives, in any previous year;
- from any person being a **resident**;
- any consideration for issue of shares that exceeds the face value of such shares;
- the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head ‘Income from other sources'

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

- Section 56(2)(viib) was inserted vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company, in excess of its fair market value.
- The said section provides that FMV shall be the greater of the following:
  - Value determined basis NAV or DCF method determined by a merchant banker;
  - As may be substantiated by the company to the satisfaction of the income tax authorities

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

❖Section 56(2)(viib) is not applicable where consideration for issue of shares is received by:

- Venture capital undertaking from venture capital companies or venture capital funds ("**VCFs**").
- By a company from Category I and Category II Alternative Investment Funds ("**AIFs**") [exemption was extended by the Finance Act of 2019]
- Certain classes of persons notified by the government. For example, the Ministry of Commerce and Industry vid Notification no. G.S.R. 127(E) dated 19.02.2019 read with notified companies that qualify the definition of "start-up" would be exempt from section 56(2)(viib)

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

- At present the said section is not applicable for consideration (share application money/ share premium) received from **non-resident investors**.

- Finance Bill 2023 proposes to extend applicability of section 56(2)(viib) to **non-resident investors** as well.

- In other words, the said section will be applicable on receipt of consideration for issue of shares from any person irrespective of his **residency status**

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

Comments/ Observations

- As on 01.02.2023, there are 89,759 startups registered by DPIIT, while the actual number of startups may be far higher
- Various unregistered start-ups and smaller private companies which want to raise funds from non-resident PEs and VCs will be subjected to the rigors of section 56(2)(viib)
- The PE funds and VCs may prefer funding the startups through debt instruments which will be burdensome for already cash starved start ups

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

Comments/ Observations

- If CCPS has been issued prior to 01.04.2023 and are to be converted to equity shares after 01.04.2025, then whether such transaction would be subject to provisions of section 56(2)(viib) ?
- Pricing guidelines under the FEMA require that foreign investments must be made at or above FMV (as determined by a merchant banker, usually following the DCF method).
  - Whether tax authorities will begin challenging valuations submitted before the RBI from exchange control perspective?

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

Comments/ Observations

- Powers granted to the tax authorities under section 56(viib) to reject the valuation method led to protracted litigation
- The Tribunal in various decisions held that tax authorities are not permitted to challenge the application of the DCF method adopted by the assessee
  - Consequent to the proposed amendment, the aforesaid controversy may arise with respect to foreign investment into unlisted Indian companies
- Section 68 provides that where any sum is found credited in the books of an assessee and the assessee does not offer an explanation about the nature and source thereof then such sum is chargeable to tax as income of the assessee

Taxation of shares issued to non-resident (angel) investors

[Clause 32] **(w.e.f. 01.04.2024)**

Comments/ Observations

- Proviso to section 68 states that if assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share capital or share premium, explanation offered by such assessee shall be deemed to be not satisfactory, unless-
  - the share subscriber being a **resident** offers an explanation about the nature and source of such sum
- Accordingly, non-resident shareholders shall not be required to explain source of source of funds

TAXATION OF BUSINESS TRUST REIT

Plugging of Dual Non-Taxation of Distribution by Business Trusts

[Clauses 3, 32 & 58] **(w.e.f. 01.04.2024)**

- Special tax regime under section 115UA of the IT Act was introduced by Finance (No.2) Act, 2014 qua taxability of income distributed by Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InvIT) (known as "Business Trusts") to the unitholders
- A pass-through status is provided to Business Trusts in respect of interest and dividend income received by the Business Trusts from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT; such income is taxable in the hands of the unitholders unless specifically exempted
- The income distributed by Business Trusts to its unitholders shall be deemed to be of the same nature and in the same proportion in the hands of the unitholders, as it had been received by or accrued to the Business Trusts

Plugging of Dual Non-Taxation of Distribution by Business Trusts

[Clauses 3, 32 & 58] **(w.e.f. 01.04.2024)**

- Business Trusts, apart from distributing sums in the form of interest, dividend and rental income, have also being paying monies in the form of "repayment of debt"
- Interest, dividend and rental incomes have been accorded a pass-through status at the level of Business Trusts and are taxable in the hands of the unitholder
- Distributions shown as repayment of debt did not suffer taxation either in the hands of Business Trusts or in the hands of unitholders resulting in dual non-taxation of the said sum distributed by Business Trusts
- In order to plug the aforesaid unintended consequence, it is proposed to insert clause (xii) in section 56(2) to bring to tax sum received (not in the nature of interest, dividend or rent) by the unitholders (in excess of cost in case of redemption) from Business Trusts, which does not suffer taxation in the hands of Business Trusts. Corresponding amendments are proposed in sections 2(24) and 115UA

Plugging of Dual Non-Taxation of Distribution by Business Trusts

Comments/Observations

- InvIT Regulations mandates for distribution of not less than 90% of the net distributable cash flows to the unitholders after specified intervals
- Presently, distributions were made by Business Trust in the form of either "return of capital" or "repayment of debt" (not being of the nature of dividend, interest or rent); such distributions (in excess of cost in case of redemption) made after April 1, 2023 shall be subject to tax in hands of unitholders as "Income from other sources"
- Whether surplus on redemption of units would, going forward, be subject to tax under the head "Income from other sources", instead of "capital gains" ?
- Once the entire amount of return on capital/ repayment of loan (in case of distribution and not redemption) is taxed under the head "income from other sources", then, whether the impaired value of the unit would be allowable loss to the unitholder ? See example

Plugging of Dual Non-Taxation of Distribution by Business Trusts

Particulars	COA of unit (Given)	Distribution of repayment of debt/ return of capital without redemption		Distribution of repayment of debt/ return of capital with redemption		
	100	**80**	**100**	**80**	**100**	**150**
Present Position in the hands of Unitholders (Taxability)		Nil	Nil	Nil	Nil	50
COA		20	Nil	CL (20)	Nil	CG (50)
Proposed Position in the hands of Unitholders (Taxability)		80	100	Nil	Nil	50 IFOS
COA		100	100	100	100	100
				(without having any intrinsic value)		

Practically, there is impairment in value of unit which would never be allowable as loss to the unitholder

TAXATION OF CHARITABLE TRUSTS AND INSTITUTIONS

Charitable Trusts/ Institutions

- Charitable Trust and Institutions can avail exemption under the following regimes:
  - Fund/ trust/ institution referred under clauses (iv), (v), (vi) and (via) under section 10(23C) [referred as **1st regime**]
  - Trusts registered under section 12AA/12AB [referred as **2nd regime**]
- In terms of compliance requirements, application, investments, registration regime, etc., the two regimes are already at par in view of changes/ amendments made in past years
- In the 2023 Budget, similar and simultaneous amendments are made under both the regimes

Depositing back of corpus & Repayment of borrowings

[Clauses 5 & 7] **(w.e.f. 01.04.2023)**

- Earlier, all expenditure incurred by charitable trust, irrespective of source, was allowed as application of income

- Vide Finance Act, 2021 (w.e.f. AY 2022-23) it was provided that:
  - Application made by utilizing corpus funds shall not be treated as application of income in the year of application; the same shall be treated as application in the year in which the amount is invested **back** in the modes prescribed under section 11(5) maintained specifically for such corpus
  - Application made by utilizing borrowed funds shall not be treated as application of income in the year of application; the same shall be treated as application in the year of repayment of loan

Depositing back of corpus & Repayment of borrowings

[Clauses 5 & 7] **(w.e.f. 01.04.2023)**

- Further, the existing provisions, inter alia, place following fetters on allowing application of income ('conditions precedent'):
  - Promotion of international welfare outside India is approved by CBDT [*section 11(1)(c)*];
  - Corpus donation to other charitable trust is not allowed as application [*Explanation 2*]
  - Application is subject to provisions of section 40(a)(ia) [30% disallowance if TDS not deducted or paid], and section 40A(3)/(3A) [disallowance of cash expenses > Rs.10,000 in a single day to a since person] [*Explanation 3*]
  - Deficit of any preceding year not allowed as application [*Explanation 5*]
  - Application only on payment basis [*Explanation section below 11(7)*]
  - Amount is not applied for benefit of specified persons [*section 13(1)(c)*]

Depositing back of corpus & Repayment of borrowings

[Clauses 5 & 7] **(w.e.f. 01.04.2023)**

- It is now proposed to provide that:
  - Recoupment/ investment back in corpus or repayment of loan would be allowed as application only **if 'conditions precent' (*supra*) are complied** with at time of incurrence of expenditure/ application of amount
  - Application is allowed only if investing back in corpus and repayment of loan is made within **5 years** from the year in which application was made
- It is also proposed that investing back in corpus or repayment of loan is **not allowed if application**/ expenditure from corpus or loan was **made upto 31.03.2021**

  The said amendment is aimed to avoid double application inasmuch a trust could have claimed expenditure as application in absence of restriction prior to AY 2022-23

Depositing back of corpus & Repayment of borrowings

[Clauses 5 & 7] **(w.e.f. 01.04.2023)**

Comments/Observations

- Deterrent for charitable trusts to have loans for period more than 5 years
- The amendments relating to not allowing repayment of loans, taken prior to 31.03.2021, may lead to anomaly inasmuch it may lead to double non-deduction/ non- application as explained hereunder:
  - Even prior to assessment year 2021-22, the ITR forms allowed capital expenditure incurred from own funds only as application of income; capital expenditure incurred from borrowed funds were allowed only on repayment of loans
  - In such a case, where capital expenditure is incurred prior to 31.03.2021 from borrowed funds and has not been claimed as application as per mandate in ITR form, the repayment of same loan going forward would also not be allowed as application as per amended provision- it would result in expenditure not being allowed as application even once
  - Circular No.100 dated 24.01.2.1973 allowed repayment of loan as application

Donations to other trusts

[Clauses 5 & 7] **(w.e.f. 01.04.2024)**

- Presently, entire voluntary contributions/ donations by charitable trust to other charitable trust out of current year's income is allowed as application of income
- As regards recipient charitable trust, exemption is available subject to utilization of 85% of income/ donation
- The Memorandum states that instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer
- It is, thus, proposed that voluntary donations to the extent of only 85% shall be allowed as application in the hands of donor trust

Donations to other trusts

[Clauses 5 & 7] **(w.e.f. 01.04.2024)**

Comments/Observations

- The proposed amendment results in denial of application (to the extent of 15%) even qua genuine donations made to other charitable trusts
- The aforesaid may also, in certain cases, result in anomaly inasmuch as though sum/ money shall actually flow out of coffers of the giver trust, but application shall be allowed to the extent of 85% thereof
- It may lead to a situation where trust may not have actual funds for future application

  E.g. Trust A, out of current income of Rs.100, donates Rs.100 to Trust B, which applies entire amount for charitable purpose. In hands of Trust A, only Rs.85 shall be allowed as application, whereas the Trust shall not have actual residual funds of Rs.15

Roll back of registration/ exemption - only for 2nd regime

[Clause 8] **(w.e.f. 01.04.2023)**

- For trusts falling under **2nd regime**, main provisions of section 12A(2) provides that where an application for registration is made, exemption under section 11/12 shall be available from assessment year immediately following the financial year in which application is made
- **First proviso** provides that– (i) in case of renewal of already registered trust on introduction of section 12AB, exemption shall be available from AY for which earlier registration was granted; and (ii) in case of renewal/ finalization of provisional registration, from year from which it was provisionally registered
- **Second proviso** provides that that where registration has been granted under section 12AB, then exemption shall be available for preceding AYs wherein assessment is pending

Roll back of registration/ exemption - only for 2nd regime

[Clause 8] **(w.e.f. 01.04.2023)**

- **Third proviso** provides that no action under section 147 shall be taken by the AO in case of trust for any AY preceding the aforesaid AY only for non-registration of trust for said AY
- **Fourth proviso** provides that second and third proviso shall not apply where trust was refused registration, or registration granted was cancelled at any time
- Further, with introduction of amended regime for registration vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ['TOLA'], a new trust is required to apply for provisional registration prior to commencement of activities and thus certain provisions relating to roll-back of exemption are stated to be not needed
- Thus, it is proposed to delete/ omit second, third and fourth proviso to section 12A(2)

Roll back of registration/ exemption - only for 2nd regime

[Clause 8] **(w.e.f. 01.04.2023)**

Comments/Observations

- The rolling back of exemption had judicial approval, inter alia, in following cases:
  - Sree Sree Ramkrishna Samity vs DCIT: [2016] 156 ITD 646 (Kol Trib.)
  - SNDP Yogam vs ADIT: [2016] 161 ITD 1 (Cochin Trib.)
  - St. Jude's Convent School vs ACIT: [2017] 164 ITD 594 (Asr Trib.)
- The roll-back provisions would have still been relevant in certain cases. For illustration, where the application of registration is delayed for bonafide reasons; application is re-filed on account of technical/ venial default, etc.

Rationalising the provisions of provisional & regular registration

[Clauses 5, 8, 9 & 40] **(w.e.f. 01.10.2023)**

TOLA introduced new registration regime as under:

- **Provisional Registration -** New trust needs to apply for provisional registration at least 1 month prior to the start of financial year for which exemption is sought. Provisional registration valid for 3 years
- **Regular Registration -** Provisionally approved trust again needs to apply for the regular registration at least 6 months prior to expiry of provisional registration or within 6 months of the commencement of activities, whichever is earlier. Such approval is valid for a period of 5 years; the trusts will again apply for renewal at least 6 months prior to expiry of regular registration

Issues/ difficulties faced as per existing provisions:

- New trusts formed during the previous year were not able to claim exemption since they were required to apply 1 month before the previous year
- In case of trust where activities have already commenced are required to apply for 2 registrations (provisional/ regular) simultaneously

Rationalising the provisions of provisional & regular registration

[Clauses 5, 8, 9 & 40] **(w.e.f. 01.10.2023)**

To remove the difficulties for new trusts, following amendments are proposed:

- Where trust has **not commenced activities:**
  - It shall apply for Provisional Registration 1 month before financial year for which exemption is sought;
  - Provisional Registration is granted automatically **for 3 years**
  - In short - **no change** for such trust

Rationalising the provisions of provisional & regular registration

[Clause 5, 8, 9 & 40] **(w.e.f. 01.10.2023)**

- Where trust has **commenced activities:**
  - It shall apply **directly for Regular Registration;**
  - Procedure as laid down shall be followed- examination of objects and activities, compliance to other laws etc. would be examined by the PCIT;
  - Regular registration is granted **for 5 years**

- Another amendment is proposed in the definition of **specified violation**, to provide that registration can be cancelled/ withdrawn where application made for grant of registration is incomplete or it contains false/ incorrect information (w.e.f 01.04.2023)

Section 115TD (Exit Tax)

[Clause 57] **(w.e.f. 01.04.2023)**

- Section 115TD levies tax at MMR on 'accreted income' as on date of conversion, inter alia, where the charitable trust converts into any form not eligible for registration (popularly known as exit tax)
- It is now proposed to levy such **exit tax** on trust which **fails to apply for renewal of provisional/ regular registration** within the time prescribed under relevant clauses
- Date of conversion in such case is proposed to kept as the last date for making application for renewal of registration

Section 115TD (Exit Tax)

[Clause 57] **(w.e.f. 01.04.2023)**

Comments/ Observations

- The provisions appear to be **draconian/ harsh** and may impact even the following cases:
  - Whether trust registered under old regime inadvertently forgets to apply for re-registration under section 12AB regime within time allowed but applies belatedly for renewal or fresh registration
  - Since, there are no express provision for condonation of delay in applying for renewal of registration, even a day's delay, that too, on account of genuine/ bona fide reason(s) may also be adversely taxed
  - Since date of conversion is kept as the last date for making application for renewal of registration, the same would result in a situation where accredited income is taxed despite registration being valid for at least 6 more months
  - The amendment is retrospective inasmuch as the same is made applicable for AY 2023-24 (FY 2022-23)

Time limit for filing Forms and Return

[Clauses 5,7 & 8] **(w.e.f. 01.04.2023)**

- The following forms are required to be filed at least 2 months prior to the due date specified under sub-section (1) of section 139 of the Act:
  - Form 10 : In relation to accumulation beyond 15%;
  - Form 9A : Deferment in terms of Explanation to section 11(1) [2nd regime]
- Exemption under 1st and 2nd regime to be available only if return of income furnished within the time prescribed under sub-section (1) or (4) of section 139 [*time for newly updated return not allowed*]

Comments/Observations

- Trust would be required to **finalize** accounts/ audit and even **computation of income** at least 2 months prior to filing return

Exemption to Development Authorities etc.

[Clause 5 & 7] **(w.e.f. 01.04.2024)**

- Section 10(46) provides exemption to any specified income arising to a body/ authority/ board/ trust/ commission which:
  - is established by Central/ State/ Provisional Act or by Central/ State Govt. ('CG/SG') with the object of regulating/ administering any activity for the benefit of the general public;
  - is not engaged in any **commercial activity**;
  - is notified by the CG in the official gazette for the purpose of this clause
- Recently, in the case of **ACIT(E) vs Ahmedabad Urban Development Authority: [2022] 449 ITR 389 (SC)** the Court held that the term '**commercial**' as defined under section 10(46)(b) has the same meaning as 'trade, commerce, business' under section 2(15) and, therefore, sum charged by notified body etc. will require similar consideration, i.e., whether amounts charged are on cost/nominal mark-up basis or significantly higher to fall within the mischief of commercial activity

Exemption to Development Authorities etc.

- A new clause 46A is proposed to be inserted in section 10 to exempt income of such bodies/ commission established by the CG/ SG with following purposes:
  - Dealing with and satisfying the need for housing accommodation;
  - Planning, development or improvement of cities, towns and villages;
  - Regulating, or regulating and developing, any activity for the benefit of the general public; or
  - Regulating any matter, for the benefit of the general public, arising out of the object for which it has been created
- The organization would be required to be notified by the CG in the official gazette

TAXATION OF BUSINESS PROFITS

Promoting Timely Payments to Micro and Small Enterprises

[Clause 13] **(w.e.f. 01.04.2024)**

- Section 43B provides for deduction of expenditure in the year of actual payments, irrespective of the fact that the liability to pay the same pertains to any other year
- In terms of the proviso to the said section, deduction is allowed on accrual basis if the specified sum is paid on or before the due date of furnishing of the return of income
- Section 15 of Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") provides a statutory timeline of 15 days for payment of dues to MSMEs, which may be extended contractually for up to 45 days

Promoting Timely Payments to Micro and Small Enterprises

[Clause 13] **(w.e.f. 01.04.2024)**

- In order to promote timely payments to MSMEs, section 43B is proposed to be amended to provide that sum paid/payable to Micro and Small Enterprises shall be allowable deduction on actual payment basis if paid beyond the time limit specified in section 15 of the MSMED Act
- Deduction of the payment to Micro and Small Enterprises would not be allowed on accrual basis (unless paid within the time limit of 15/ 45 days, as the case may be), although paid on or before the due date of furnishing of the return of income
- In other words, outstanding payment to Micro and Small Enterprises at the year end would be allowable deduction on accrual basis provided the payment is made within the time mandated under section 15 of MEMED Act (i.e., 15/45 days)

Promoting Timely Payments to Micro and Small Enterprises

[Clause 13] **(w.e.f. 01.04.2024)**

Comments/Observations

- With the aim of providing relief to the Micro and Small Enterprises, the Finance Bill has proposed to amend section 43B to ensure timely payments are received by Micro and Small Enterprises. This is expected to end the delayed payment problems being faced by many Micro and Small Enterprises

- **The proposed amendment would apply qua the payments falling due on or after 1st April, 2024 and not to unpaid amounts carried forward from previous years, if any**

Facilitating Certain Strategic Disinvestment

[Clauses 33 & 34] **(w.e.f. 01.04.2023)**

Amendment in section 72A

- Section 72A deems carry forward and set-off of accumulated loss and unabsorbed depreciation of the amalgamating company in the hands of the amalgamated company for the previous year in which the amalgamation was effected
- In terms of clause (d) of section 72A, benefit of carry forward and set-off of accumulated loss and unabsorbed depreciation of the amalgamating company is provided on amalgamation of erstwhile public sector company with one or more company(ies), if amalgamation is carried out within 5 years of strategic disinvestment
- The term "strategic disinvestment" is defined in clause (iii) of Explanation to section 72A(1) to 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**"

Facilitating Certain Strategic Disinvestment

[Clauses 33 & 34] **(w.e.f. 01.04.2023)**

Amendment in section 72A

- In order to provide impetus to strategic disinvestments, it is proposed to amend the definition of "strategic disinvestment" to further provide by way of proviso that:
  - the condition of reduction of Government or public sector company's shareholding below 51% shall apply only in case the shareholding is above 51% prior to sale of shareholding, and
  - transfer of control may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them

Facilitating Certain Strategic Disinvestment

[Clauses 33 & 34] **(w.e.f. 01.04.2023)**

Amendment in section 72AA

- Clause (i) of section 72AA, inter alia, permits carry forward of accumulated losses and unabsorbed depreciation in the case of amalgamation of more or more banking company with any other banking institution under a scheme sanctioned by Central Government under Banking Regulation Act, 1949
- It is proposed to add sub-clause (b) to clause (i) for enabling carry forward of accumulated losses and unabsorbed depreciation in the case of amalgamation of –

  "one or more banking company with any other banking institution or a company ***subsequent to a strategic disinvestment****, if such amalgamation takes place within 5 years of strategic disinvestment."*

Amortization of preliminary expenses – ease in claiming deduction

[Clause 12] **(w.e.f. 01.04.2024)**

- Section 35D provides for amortization of certain preliminary expenses
- As per the existing provisions, the work in connection with the preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services is required to be carried out either **by the assessee or by a concern approved by the Board**
- In order to promote ease of compliance, the Finance Bill has proposed to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board

Amortization of preliminary expenses – ease in claiming deduction

[Clause 12] **(w.e.f. 01.04.2024)**

❖As per the proposed amendment, the assessee shall be required to furnish a statement containing the particulars of this expenditure within the prescribed period to the prescribed income-tax authority in the prescribed form and manner

❖Government would lay down rules for the above purpose

Requirement of audit of accounts rationalized

[Clause 15] **(w.e.f. 01.04.2024)**

❖Presently, audit requirement under section 44AB does not apply to businesses who have opted for presumptive basis of taxation in accordance with section 44AD(1)

❖The Finance Bill, 2023 has proposed to substitute the first proviso to section 44AB to provide that the audit requirement shall not apply to businesses **as well professionals** opting for presumptive taxation under section 44AD(1) or section 44ADA(1)

Requirement of audit of accounts rationalized

[Clause 15] **(w.e.f. 01.04.2024)**

Comments/Observations

- Sub-section (4) of section 44ADA provides that the requirement of audit applies in cases where profits and gains from profession are lower than gains computed on presumptive basis
- Presently there is no express provision that exempts the audit requirement for professionals who have opted for presumptive taxation under section 44ADA
- Proposed amendment in section 44AB clarifies that the requirement of audit is not required in such cases

Increasing threshold limits for presumptive taxation schemes

[Clauses 16 &17] **(w.e.f. 01.04.2024)**

❖The Finance Bill proposes to amend the provisions of sections 44AD and 44ADA to increase the threshold limits for presumptive taxation, as under:

Section	Eligibility	Existing threshold	Proposed threshold*
44AD	Business	2 crores	3 crores
44ADA	Profession	50 lakhs	75 lakhs

*subject to a condition that cash receipts does not exceed 5% of the total turnover/ gross receipts

Comments/Observations

❖The proposed amendment is a welcome change which would increase the coverage of presumptive taxation, thus, resulting in more taxpayers opting for this scheme

❖It will facilitate ease of doing business and promote cash-less economy

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

[Clauses 18 and 19] **(w.e.f. 01.04.2024)**

❖Section 44BB provides for presumptive scheme in the case of a non-resident assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils

❖Under the said section, 10% of the aggregate of the amounts specified in the section are deemed to be profits chargeable under the head "Profits and gains of business or profession"

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

[Clauses 18 and 19] **(w.e.f. 01.04.2024)**

❖Similarly, section 44BBB provides for presumptive scheme in the case of a non-resident foreign company who is engaged in the **business of civil construction** or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government

❖Under the said section, 10% of the amount paid or payable to the said assessee on account of such civil construction, erection, testing or commissioning is deemed to be profits chargeable under the head "Profits and gains of business or profession"

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

[Clauses 18 and 19] **(w.e.f. 01.04.2024)**

❖Sections 44BB and 44BBB provides that an assessee may claim lower profits and gains if he maintains books of accounts and gets the same audited under section 44AB

❖It is seen that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income i.e.

- in a year when **they have loss**, they claim actual loss as per the books of account and carry it forward;
- in a year when they have **higher profits**, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

[Clauses 18 and 19] **(w.e.f. 01.04.2024)**

- The memorandum to the Finance Bill, 2023 states that there is no justification for setting-off of losses computed as per books of account with income computed on presumptive basis

- To avoid such misuse, Finance Bill, 2023 has proposed to insert a sub-section (4) and sub-section (3) to section 44BB and section 44BBB respectively;

  "(4) Notwithstanding anything contained in sub-section (2) of section 32 and sub-section (1) of section 72, where an assessee declares profits and gains of business for any previous year in accordance with ***the provisions of subsection (1), no set off of unabsorbed depreciation and brought forward loss*** *shall be allowed to the assessee for such previous year"*

Inventory valuation by Department nominated Cost Accountant

[Clauses 68, 72 & 122] **(w.e.f. 01.04.2023)**

- Under the existing provisions of section 142(2A), the assessing officer may, with the prior approval of PCCIT/ CCIT/ PCIT/ CIT, direct the assessee to get his accounts audited by an accountant, and furnish report as per Rules

- It is now proposed to amend sub-section (2A) of section 142 to additionally enable the assessing officer to direct the assessee to get the 'inventory' valued by a cost accountant, as nominated by the PCCIT/ CCIT/ PCIT/ CIT

- The aforesaid amendment is stated to be a measure to ensure adherence with the Income Disclosure Standards (ICDS) notified by the Government and the provisions of Companies Act, 2013

Inventory valuation by Department nominated Cost Accountant

[Clauses 68, 72 & 122] **(w.e.f. 01.04.2023)**

- The following consequential amendments are also proposed:–
  - to amend section 153, so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.
  - to amend section 295, so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain

- The proposed amendments will take effect from 01.04.2023 and will accordingly apply to assessment year 2023-2024 and subsequent assessment years

Inventory valuation by Department nominated Cost Accountant

[Clauses 68, 72 & 122] **(w.e.f. 01.04.2023)**

Comments/Observations

- The proposed amendment seeks to overcome the permanent deferral of taxes through under-valuation of inventory

- In terms of the proposed amendment, the assessing officer is now empowered to direct special audit for the limited purpose of valuation of inventory even without reference for audit of accounts

- The pre-requisite conditions of section 142(2A) viz., nature and complexity, volume, multiplicity of transactions etc., qua the inventory valuation will have to be satisfied to direct cost audit of accounts

Section 10AA eligible if return filed before the due date

[Clauses 6 & 74] **(w.e.f. 01.04.2024)**

- The existing provisions of section 10AA does not provide for the condition to file return before due date provided under section 139(1) for claiming deduction as is provided for similar exemption provisions [i.e., section 10A, 10B etc.]

- Clause (v) of section 143(1) however provides that deduction under section 10AA shall be eligible only if the return is filed before the due date

- It is now proposed to align the aforesaid provisions by inserting a proviso to sub-section (1) of section 10AA to provide that no deduction under the said section shall be allowed to an assessee who does not furnish a return of income on or before the due date specified under sub-section (1) of section 139

Time limit stipulated for SEZ units to bring forex in India for claiming 10AA deduction

[Clauses 6 & 74] **(w.e.f. 01.04.2024)**

- No time-limit is prescribed in the Act for timely remittance of the export proceeds from sale of goods or provision of services by SEZ Units for claiming deduction under the said section as is provided under other similar export related deductions [i.e., section 10A, 10B etc.]

- A new sub-section (4A) is proposed to be inserted in section 10AA to provide that deduction under the said section shall be available for such unit, if the proceeds from sale of goods or provision of services is received in, or brought into India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf

Time limit stipulated for SEZ units to bring forex in India for claiming 10AA deduction

[Clauses 6 & 74] **(w.e.f. 01.04.2024)**

- The proposed amendment further provides that export proceeds from sale of goods or provision of services shall be deemed to have been received in India where such proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India

- It is also proposed to make consequential amendment in sub-section (11A) of section 155, to allow the assessing officer to amend the assessment order later where the export earning is realized in India after the permitted period

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

- As per clause (iv) of section 28, the value of *any benefit or perquisite, whether convertible into money or not,* arising from business or exercise of profession is taxable under the head 'profits and gains of business or profession' in the hands of the recipient of such benefit or perquisite

- The **Hon'ble Supreme Court** had in the case of **CIT vs Mafatlal Gangabhai & Co (P) Ltd: 219 ITR 644 (SC),** rendered in context of provisions of sections 40(A)(v) and section 40A(5)(a)(ii), held that by using the words *'whether convertible into money or not',* the legislative intent was to cover only non-monetary benefits/ perquisites

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

- The Courts have, in the following decisions, held that for attracting the provisions of section 28(iv), the benefits/perquisites must be non-monetary in nature and that the said provision does not apply to benefits/perquisites received in cash or money:
  - CIT vs Mahindra & Mahindra Ltd: 404 ITR 1 (SC)
  - CIT vs Jindal Equipments Leasing & Consultancy Services Ltd: 325 ITR 87 (Del)
  - CIT vs Tosha International Ltd: 331 ITR 440 (Del)

- Basis the aforesaid legal precedents, monetary benefit arising pursuant to capital account transactions, particularly waiver of loan and interest thereon (not claimed as business deduction), are considered as not liable to tax under the extant provisions

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

- Memorandum, however, states that the intention of the Legislature behind introduction of section 28(iv) was to include benefits or perquisites, both in cash and kind [Circular No. 20D dated 07.07.1964]. However, the Courts have interpreted that monetary benefit is not covered within the ambit of said section

- Memorandum further states that in order to align the provisions with the intention of Legislature, it is now clarified that clause (iv) of section 28 also applies if benefit or perquisite provided is in cash or partly in cash and partly in kind

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

Comments/ Observations

- Proposed amendment, seeking to dilute the legal position settled by the **Supreme Court** in the case of ***Mahindra & Mahindra Ltd (supra),*** shall have serious consequences

- Pertinently, in the proposed amendment, there is no exclusion to Companies undergoing debt restructuring (like OTS with banks/ financial institutions), reorganizations and insolvency resolution under IBC

- Accordingly, issue that arises is whether waiver of loan under one time settlement scheme with banks, financial institutions and other creditors, being fundamentally a capital receipt, would now become taxable under section 28(iv)?

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

Comments/Observations

- Take example of following balance sheet of a Corporate Debtor:

Liabilities	Amount (in Rs. crores)	Assets	Amount (in Rs. crores)
Share Capital	100	…..	…..
Loan	1,000		
Interest payable	200		
Total	**1,300**	**Total**	**1,300**

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

Comments/Observations

- Vide Question No. 1 of Circular No. 18 of 2022 dated 13.09.2022, it was provided that benefit arising from settlement/ waiver of loan by specified financial institutions would not be subjected to provisions of section 194R. It was, however, clarified that such exemption from tax withholding would not impact the taxability of income in the hands of the borrower. Considering the proposed amendment whereby cash benefits would specifically get included within the ambit of section 28(iv), it appears that the amount of loan waived would get taxed in the hands of the borrower

Providing clarity on benefits and perquisites in cash

[Clause 11] **(w.e.f. 01.04.2024)**

- Whether proposed amendment expressly made applicable from 1st April, 2024, can be applied to earlier assessment years?

  - An enactment is to be construed as prospective, unless the contrary appears from the express language or by necessary implication **[N. Govindaraju vs ITO : 377 ITR 243 (Kar)]**

  - Amendment overruling a decision of the Supreme Court cannot have retrospective effect

Providing clarity on benefits and perquisites in cash - Section 194R

[Clause 86] **(w.e.f. 01.04.2023)**

- Section 194R was inserted to apply TDS on benefits or perquisites, ***whether convertible into money or not, arising from carrying out of a business or exercising of a profession***

- First proviso of section 194R expanded the scope of the section to **benefit or perquisite, wholly in kind or partly in cash and partly in kind**

- **Memorandum to Finance Bill, 2022** categorically stated that section 194R provides for deduction of tax in respect of income falling within the ambit of section 28(iv) - considering that provisions of section 28(iv) were held to be not applicable to monetary transactions, it was interpreted that pure monetary transactions would be outside the ambit of section 194R as well

Providing clarity on benefits and perquisites in cash - Section 194R

[Clause 86] **(w.e.f. 01.04.2023)**

- Vide **question 2 of Circular No. 12 of 2022**, relying on first proviso to section 194R(1), CBDT clarified that tax under section 194R is required to be deducted on all benefits or perquisites, whether in cash or in kind

- The above clarification is now proposed to inserted by way of inserting an Explanation in the section

Providing clarity on benefits and perquisites in cash - Section 194R

[Clause 86] **(w.e.f. 01.04.2023)**

Comments/ Observations

- Proposed amendment seeks to widen the definition of benefit/perquisite to include pure monetary transactions under section 194R in line with the amendment made in section 28(iv)
- Section 194R was inserted w.e.f., 01.07.2022 and Explanation 2 has been made applicable from 01.04.2023 – Whether the amendment is applicable to AY 2023-24?
- Can the deductor be held liable to deduct tax at source during the period when the explanation was not on the statute [**Engineering Analysis Centre of Excellence (P) Ltd vs CIT: 432 ITR 471(SC)**]

Providing clarity on benefits and perquisites in cash section 194R

[Clause 86] **(w.e.f. 01.04.2023)**

- The language of section 194R(1) is plain, unambiguous and pari materia to section 28(iv), and was interpreted to exclude monetary benefits under that provision. The first proviso sought to expand the scope of the main provision of section 194R(1) to make it applicable to benefits which were partly in cash and partly in kind

- When provisions of section 194R are clear and unambiguous - Can Explanation expand the scope of main provision? [**Katira Construction Ltd vs UOI: 352 ITR 513 (Guj)] and N. Govindaraju vs ITO : 377 ITR 243 (Kar)]**

CAPITAL GAINS

Converting Gold to Electronic Gold Receipt and vice versa

[Clauses 3,21,23] **(w.e.f. 01.04.2024)**

- SEBI, in its meeting held on September 28, 2021, approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021
- In order to promote the concept of EGR, the following amendment are proposed in the Finance Bill :
  - Section 47 is proposed to be amended to provide that that conversion of gold into EGR or vice-versa shall not be treated as “transfer” for the purposes of capital gains
  - Section 2(42A) to provide that on conversion of the EGR into gold and vice versa, the period of holding would be reckoned from the date of acquisition of the originally converted asset
  - Section 49 to provide that the cost of acquisition of EGR/ Gold (as the case may be) shall be deemed to be the cost of the converted asset

Limiting roll over benefit under section 54/ 54F

[Clauses 25 & 30] **(w.e.f. 01.04.2024)**

- Under the existing provisions, deduction is allowed (without any capping) on the amount of long-term capital gains re-invested in a residential house property as under:
  - **Section 54** allows deduction on gains arising from transfer of residential house if such gain is re-invested in a residential house;
  - **Section 54F** allows deduction on gains arising from transfer of any long-term capital asset (except residential house), if the net consideration is re-invested in a residential house
- Presently there is no restriction on the amount of exemption that can be claimed from long term capital gains by re-investing in a residential house
- The proposed amendment now puts a cap of INR 10 crore (ten crores) on the exemption that can be claimed under section 54 and section 54F on reinvestment made in residential house. The amendment also provides that if the cost of the new asset purchased is more than INR 10 crore, the cost of such asset shall be deemed to be INR 10 crore only

Limiting roll over benefit under section 54/ 54F

[Clauses 25 & 30] **(w.e.f. 01.04.2024)**

- Consequential amendments are also proposed in sub-section (2) of section 54 and sub-section (4) of section 54F to restrict the amount of deposit that can be made in the Capital Gains Account Scheme to INR 10 crores

- The amendment has been proposed to dislodge huge claim of exemption being made by high-net-worth individuals (HNIs) who reinvest proceeds on sale of their investments for purchasing expensive residential houses, which is stated to be contrary to the intent for which the section was introduced

- The amendment proposed is prospective in nature and would apply in relation to assessment year 2024-25 and subsequent assessment years

Limiting roll over benefit under section 54/ 54F

[Clauses 25 & 30] **(w.e.f. 01.04.2024)**

Comments/ Observations

- The amendment only proposes to restrict the quantum of exemption that can be claimed under section 54/54F of the Act and would have no impact on the actual cost of acquisition of the asset
- The proposed move to restrict the quantum of exemption to INR 10 crores will have an adverse impact on luxury home sales and also HNIs who avail large capital gains exemption on account of high value transactions
- The limit of INR 10 crores seems to be unrealistic considering the exponential rise in real estate prices in the recent past
- Whether amounts kept in Capital Gains Account Scheme as on 31.03.2023 and reinvested in assessment year 2024-25 would be impacted by the proposed amendment?

Taxation of capital gains in case of Market Linked Debentures

[Clause 24] **(w.e.f. 01.04.2024)**

- As per the memorandum, hybrid securities having features of debt securities and exchange traded derivatives are being issued, listed and traded on stock exchange and are being subject to tax as long-term capital gains @ 10% without indexation under section 112. These securities are primarily in the nature of derivatives linked with performance of market and give variable interest

- In order to tax income arising from market linked debentures in the same manner as derivative trades (which are subject to tax @ 30%), section 50AA is proposed to be inserted to tax the transfer, redemption or maturity of Market Linked Debentures as short-term capital gains

Taxation of capital gains in case of Market Linked Debentures

[Clause 24] **(w.e.f. 01.04.2024)**

- Market linked Debentures is defined as a security by whatever name called, which has an **underlying principal component in the form of a debt security** and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a Market Linked Debenture by SEBI

Defining cost of acquisition in case of certain assets

[Clause 31] **(w.e.f. 01.04.2024)**

- Under the existing provisions of section 55, the cost of acquisition and improvement in respect of self-generated 'intangible assets' or 'any other right' has not been specifically defined

- The cost of acquisition in respect of self-generated intangible assets/rights for the purpose of computing capital gains has been subject to widespread litigation, considering that the present provisions do not clearly define such cost of acquisition as 'Nil'

- In terms of the legal position as it stands today, a definite cost of acquisition is required for taxability of capital gains, in the absence of which the computation mechanism would fail, leading to no taxability of capital gains [Refer: **CIT vs B.C. Srinivasa Setty: 128 ITR 294 (SC)**]

Defining cost of acquisition in case of certain assets

[Clause 31] **(w.e.f. 01.04.2024)**

- The Finance Bill, 2023 now proposes to amend provisions of sub-clause (1) of clause (b) of sub-section (1) and clause (a) of sub-section (2) of section 55 to specifically define the term 'cost of acquisition' and 'cost of improvement' in respect of such self-generated capital asset being 'intangible asset' or 'any other right' as "Nil"

Comments/ Observations

- 'Intangible assets' and 'any other rights', being undefined terms, could be construed very widely and many transactions which are currently not subject to tax, nor intended to be taxed may potentially be covered
- Leasehold rights, reversionary rights, mortgage, life interest, intellectual property rights, and rights in technology, right to specific performance or easement rights may now stand covered by the proposed amendment

BUSINESS REORGANIZATION

Provisions related to business reorganization

[Clause 77] **(w.e.f. 01.04.2023)**

- Section 170A of the Act was inserted vide Finance Act, 2022 to give effect to the order of the Tribunal or Court in respect of business reorganization having impact on the income tax return filed by the successor in the preceding year(s)

- Notwithstanding the provisions of section 139 which provides for the due date for filing the income tax return, the new section permits filing of the modified return by the successor company in case of business reorganization upon receipt of the order of High Court or Tribunal or an adjudicating authority, within a period of six months from the date of such order in such form and manner as may be prescribed

Provisions related to business reorganization

[Clause 77] **(w.e.f. 01.04.2023)**

- Rule 12AD has been notified prescribing the form and manner of furnishing such modified return by companies by the Board vide Notification No. 110/2022 dated 19.09.2022

- Presently, there is no provision on the procedure to be followed by the assessing officer after the modified return is furnished by the successor entity

Provisions related to business reorganization

[Clause 77] **(w.e.f. 01.04.2023)**

- In order to enable modification of the return of income already filed by the predecessor before receipt of order from the concerned Authority/Court/Tribunal, extant provisions of section 170A are proposed to be substituted to provide that in respect of any return of income furnished for any assessment year by the predecessor prior to the order, the successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in the form and manner, as may be prescribed, in accordance with and limited to the said order

Provisions related to business reorganization

[Clause 77] **(w.e.f. 01.04.2023)**

- It is proposed to further provide that the assessing officer shall pass an order assessing/reassessing/modifying the total income of the relevant assessment year in accordance with the order of the business reorganization and taking into account the modified return so furnished

- For the purposes of such assessment or reassessment, all other provisions shall apply and the tax shall be chargeable at the rate applicable to such assessment year

TAX DEDUCTION/ COLLECTION AT SOURCE

Increase in threshold limit for co-operatives to withdraw cash without TDS

[Clause 85] **(w.e.f. 01.04.2023)**

❖Under section 194N, any banking company or a co-operative society engaged in the business of banking or a post office is required to deduct tax at source at the rate of 2% at the time of payment in excess of Rs.1 crore

❖In case of non-filers, following TDS rates are applicable:

- 2% on any sum exceeding Rs. 20 lakh but not exceeding Rs. 1 crore;
- 5% on sum exceeding Rs. 1 crore

Increase in threshold limit for co-operatives to withdraw cash without TDS

[Clause 85] **(w.e.f. 01.04.2023)**

- It has now been proposed to **increase the threshold limit for recipients being co-operative societies to Rs. 3 crore rupees** instead of existing limit of Rs. 1 crore rupees

- For co-operative societies who are non-filers, the deduction shall be made at the rate of 2% on sums exceeding Rs. 20 lakh but not exceeding Rs. 3 crores and 5% on sums exceeding Rs. 3 crores

Increase in threshold limit for co-operatives to withdraw cash without TDS

[Clause 85] **(w.e.f. 01.04.2023)**

Comments/ Observations

- This move has been proposed to promote co-operative societies and is in line with other amendments proposed under section 269SS and 269T

- These measures have arrived amid the government promoting a cooperative-based economic development model, especially for small and marginal farmers, and other marginalized sections

Increase in threshold limit for co-operatives to withdraw cash without TDS

[Clause 85] **(w.e.f. 01.04.2023)**

Comments/Observations

- Co-operative societies in India are mainly engaged in agriculture, dairies, sugar mills, spinning mills and cash is a fundamental mode of operation for these cooperatives. The enhanced threshold for cash withdrawal would provide a much-needed impetus to the co-operative sector

Extending the scope for deduction of tax at source to lower or nil rate

[Clause 88] **(w.e.f. 01.04.2023)**

- Section 194LBA which, inter-alia, provides that a business trust shall deduct and deposit tax @ 5% on distribution of income to non-resident unit holders, is presently not covered within the ambit of section 197

- Representations were received that in some cases deduction of tax may not be required on account of certain exemptions. However, since certificate for lower deduction under section 194LBA cannot be obtained under section 197, benefit of exemption is not available at the time of tax deduction

- It is now proposed to amend section 197(1) to make section 194LBA eligible for obtaining certificate for deduction at lower or nil rate

TDS exemption on payment of interest on listed debentures to a resident withdrawn

[Clause 81] **(w.e.f. 01.04.2023)**

- Section 193 provides for TDS on payment of any income to a resident by way of interest on securities
- No TDS is required to be deducted on interest on securities issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India [refer clause (ix) of proviso to section 193]
- The Finance Bill states that there is underreporting of income, on account of non-deduction of tax at source. Accordingly, it is proposed to omit clause (ix) to withdraw the above TDS exemption

Comments/Observations

- This would increase the additional tax compliances for listed companies issuing such securities

Online gaming – Taxability of income

[Clauses 53 & 54] **(w.e.f. 01.04.2024)**

❖The existing provisions of section 115BB provides for taxation at the rate of 30% on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever

❖It is proposed to amend section 115BB to exclude online gaming and **insert a new section 115BBJ** to specifically provide for taxation of winnings from online games at the same rate of 30%. '**Online game**' has been defined to mean a game offered on the internet accessible through computers, mobiles, etc.

Online gaming – Taxability of income

[Clauses 53 & 54] **(w.e.f. 01.04.2024)**

Comments/Observations

- The Finance Bill creates a distinction between taxation of online and offline games
- Analysis of 'game of skill' vs 'game of chance' - irrelevant for online games?

Offline gaming – Rationalization of TDS provisions

[Clauses 82 & 84] **(w.e.f. 01.04.2023)**

- Sections 194B and 194BB currently provide for deduction of tax at the rate of 30% on payment of any amount exceeding Rs. 10,000

- Presently, there is no clarity as to how threshold limit of Rs. 10,000 is to be computed

- The Finance Bill 2023 proposes to clarify that threshold limit of Rs. 10,000 is to be computed on an aggregate basis in a financial year

Offline gaming – Rationalization of TDS provisions

[Clauses 82 & 84] **(w.e.f. 01.04.2023)**

❖It is also proposed to amend section 194B to provide that tax on winnings from online gaming would not be deducted under this section w.e.f. 1st July 2023

Comments/Observations

❖The amendments in section 194B and 194BB is to tap revenue leakage on account of splitting a winning into multiple transactions, each below Rs. 10,000

Online gaming – TDS provisions

[Clause 83] **(w.e.f. 01.07.2023)**

- It is also **proposed to insert a new section 194BA** to deal with deduction of tax at source on winnings from online games

- Under the new provisions, withholding is proposed to take place on 'net winnings' in the user account

- In case there is withdrawal from user account during the financial year, tax shall be deducted at the time of such withdrawal on net winnings. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year

- No minimum threshold has been prescribed under this section

Online gaming – TDS provisions

[Clause 83] **(w.e.f. 01.07.2023)**

- In case winnings are partly in kind and cash and the cash component is short of the tax required to be deducted, person responsible for paying TDS shall ensure that tax has been paid in respect of such winnings

- Computation of net winnings will be prescribed in due course

- As per strict reading of the section, the proposed amendment is applicable to all users, including non-resident users. Even non-resident online gaming intermediary is responsible for deducting TDS

- TDS is to be deducted as per rates in force

Online gaming – TDS provisions

[Clause 83] **(w.e.f. 01.07.2023)**

Comments/ Observations

- No threshold for deduction of tax would increase compliance burden

- Would net winnings mean winnings net of entry fees/ platform fee or net of losses incurred in other games?

- If winnings net of losses is not considered, the amount in the user account may fall short of the tax required to be deducted

Online gaming – TDS provisions

[Clause 83] **(w.e.f. 01.07.2023)**

Comments/ Observations

- Winnings pertaining to the period April to June 2023 otherwise not liable for deduction of taxes, would become liable for deduction of tax at source on withdrawal after 01 July 2023

- Users will now need to provide PAN and other details across the gaming platforms to claim credit for withholding tax

- Section 194BA, being non obstante clause overrides all other provisions of the Act - whether treaty benefit would be allowed to non-resident users?

- An issue would arise w.r.t. applicability of withholding tax obligation on non-resident online gaming intermediary, particularly where gamer is a non-resident user – tantamount to extra territorial operation of law. Taxability may also arise for non-resident users playing online games on platform of resident online gaming intermediary

Increasing rate of TCS of certain remittances

[Clause 90] **(w.e.f. 01.07.2023)**

- Section 206C provides for TCS on profits and gains from the business of trading in alcohol, liquor, forest produce, scrap etc.
- Sub-section (1G) was inserted in section 206C vide Finance Act, 2020 to provide for TCS on foreign remittance made through the Liberalized Remittance Scheme and on sale of overseas tour package. The obligation of the said TCS is on the Authorized Dealer Bank (AD Bank) through which the remittances are made
- It is now proposed to increase the rates of TCS on overseas travel, foreign remittances made (other than for the purpose of education or medical expenditure) from 5% to 20% on the amounts remitted during the financial year without any threshold

Increasing rate of TCS of certain remittances

[Clause 90] **(w.e.f. 01.07.2023)**

❖ The current and proposed TCS rates are tabulated as under:

S. No.	Nature of foreign remittance	Current rate	Proposed rate
(1)	For the purpose of education, if remittance is a loan obtained from any financial institution as defined in section 80E.	0.5% of the amount/aggregate of the amounts remitted during the FY in excess of Rs. 7 lakh.	No change
(2)	For the purpose of education, other than (1) or for the purpose of medical treatment.	5% of the amount/aggregate of the amounts in excess of Rs. 7 lakh.	No change
(3)	Overseas tour package	5% without any threshold limit.	**20%** without any threshold limit
(4)	Any other case	5% of the amount/aggregate of the amounts in excess of Rs. 7 lakh.	**20% <u>without any threshold limit</u>**

Increasing rate of TCS of certain remittances

[Clause 90] **(w.e.f. 01.07.2023)**

Comments/Observations

- Higher TCS on overseas travel, foreign remittances made (other than for the purpose of education or medical expenditure) from 5% to 20% would result in higher cash outflow at the time of remittance
- Intended to keep a check on higher foreign remittance vis-à-vis low income reported in the ITR

Clarification for consideration received through cheques in case of Joint Development Agreements (JDA)

[Clause 20] **(w.e.f. 01.04.2024)**

❖Under the existing provisions of the Act, in case of an assessee, **being an individual or Hindu undivided family**, who enters into a specified **registered agreement** for development of a project, the capital gains shall be chargeable to income-tax in the previous year **in which the certificate of completion for the whole or part of the project is issued by the competent authority [refer section 45(5A)]**

❖In case of JDA, the consideration for the land-owner may be in form of lump sum consideration, percentage of sales revenue or percentage of the newly constructed project depending upon the terms mutually agreed upon by the parties

Clarification for consideration received through cheques in case of Joint Development Agreements (JDA)

[Clause 20] **(w.e.f. 01.04.2024)**

❖For the purpose of computation of capital gains under section 48, the stamp duty value of the share of the owner, being land or building or both, in the project, on the date of issue of completion certificate, "as increased by the **consideration received in cash**", if any, is deemed to be the full value of the consideration

❖Correspondingly, the existing provisions of section 194-IC provides for deduction of tax at source by developers upon payment of **consideration in cash or by issue of a cheque or draft or by any other mode (other than in kind)** to landowners at the rate of 10%

Clarification for consideration received through cheques in case of Joint Development Agreements (JDA)

[Clause 20] **(w.e.f. 01.04.2024)**

❖It has been now proposed to amend **section 45(5A) to align with section 194-IC** of the Act and clarify that **payments received in a mode other than cash, i.e., cheque or electronic payment modes would be included in the full value consideration** for the purpose of computing capital gains chargeable to tax under this section

Comments/Observations

❖This is a clarificatory amendment and has no substantive consequence

❖Interpretation of expression 'receipt in cash' in section 45(5A) to exclude amounts received through banking channels would have, in fact, resulted in absurdity

Clarification for consideration received through cheques in case of joint development agreements

[Clause 20] **(w.e.f. 01.04.2024)**

❖The Finance Bill has, however, not addressed several open issues under section 45(5A), including, inter alia, the following:

- Provisions should also be made applicable to persons other than individual and HUFs
- Whether time limit for claiming benefit of exemption from long-term capital gain under section 54 and 54F is to be reckoned from date of transfer (which is the date of entering into the JDA) or from the date of issuance of completion certificate?
- Whether benefit of indexation on cost/improvement would be available till the year in which completion certificate has been received or only till the year in which the JDA has been entered into?

Amendments in penalty and prosecution provisions

[Clause 113 and 119] **(w.e.f. 01.04.2023/ 01.07.2023)**

- Penalty and prosecution provisions contained in sections 271C and 276B have been amended to include TDS defaults under newly introduced sections 194R and 194S **(w.e.f. 01.04.2023)** and the proposed section 194BA **(w.e.f. 01.07.2023)** within its ambit

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

- Section 196A provides for TDS on specified incomes @20%.

- Unlike section 195, section 196A does not provide for deduction of tax at 'rates in force', which includes tax rates provided in DTAAs; thereby requiring deduction of tax at higher rate of 20%.

- Supreme Court in the case of **PILCOM vs CIT: [2020] 425 ITR 312 (SC)** held that payer cannot apply rates prescribed under the relevant DTAAs for TDS on payments to non-residents where the Act contains provisions providing for specific TDS rates on such payments.

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

- It is, accordingly, proposed to insert a proviso in section 196A(1) to provide that in case of a payee to whom DTAA applies and such payee has furnished the tax residency certificate referred to in section 90(4)/ section 90A(4), then, tax shall be deducted @ 20% or rate of income-tax provided in DTAA for such income, whichever is lower

Comments/Observations

- In terms of the extant provisions, non-residents and foreign company suffer TDS at higher rate of 20% and thereafter, claim eligibility of lower rates under the respective DTAAs and refund of additional tax deducted in India by filing return of income

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

- Repatriation of tax refund involves opening a bank account in India that resulted in unnecessary compliance for such non-residents/ foreign companies

- The aforesaid amendment is a welcome move, removing the higher tax burden imposed on non-residents and foreign company, which ultimately would have been refundable to them, thereby also leaving more money in their hands to invest in India

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

❖Section 196A provides that any person responsible for paying to a non-resident any income in respect of **units of a Mutual Fund specified under section 10(23D)** or a company referred to in section 2 of Unit Trust of India Act, 2002 shall deduct income-tax @ 20%

❖Presently, benefit of the lower tax rate in the **Tax Treaty** is not available at the time of deduction of tax at source under the aforesaid section

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

- In order to provide the relief to the non-resident taxpayers, Finance Bill, 2023 proposes to insert a proviso to section 196A(1) which seeks to provide that:
  - tax would be deducted at the rate which is lower of the rate of 20% and the rate provided under the relevant Tax Treaty provided such payee has furnished the tax residency certificate referred to in section 90(4)

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

❖The Supreme Court in the case of **PILCOM vs CIT: [2020] 271 Taxman 200 (SC),** has held that:

- payer cannot apply rates prescribed under the relevant tax treaty for TDS on payments to non-residents where the Act contains provisions providing for specific TDS rates on such payments
- In the said decision, it was held that for payments covered by section 115BBA, tax was required to be deducted @ 10% as provided in section 194E and the benefit of tax treaty could not be availed at the stage of TDS since unlike section 195 of the Act, section 194E provides for TDS at a flat rate of 10% and not as per 'rates in force', which expression would include DTAA rates within its ambit

Tax treaty relief at the time of TDS under section 196A of the Act

[Clause 87] **(w.e.f. 01.04.2023)**

❖Consequent to the aforesaid amendment, the ratio decidendi of the aforesaid case shall not apply to deduction of tax at source to be made under section 196A

TDS on payment of accumulated balance to an employee under section 192A

[Clause 80] **(w.e.f. 01.04.2023)**

- Section 192A provides for TDS on payment of accumulated balance due to an employee under the Employee's Provident Fund Scheme, 1952 ('EPFS')

- Rule 8 of the Fourth Schedule exempts accumulated balance withdrawn by an employee on fulfilment of certain conditions prescribed therein

- Where Rule 8 of the Fourth Schedule becomes not applicable, the deductor is statutorily required to deduct TDS @10%, where such payment or the aggregate amount of such payment exceeds Rs.50,000

- The second proviso to section 192A requires the recipient to furnish his PAN to the deductor, failing which tax shall be deducted at the maximum marginal rate, which may extend upto 42.74%, causing grave prejudice to many low-paid employees who do not have PAN

TDS on payment of accumulated balance to an employee under section 192A

[Clause 80] **(w.e.f. 01.04.2023)**

❖In order to overcome this problem, it is now proposed to omit the second proviso to section 192A, so that withholding tax in cases where the taxpayer fails to furnish PAN is at par with section 206AA, i.e., taxed at 20% instead of maximum marginal rate

Comments/Observations

❖This is a welcome amendment that would relieve the low paid employees from unwarranted tax burden

TDS credit for incomes offered to tax in previous years

[Clauses 74 & 93] **(w.e.f. 01.10.2023)**

- The existing provisions of section 155(14) provide for grant of TDS and TCS credits, denied earlier on the ground that TDS/ TCS certificates were not filed with the tax return, upon furnishing of such certificates by assessees within 2 years from the end of the assessment year in which such income is assessable. Such credits were granted provided the corresponding income was reported in the tax return for that assessment year

- In many cases, TDS credit mismatches arise owing to timing differences or spread over of receipts in more than one year or different accounting methods followed by the deductor and deductee. Such issues could not be resolved through recourse to section 155(14) as tax was necessarily not deducted in the same year in which income was offered to tax by the assessee

- It may also not be possible to revise the return of past year in which the corresponding income was included since time to revise the return of income for that year may have lapsed. This resulted in difficulty to the taxpayers in claiming credit of TDS

TDS credit for incomes offered to tax in previous years

[Clauses 74 & 93] **(w.e.f. 01.10.2023)**

- In order to remove this difficulty, it is now proposed to insert sub-section (20) to section 155 to provide that in case where the income has been included by the assessee in the tax return for **any year**, however the tax on such income has been deducted at source in a subsequent financial year, **the assessing officer, on application by the assessee shall amend the previous order/ intimation and grant such additional TDS credit**

- The application by the assessee is required to be made within 2 years from the end of the financial year in which such tax was deducted at source

- The limitation period of 4 years has been prescribed for passing of an order under section 155(20) shall be reckoned from the end of the financial year in which such tax has been deducted

- Amendment has also been proposed in section 244A to provide that interest on refund arising as a result of order passed under section 155(20) shall be granted for the period starting from the date of application by the assessee

TDS credit for incomes offered to tax in previous years

[Clauses 74 & 93] **(w.e.f. 01.10.2023)**

Comments/Observations

- Interest under section 244A is compensatory in nature and therefore, should have, at least, been provided from the date of remittance of tax by the deductor and not from the date of application by the deductee for such credit

- In a converse scenario, i.e., where deductor follows mercantile basis of accounting and the deductee follows cash basis of accounting, the tax credits can be carried forward and claimed by the deductee in future years corresponding to the income being offered in accordance with section 199 read with Rule 37BA. The income tax return form expressly provides for such carry forward of TDS credit

- The applicability of the amendment has not been extended to TCS credit

Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns

[Clause 89 & 91] **(w.e.f. 01.04.2023)**

- Vide Finance Act, 2021, sections 206AB and 206CCA were inserted in the Act as special provisions providing for higher rate for TDS / TCS (i.e., twice the rate under the Act or 5%, whichever is higher) for the non-filers ('**specified persons**')

- Under existing provisions of sections 206AB and 206CCA, "specified person" is defined to mean a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted or collected:

  - for which the time limit for furnishing the return of income under section 139(1) has expired; and
  - the aggregate TDS/TCS in his/her is Rs.50,000 or more

Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns

[Clause 89 & 91] **(w.e.f. 01.04.2023)**

- Presently in terms of proviso to sections 206AB and 206CCA only a non-resident is excluded from the definition of specified person, if such non-resident does not have a permanent establishment in India

- It is now proposed to expand the exclusions to also exclude a person who is not required to furnish the return of income for that assessment year and who is notified by the Central Government in the Official Gazette in this behalf

Comments/Observations

- Big relief to small assessees who are not liable to furnish return from higher TDS/TCS – reduction in compliance burden and higher cash flow

APPEALS AND SEARCH & SEIZURE

Introduction of authority of Joint Commissioner (Appeals)

[Clauses 3, 60 to 62, 64, 65, 73, 75 to 79, 98, 99, 100 to 104, 107, 109 to 112, 115, 117, 120 to 122] (w.e.f. 01.04.2023)

- The Finance Bill proposes to create a new authority/forum for adjudication of appeals, Joint Commissioner (Appeals) in order to reduce the current burden on the first appellate authority, Commissioner (Appeals) and ensure speedy hearing and disposal of appeals involving small amount of disputed demand.

- It is proposed to allow transfer of appeals pending before Commissioner (Appeals) to the new forum i.e., Joint Commissioner (Appeals) and vice-versa. In the instance of transfer of appeal, the assessee shall be given an opportunity of being 'reheard'.

- It is proposed that the Joint Commissioner (Appeals) shall have all the powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.

Introduction of authority of Joint Commissioner (Appeals)

[Clauses 3, 60 to 62, 64, 65, 73, 75 to 79, 98, 99, 100 to 104, 107, 109 to 112, 115, 117, 120 to 122] (w.e.f. 01.04.2023)

- The Salient features/powers of the new appellate forum, Joint Commissioner (Appeals) is culled out as under:
  - Income tax authorities at Joint Commissioner/ Additional Commissioner level to adjudicate appeals involving small amount of disputed demand.
  - Appeal in the proposed forum can be filed against an assessment order, reassessment order, TDS assessment order, TDS processing order, TCS assessment order, TCS processing order, penalty(s) order and the order passed for rectification. Hence, almost all the category of cases are proposed to be covered.
  - Appeal cannot be filed against an order which is passed by or with the approval of an income-tax authority above the rank of Deputy Commissioner.
  - The proposed forum is contemplated to be conducted in a faceless manner and for this purpose a separate scheme is proposed to be framed

Introduction of authority of Joint Commissioner (Appeals)

[Clauses 3, 60 to 62, 64, 65, 73, 75 to 79, 98, 99, 100 to 104, 107, 109 to 112, 115, 117, 120 to 122] **(w.e.f. 01.04.2023)**

Comments/Observations

- Effectively, only orders passed by 'Income Tax Officer' or 'Assistant/ Deputy Commissioner of Income Tax' can be challenged if no approval accorded by higher authority
- Proposed amendment may not apply to assessments completed by NFAC, since the rank/ level of income-tax authority in the Assessment Unit is not known
- No provision for providing opportunity of hearing before 'transfer' of case from CIT(A) to new forum and vice-versa
- The Joint Commissioner (Appeals) too will have the power to 'confirm', 'reduce', 'enhance' or 'annul' the assessment as currently available with Commissioner (Appeals)
- The quantum of 'small disputed demand' has not been defined

Provisions relating to procedure in appeals before the First Appellate authority - Section 250

[Clause 100] **(w.r.e.f. 01.04.2022)**

In terms of the existing provisions, the scheme for appeals under the Act, the first appellate authority for an assessee aggrieved by any order of the AO is CIT(A). CIT(A) has the powers to confirm, reduce, enhance or annul/ cancel an order of assessment or an order of penalty, after providing an opportunity of being heard to the assessee and the AO.

Proposed amendments

- The amendments are proposed in sub-sections (1), (3) to (6) and (7) of section 250 **to introduce Joint Commissioner (Appeals)** for:
  a. issuing notice to the appellant and the AO for fixing a day and place of hearing of appeal against the AO order;
  b. Granting adjournment;

Provisions relating to procedure in appeals before the First Appellate authority - Section 250

[Clause 100] **(w.r.e.f 01.04.2022)**

c. Conducting enquiries and directing the AO to make further enquiry and reporting the result;
d. Allow additional grounds of appeal not specified in the appeal memo;
e. Passing the speaking order;
f. Communicating the order to the assessee and to PCCIT or CCIT or PCIT or CIT

Comments/Observations

❖ Section 246 provided for an appeal functions of Dy.CIT (A) [before 01.06.2000] in respect of the specified orders passed by the AO.

Provisions relating to procedure in appeals before the First Appellate authority - Section 250

[Clause 100] **(w.r.e.f 01.04.2022)**

- With the insertion of the provisions of section 246A w.e.f. 1.10.1998 there was an overlapping of powers between Dy. CIT(A) and CIT(A) under sections 246 [appeal functions of Dy. CIT(A)] and 246A. In order to remove such an overlap in the provisions of section 246 and 246A, the legislature provided for the sunset period being 01.06.2000. Accordingly, after 01.06.2000 all pending appeals were transferred to CIT(A)

- The proposed amendment is intended **to clear a bottleneck at the CIT(A) level to handle certain class of cases involving small amount of disputed demand**

Provisions relating to procedure in appeals before the First Appellate authority - Section 250

[Clause 100] **(w.r.e.f 01.04.2022)**

- **The Joint Commissioner (Appeals) is proposed to exercise all the powers, responsibilities and accountability of CIT(A) with respect to the procedure for disposal of appeals**

- Pertinently the vital condition in filing the appeal before the JCIT/Addl. CIT is that an appeal shall not lie against an order which "is passed by" or "with the approval" of an income-tax authority *above* the rank of DCIT

Section 253 – Rationalization of appeals to the Tribunal

[Clause 102] **(w.e.f. 01.04.2023)**

- Penalty may be levied under sections 271AAB, 271AAC and 271AAD by the assessing officer as well as by the Commissioner (Appeals)

- However, in the absence of reference to such penalty orders passed by the Commissioner (Appeals) in sub-section (1) of Section 253, at present the assessee cannot appeal against such orders passed by the Commissioner (Appeals)

- It is proposed to amend section 253 to provide that appeal against penalty orders passed by Commissioner (Appeals) under sections 271AAB, 271AAC and 271AAD may be made to the Appellate Tribunal

Section 253 – Rationalization of appeals to the Tribunal

[Clause 102] **(w.e.f. 01.04.2023)**

- An order of revision under section 263 can also be passed by Principal Chief Commissioner and Chief Commissioner

- However, in the absence of reference to such orders passed by the Principal Chief Commissioner and Chief Commissioner in sub-section (1) of Section 253, appeal cannot be filed by an aggrieved assessee against such orders

Section 253 – Rationalization of appeals to the Tribunal

[Clause 102] **(w.e.f. 01.04.2023)**

❖It is proposed to amend section 253 to provide that appeal against revision orders passed by Principal Chief Commissioner or Chief Commissioner under section 263 may be made to the Appellate Tribunal

Filing cross objections before the Tribunal

❖Sub-section (4) of section 253 allows the respondent in an appeal, against an order of Commissioner (Appeals), to file a memorandum of cross-objections against any part of the order of the Commissioner (Appeals) before the Appellate Tribunal

Section 253 – Rationalization of appeals to the Tribunal

[Clause 102] **(w.e.f. 01.04.2023)**

- However, appeal can be filed before the Tribunal against the orders of authorities other than the Commissioner (Appeals) such as the order passed by the Dispute Resolution Panel

- It is proposed to amend sub-section (4) of section 253 to enable filing of memorandum of cross-objections ("CO") in all classes of cases in which appeal can be made to the Appellate Tribunal

- Accordingly, the assessing officer would now be able to file memorandum of cross objections in cases where the assessee files an appeal to ITAT against the final order passed by the assessing officer in consequence of directions issued by the Dispute Resolution Panel ('DRP')

Section 253 – Rationalization of appeals to the Tribunal

[Clause 102] **(w.e.f. 01.04.2023)**

- In order to minimize litigation, sub-section (2A) of Section 253, which allowed the Revenue to file an appeal against the order of the DRP was omitted by Finance Act, 2016

- Even though the order of DRP is not appealable by the Revenue under sub-section (1) of section 253, the Revenue may challenge the relief allowed by the DRP deleting any item of addition/ disallowance, by filing cross objections in cases where the assessee has filed appeal before the Tribunal on other issues

Assistance to authorized officer during search and seizure

[Clause 63] **(w.r.e.f. 01.04.2023)**

- Provisions of section 132 relating to search and seizure *inter-alia* empowers income-tax authority(ies) to requisition services of other officers (*police officers or any other officers of Central Govt.*) for assistance, examination of books of account or other documents, procedure for custody of evidence, valuation etc. The section also provides the timelines to be followed by the income-tax authority during and post search proceedings

- The requisition of services for search and seizure operation is currently restricted only to Central Government employees

Assistance to authorized officer during search and seizure

[Clause 63] **(w.r.e.f. 01.04.2023)**

- The Finance Bill now proposes to amend sub-section (2) of section 132 to provide that during the course of search the authorized officer may requisition the services of **any other person or entity**, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure prescribed by the Board, to assist him for the purposes of the search.

Assistance to authorized officer during search and seizure

[Clause 63] **(w.r.e.f. 01.04.2023)**

- It is also proposed to amend sub-section (9D) of section 132 to empower the authorized officer to make reference to **any other person or entity** for the purpose of valuation of property/assets

- The amendment has been proposed in light of the increased use of technology and digitization in every aspect including management and maintenance of accounts, digitization of data, cloud storage, assets being held in digital form etc., owing to which the procedure for search & seizure has become complex, requiring the use of digital/data forensic professionals, valuers, archive experts, advanced technologies for decoding data etc., for complete and proper analysis of accounts and valuation of assets held in encrypted/digital forms

Assistance to authorized officer during search and seizure

[Clause 63] **(w.r.e.f. 01.04.2023)**

- The amendment proposed is retrospective in nature and would apply in relation to assessment year 2023-24 and subsequent assessment years

- The timelines for completing assessment or reassessment in search cases is linked to the execution of the last of the authorizations during such procedure, in order to establish the day of conclusion of search proceedings, and what constitutes as last authorization is provided in section 153B

- Consequent to the changes in Finance Act, 2021, the assessment or reassessment in consequence to search is now performed under section 147 and provisions of sections 153A and 153B are no longer applicable

Assistance to authorized officer during search and seizure

[Clause 63] **(w.r.e.f. 01.04.2023)**

- As the provisions of section 153B are no longer applicable, it is proposed to provide the meaning of execution of last authorization under section 132 itself as under:
  - in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued; or
  - in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorized officer

- The amendment proposed is retrospective in nature and would apply in relation to assessment year 2022-23 and subsequent assessment years

COMPLIANCES & TAX ADMINISTRATION – ASSESSMENT, REASSESSMENT & REFUNDS

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

- Section 153(1) has been amended to increase the time-period for completion of assessment for AYs 2022-23 and onwards
- The period has been increased from 9 months to 12 months from the end of the relevant assessment year
- Limitation has similarly been enhanced in sub-section (1A), which provides for period of limitation for completion of assessment in case of updated return of income filed under section 139(8A), period of limitation increased from 9 months to 12 months from the end of the financial year in which updated return is filed
- The intent behind the amendment is to provide more time to the Assessing Officers to complete assessment proceedings, as grievances have been raised by taxpayers that sufficient time was not provided during assessment proceedings to provide submissions / evidences; this will also make the assessment procedure reasonable, in lines with the principles of natural justice

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

❖Sub-section (3A) has been inserted in section 153 to provide that where an assessment or re-assessment is pending on the date of initiation of search, then in the following cases, the period of assessment / re-assessment shall stand **<u>further extended by 12 months</u>**:

- In case of an assessee on whom search is carried out;
- In case of an assessee to whom any money, bullion, jewellery, or other valuable article seized or requisitioned belongs;
- In case of an assessee, to whom any books of accounts or documents seized or any information contained therein belongs;

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

- That under the erstwhile search assessment regime (section 153A, etc.), any assessment / re-assessment pending on the date of search, abated, and scrutiny proceedings were later initiated under section 153A for concluding assessments; however, the new re-assessment regime (section 148, 148A, etc.) introduced vide Finance Act, 2021, does not provide for any abatement or revival of any assessment/reassessment proceeding pending on the date of search/requisition under section 132/132A

- Accordingly, an extended period of 12 months is provided to assessing officer to conduct proper scrutiny based on the seized material / investigation

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

❖The amended time-limits are tabulated hereunder:

Particulars	Old time-limit	Amended Time-limit
Section 153(1) (AY 2022-23 onwards)	**9 months** from the end of the relevant AY	**12 months** from the end of the relevant AY
Section 153(3A) [Search cases where regular assessment/re-assessment is pending on the date of search]	After 01.04.2021, no separate time-limit provided for search cases where assessment was pending on the date of search [No concept of abatement of assessment]	As per the proposed sub-section, the existing time-limits provided for assessment / re-assessment shall be **further extended by a period of 12 months in case of search cases**.

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

- Section 153 has been amended to streamline sub-sections (3), (5) and (6) with the amendments brought in section 263 vide Finance Act, 2021

- Finance Act, 2021 provided powers to Principal Chief Commissioner and Chief Commissioner to pass orders under section 263

- However, section 153 was not aligned to provide for period of limitation with respect to orders passed by Principal Chief Commissioner and Chief Commissioner under section 263

- Accordingly, sub-sections (3), (5) and (6) of section 153, which deals with limitation for passing of consequential order, are proposed to be aligned with the provisions of section 263

Return/ Assessment/ Reassessment/ Revision

[Clause 72] **(w.e.f. 01.04.2023)**

- Explanation 1 to section 153 has been amended to exclude from the period of limitation, the time taken by the valuer to value inventory of an assessee as per the amended provisions of section 142(2A)
- Further, the reference to sub-section (1A) has been inserted in sub-sections (3), (5), and (6), and in Explanation 1, to streamline the provisions and avoid any conflict

Comments/Observations

- Extension of period of limitation for completion of assessments under section 143/144 is in view of the fact that Courts have been setting aside / quashing assessment orders on the grounds of violation of principles of natural justice / non-adherence to the procedure provided under section 144B.
- The assessment / re-assessment completed by taking into account seized material/information, if annulled in appeal or by Courts, whether the assessment / re-assessment pending on date of search shall stand be revived?

Return/ Assessment/ Reassessment/ Revision

[Clauses 66, 96, 97, 100 & 116]

(Sections 134A, 250 and 270 w.e.f. 01.04.2022, Sections 245MA and 245R w.e.f. 01.04.2023)

Faceless Schemes and E-Proceedings:

- In last few years, the Central Government has introduced various schemes to eliminate face-to-face interaction between AOs and the taxpayers, such as:
  - Section 135A – E-Verification Scheme 2021
  - Section 245MA – E-Dispute Resolution Scheme, 2022
  - Section 245R – E-Advance Rulings Scheme, 2022
  - Section 250 – Faceless Appeal Scheme, 2021
  - Section 275 – Faceless Penalty Scheme, 2022

- Under these sections, Central Government was only empowered to issue schemes and no power was granted to Central Government to amend or modify the scheme issued therein

Return/ Assessment/ Reassessment/ Revision

[Clauses 66, 96, 97, 100 & 116]

- Central Government was finding it difficult to modify the existing schemes and remove any inconsistency / redundancy in such faceless / e-proceeding schemes
- Now, sections 135A, 245MA, 245R, 250, and 274, are proposed to be amended to empower the Central Government to amend or modify any scheme / regulation issued under these sections for implementation of faceless / e-proceeding regime

Comments/Observations

- This amendment has been brought in light of the issues highlighted by industry/taxpayers in the faceless appeal / penalty schemes notified by the Central Government
- Central Government may amend / modify these schemes to provide for a stipulated time-limit to dispose-off the appeals and simplify the cumbersome procedure laid out therein

Provisions relating to reassessments

[Clauses 69 to 71]

- The legislature vide Finance Act, 2021 amended the procedure for reassessment of income escaping assessment and made consequent amendments in sections 148, 148A,149 and 151

- The Finance Act, 2021 also provided that in cases where search has been initiated under section 132 or material has been requisitioned under section 132A on or after 01.04.2021, assessment/reassessment shall be made under section 147

- Further, the aforesaid provisions were further rationalised by various amendments brought in by the Finance Act, 2022

Provisions relating to reassessments

[Clauses 69 to 71]

Proposed amendment No.1 **(w.e.f. 01.04.2023)**

- ITR in response to notice under section 148 to be furnished within 3 months from the end of the month in which notice is issued; or

- Within the extended time allowed by the AO on a request made in this behalf by the assessee

- ITR furnished after the period allowed shall not be deemed to be return under section 139. Consequently, the requirement of issuance of notice under 143(2) would not be mandatory

Provisions relating to reassessments

[Clauses 69 to 71]

Comments/Observations

- The amendment is proposed to streamline the reassessment proceedings and facilitate conclusion thereof
- The proposed amendment now mandates that the ITR in response to the notice under section 148 be filed within the specified time, failing which there shall be no requirement of issuance of notice under section 143(2).
- It may now not be available to argue that in absence of issuance of jurisdictional notice under section 143(2), the entire proceedings are nullity. [Refer: **ACIT vs Hotel Blue Moon: 321 ITR 362 (SC); CIT vs Laxman Das Khandelwal: 417 ITR 325 (SC)**]

Provisions relating to reassessments

[Clauses 69 to 71]

Proposed amendment No.2 **(w.e.f. 01.04.2023)**

- Third proviso to section 149(1) is proposed to be inserted to provide that, in search / requisition cases [**section 132/ 132A**] where search is initiated or a search for which last of authorizations is executed or a requisition is made, **after 15th March of any FY** and the period **for issue of notice under section 148 expires on 31st March** of such FY, **then a period of 15 days shall be excluded for the purpose of computing the period of limitation** and the **notice issued under section 148 in such case shall be deemed to have been issued on the 31st March of such FY**

Provisions relating to reassessments

[Clauses 69 to 71]

Comments / Observations

- Pertinently, no procedure under section 148A is required to be followed in section 132 and 132A cases, however, the proposed amendment seeks to relax the time available with the AO for issuing notice under 148

Proposed amendment No.3 **(w.e.f. 01.04.2023)**

- Fourth proviso to section 149(1) is proposed to provide that where:
  - Information as referred to in explanation 1 to section 148 emanates from a statement recorded; or
  - documents impounded under section 131 or 133A on or before the 31st March of a financial year,

  in consequence of, a search which is initiated or a search for which last of the authorizations is executed or a requisition is made after the 15th March of such FY, a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice under section 148 and notice under section 148A(b) shall be deemed to have been issued on the 31st March of such FY. As an effect of this amendment, additional time is being given to the AO for issuance of notice under section 148 in such specific cases

Provisions relating to reassessments

[Clauses 69 to 71]

Comments/Observations

- The proposed amendment seeks to relax the time available with the AO for collating the requisite information, conducting enquiries and issuing notice under section 148A(b)

Proposed amendment No.4 **(w.e.f. 01.04.2023)**

- Sixth proviso to section 149(1) is proposed to extend the limitation period so as to provide a minimum of 7 days to AO for passing order under section 148A(d)

Comments/Observations

- The proposed amendment seeks to clarify and remove any ambiguity in the existing provision

Provisions relating to reassessments

[Clauses 69 to 71]

Proposed amendment No.5 **(w.e.f. 01.04.2023)**

- Clause (ii) of section 151, which prescribes the authorities for grant of sanction for the purpose of sections 148 and 148A, is proposed to be amended to provide that the specified authority for the purpose of sections 148 and 148A shall be the PCCIT or Principal Director General or CCIT or Director General, if more than 3 years have elapsed from the end of the relevant assessment year

Comments/Observations

- The proposed amendment seeks to clarify and remove the scope of any misinterpretation of the existing provision

Provisions relating to reassessments

[Clauses 69 to 71]

Proposed amendment No.6 **(w.e.f. 01.04.2023)**

- Proviso in section 151 is proposed to be inserted to exclude the period, which is otherwise **excluded or extended in terms of the existing 3rd & 4th provisos and proposed 5th & 6th provisos** to section 149, from the time limit for issuance of notice under section 148 for computing the period of 3 years for the purposes of determining the approving specified authority

Comments/Observations

- The proposed amendment has been inserted to rationalize the provisions and bring them in line with the provisions of section 149, and to remove any ambiguity regarding computation of the period of three years for granting sanction

Set off and withholding of refund in certain cases

[Clauses 92 & 94] **(w.e.f. 01.04.2023)**

- Section 241A provides for withholding of refund in cases where a refund **becomes due to an assessee under section 143(1) and notice for assessment is issued under section 143(2)**, the AO may, after recording the reasons for doing so and with prior approval of the approving authorities, **withhold such refund till the date of such assessment being made**, if he is of the opinion that the grant of refund is likely to adversely affect the Revenue

- Section 245 provides for set-off of refunds found to be due to any person under any provision of the Act against tax remaining payable after giving him an intimation in writing regarding the proposed action

Set off and withholding of refund in certain cases

[Clause 92 & 94]

Proposed amendments **(w.e.f. 01.04.2023)**

Section 241A is proposed to be amended to **provide a sunset clause on the section** with effect from 31.03.2023. Thus, no withholding of refund shall be made under section 241A on or after 01.04.2023

❖ The provisions of section 245 are proposed to be substituted to provide as under:

- 245(1) set-off of refunds found to be due to any person under any provision of the Act against tax remaining payable after giving him an intimation in writing regarding the proposed action; and
- 245(2) withholding of refund [part after set-off or full] **becomes due to an assessee and** assessment/ reassessment proceedings are pending, the AO may, after recording the reasons for doing so and with prior approval of the approving authorities, **withhold such refund till the date such assessment/reassessment is made**

Set off and withholding of refund in certain cases

Comments/Observations (w.e.f. 01.04.2023)

❖ Vide the proposed amendment in section 245(2), the legislature has now substituted the following:

Existing provisions of section 241A	Proposed Amendment by Finance Bill, 2023 to section 245(2)	Impact
Refund of any amount becomes due to the assessee under section 143(1)	A part of refund is set-off under 245(1) or where no such amount is set-off and refund becomes due to a person	Prior to the proposed amendment any **refund due to the assessee under section 143(1)** was to be withheld; However, **post amendment any refund is amenable to be withheld**
That notice has been issued under section 143(2) in respect of such return	That proceedings for assessment/reassessment are pending	The amendment is proposed to streamline the amendment proposed in section 148 [requiring the assessee to file ITR in specified time; failing which the AO will not be required to issue notice under section 143(2)]

Set off and withholding of refund in certain cases

Comments/Observations **(w.e.f. 01.04.2023)**

- It is clarified in the memorandum explaining the provisions of the Finance Bill, 2023 that the amendments are proposed and intended to integrate the existing provisions

- The object is to eliminate the overlap between the provisions of sections 241A and 245. However, both the provisions, in our opinion, operate independently and in their respective fields

MISCELLANEOUS AMENDMENTS

Agnipath Scheme, 2022 (“Scheme”)

[Clause 5,10,39,50] **(w.e.f. 01.04.2023)**

- The Ministry of Defence ('MoD') has introduced the Scheme, which became effective from 1st November, 2022, for enrolment of Agniveers in Indian Armed Forces

- In pursuance thereof, the Competent Authority has created a non-lapsable dedicated Agniveer Corpus Fund (comprising of consolidated contributions of all the Agniveers and matching contributions of the Government alongwith interest thereon)

Agnipath Scheme, 2022 (“Scheme”)

[Clauses 5,10,39,50] **(w.e.f. 01.04.2023)**

❖The administration and maintenance of the Scheme would be carried out under the aegis of MoD with the following features

- Agniveer to contribute 30% in the designated Agniveer Corpus Fund,
- An amount equal to the said contribution would be contributed by the Central Government,
- On completion of four years, the Agniveer will receive one time amount comprising of their contribution along with Central Government’s contribution and the interest thereon, which is termed “Seva Nidhi” package

Agnipath Scheme, 2022 ("Scheme")

[Clauses 5,10,39,50] **(w.e.f. 01.04.2023)**

- To grant tax reliefs to Agniveer under the Scheme, it is proposed to insert –
  - a new sub-clause (viii) in section 17(1) to provide that the contribution made by the Central Government to the Fund shall be regarded as salary of Agniveers
  - a new section 80CCH to provide for deduction of the whole of the amount deposited/contributed by the Agniveer and Central Government to the respective account in the Agniveer Corpus Fund from the total income of the Agniveer
  - a new clause (12C) in section 10 to provide that any payment received by the Agniveer from the Agniveer Corpus Fund, or his/her nominee shall be exempt from levy of tax
- Consequential amendment in section 115BAC is also proposed which would provide for the aforesaid relief to Agniveers under the new tax regime as well
- The expressions "Agnipath scheme" and "Agniveer Corpus Fund" has been defined therein

Relief to Sugar Co-operatives from Past Demand

[Clause 74] **(w.e.f. 01.04.2023)**

- Sugar cooperatives, in a few states, pay Final Cane Price ('FCP') to sugarcane growers. FCP is paid over and above the Statutory Minimum Price ('SMP'), which is the minimum price set under the Sugarcane Control Order, 1996

- In the past, there have been disputes around the allowability of FCP, over and above, the SMP resulting into protracted litigation, with the Revenue alleging that the sum above the SMP represents appropriation/distribution of profits and thus is not allowable as an expense

- Recently, the apex court in the case of **CIT vs Tasgaon Taluka S.S.K. Ltd 412 ITR 420** held that the differential amount per se cannot be considered to be appropriation of profits and only that part of profit, which is utilized to determine the final FCP can be said appropriation of such profits. The matter was remitted to the AO to rework the computation thereof basis the direction issued therein

Relief to Sugar Co-operatives from Past Demand

[Clause 74] **(w.e.f. 01.04.2023)**

- To put quietus to the above controversy and on-going litigations, it is proposed to insert new sub-clause (19) in section 155 to enable making of an application by the assessee before the assessing officer (qua disallowance of the expenditure, wholly or partly, for the purchase of sugarcane in the past years) for recomputing the total income after allowing deduction to the extent such expenditure is incurred at price equal to or less than price fixed by the Government for the relevant year

- In order to provide effect to the above, the period of four years, as provided under the provisions of section 154 is proposed to be reckoned from the end of previous year commencing on 1st April, 2022

Tax Incentives to International Financial Service Centre ("IFSC")

[Clause 5,21,59] **(w.e.f. 01.04.2023)**

- IFSC at GIFT City is considered an offshore jurisdiction for foreign exchange purposes, businesses set up in the IFSC are still subject to the provisions of the Act. Over the past few years several tax concessions have been provided under the Act to units located in IFSC so as to make it a global hub of financial services sector
- In order to further incentivize operations from IFSC, it is proposed to amend the following provisions :
  - Due date for availing exemption by shareholders on relocation of original fund to the IFSC Fund extended from 31st March 2023 to 31st March 2025 [clause (b) of Explanation to clause (viiad) of section 47]
  - Definitions of "Specified Fund", "Resultant Fund" and "Investment Fund" are proposed to be amended to bring reference of IFSCA (Fund Management) Regulations, 2022 (made effective from May 19, 2022) within the Act

Tax Incentives to Offshore Derivative Instruments ("ODI")

[Clause 5,21,59] **(w.e.f. 01.04.2024)**

- Presently, section 10(4E), exempts from tax, income accruing or arising in the hands of a non-residents on **transfer** of (i) non-deliverable forward contracts or ODI, or (ii) over the counter derivatives entered into with an IFSC Banking unit ('IBU')
- Any income earned by IBU on the investment made in permissible Indian securities is taxed as either capital gains, dividends, or interest under section 115AD
- Thereafter, IBU distributes the post-tax income to ODI holders and receipt of the same is taxable in the hands of the non-resident ODI holders
- In view of the above, any distributions made by IBU to ODI holders gets taxed twice
- In order to address the above issue of double taxation, it is proposed to amend 10(4E) to exempt from levy of tax receipt of any income by non-resident ODI holder on distribution made by IBU (on which tax under section 115AD has already been paid)

Double deduction claimed on interest on borrowed capital

[Clause 22] **(w.e.f. 01.04.2024)**

- Under the existing provisions of the Act, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as deduction under the head "Income from house property" under section 24

- Independently, for the purpose of computation of 'capital gains' on transfer of such property, section 48, inter-alia, provides that the gains shall be computed after deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of consideration received or accruing as a result of the transfer of the capital asset

- Apart from the above, deduction is also allowed under Chapter VI-A i.e., in terms of section 80EE and 80EEA on interest payable in respect of borrowings made for purchase or construction of residential house property subject to the threshold specified therein

Double deduction claimed on interest on borrowed capital

- In the absence of any specific restrictive covenant in section 48, the assessees were claiming double deduction of interest paid/payable on borrowed capital for acquiring, renewing or reconstructing a property at two stages viz.,:
  - ***When property is in possession*** - Deduction claimed under section 24(b) or Chapter VIA.
  - ***On transfer of property*** - Deduction claimed as part of cost of acquisition or cost of improvement under section 48.

- In order to prevent such double claim of deduction, it is now proposed to insert a proviso after clause (ii) of section 48 to provide that the cost of acquisition or the cost of improvement of the asset shall not include the deductions claimed on the amount of interest under section 24(b) or Chapter VIA

Double deduction claimed on interest on borrowed capital

Comments/Observations

- The proposed amendment seeks to overrule the decision of **Tribunal** in the case of **ACIT vs C. Ramabrahmam: 27 taxmann.com 104**, wherein the assessee's claim for deduction on interest paid on housing loan was upheld both under section 24(b) as well as under section 48 on the ground that deduction under the two sections are altogether covered by different heads of income and neither of them excludes the operation of the other

- The existing provisions of section 80EE and section 80EEA already provide for exclusion of amount claimed under any other provision

- The amendment proposed is expressly stated to be prospective in nature and hence, may not impact claims already made

- The proposed amendment is restricted only to the claim of interest on house property and not the 'principal' amount claimed as deduction under section 80C(2)(xviii)

Double deduction claimed on interest on borrowed capital

Comments/Observations

- Benefit denied only to the extent of actual deduction claimed under section 24(b)/ Chapter-VIA

Particulars	Pre-amendment	Post-amendment
Sale Consideration **(A)**	INR 50,00,000	INR 50,00,000
Cost of Acquisition **(B)** [Including interest on loan of **INR 5,00,000**]	INR 30,00,000	INR 30,00,000
Actual deduction claimed under section 24(b) of the Act	INR 2,00,000	INR 2,00,000
Capital Gains [A – B]	**INR 20,00,000**	**INR 22,00,000**

Pending rectification applications before Interim Board for Settlement

[Clause 95] **(w.r.e.f. 01.02.2021)**

- The Central Government was empowered to constitute one or more Interim Boards for Settlement (IBS), as an interim measure, for settlement of applications pending with Settlement Commission as on 31.01.2021
- The existing provisions provide for exclusion of period from 01.02.2021 till 10.08.2021 (i.e., till constitution of IBS) for the purpose of computation of limitation for amending/rectifying the order of Settlement Commission in cases where such application for amendment/rectification was pending as on 01.02.2021
- In order to dispose the pendency and avoid any further litigation, it is proposed to amend clause (iv) of sub-section (9) of section 245D to be substituted with a new clause to provide that where the time-limit for amending an order or for making an application under sub-section (6B) expires on or after 01.02.2021 but before 01.02.2022, such time-limit shall stand extended to 30.09.2023
- The amendment proposed is retrospective in nature and would apply w.e.f. 01.02.2021

Amendments to Prohibition of Benami Property Transactions Act, 1988 ('PBPT Act')

[Clause 152(a)] **(w.e.f. 01.04.2023)**

❖ **Under Clause (18) of section 2, as currently existing, the "SITUS OF HIGH COURT", for the purpose of appeal under section 49 of the PBPT Act, is determined as:**

- The High Court within whose jurisdiction the **aggrieved party** [viz., the benamidar, beneficial owner, or any other person who seeks to prefer an appeal] *ordinarily resides* or *carries on business* or *personally works for gain*; and

- Where the Government is the aggrieved party, the High Court within whose jurisdiction the **Respondent** or any of them [viz., the benamidar, beneficial owner, or any other person against whom appeal is preferred] *ordinarily resides* or *carries on business* or *personally works for gain*.

Amendments to PBPT Act [contd.]

[Clause 152(a)] **(w.e.f. 01.04.2023)**

- Possibly, the existing scheme for determination of "Situs of High Court" ***lead to difficulties*** **in cases where** ***the precise location/ jurisdiction of the concerned parties*** [i.e., **the place where** *the benamidar, beneficial owner, or any other person* (filing the appeal or against whom appeal is sought to be filed), *ordinarily resides* or *carries on business* or *personally works for gain*] **was** ***not within the jurisdiction of any High Court.*** For e.g., in case of a non-resident

- **To obviate such difficulty,** ***both for the Government and other aggrieved parties,*** the amendment now provides that ***in such cases, appeal shall lie before the High Court within whose jurisdiction the office of the Initiating Officer is located***

Amendments to PBPT Act [contd.]

[Clause 152(a)] **(w.e.f. 01.04.2023)**

- Importantly, the amendment is in the nature of a "residuary" clause, for determination of "Situs of the High Court" only in the following cases:
  - Where the ***aggrieved party filing the appeal*** [viz., the benamidar, beneficial owner, or any other person **does not** *ordinarily reside* or *carries on business* or *personally works for gain* **within the jurisdiction of any High Court; OR**
  - Where the appeal is filed by the Government, **none of the Respondents** *ordinarily reside* or *carry on business* or *personally work for gain* **within the jurisdiction of any High Court**

- **In all other cases, the "Situs of the High Court" shall continue to be governed by sub-clauses (i) and (ii) of clause (18) of section 2, as currently in force**

Amendments to PBPT Act [contd.]

[Clause 152(a)] **(w.e.f. 01.04.2023)**

- The amendment, however, **does not fully address the issue of multiplicity of "Situs of High Courts"** – where more than 1 aggrieved party, such as the 'benamidar' and 'beneficial owner' *ordinarily reside* or *carry on business* or *personally work for gain,* at different places – appeals may be filed by each of them before different High Courts

- Existence of more than 1 appellate forum, i.e., the High Court, cannot be the intent of the law [refer: ***Ambica Industries (2007) 6 SCC 769***], particular since, certainty of jurisdiction in a named forum is an essential attribute of an effective judicial remedy [refer: ***ABC Papers 447 ITR 1 (SC)***]

- **The aforesaid is, thus, still an open issue which may lead to difficulty**

Amendments to PBPT Act [contd.]

[Clause 152(b)] **(w.e.f. 01.04.2023)**

- Under **sub-sections (1) and (1A) of section 46,** as they currently stand, the **limitation for filing appeal before the Appellate Tribunal,** is to be reckoned from the ***"date of the impugned order"*** passed by the concerned authority

- By way of the proposed amendment, such limitation is stated to be computed from the ***"date on which such order is received by"*** the appellant, i.e., the aggrieved person or the Initiating Officer seeking to file an appeal

- The proposed amendment is akin to **Section 12 of the Limitation Act, 1963** which provides for exclusion of the ***"the time requisite for obtaining a copy" of the impugned order, judgment, etc.,*** *for the purposes of computing the limitation for filing an appeal*

Computation of interest in updated return

[Clause 67] **(w.r.e.f. 01.04.2022)**

❖The Finance Act, 2022 inserted sub-section (8A) in section 139 enabling the furnishing of an updated return by taxpayers for up to 2 years from the end of the relevant assessment year subject to fulfilment of certain conditions as well as payment of additional tax

❖For the determination of the amount of additional tax on such updated return section 140B was inserted in the Act

Computation of interest in updated return

[Clause 67] **(w.r.e.f. 01.04.2022)**

❖Under the existing provisions of section 140B, for the purpose of computation of interest under section 234B, it was provided that interest shall be computed on an amount equal to the assessed tax or, if the assessee has made any advance tax payment, **on the amount by which the advance tax paid falls short of the assessed tax**

❖'Assessed tax' has been further defined as tax on the total income as declared in the updated return and inter-alia **reduced by amount of relief or tax referred to in sub-section (1) of section 140A**, the credit for which has been claimed in the earlier return

Computation of interest in updated return

[Clause 67] **(w.r.e.f. 01.04.2022)**

- The above provisions **resulted in double deduction for advance taxes** paid by the assessee for the purpose of computation of interest under section 234B

- It is now proposed to amend the provisions of section 140B(4) such that for the purpose of computing interest under 234B, the amount of advance tax is reduced only once. This is explained with the help of below illustration:

Computation of interest in updated return

[Clause 67] **(w.r.e.f. 01.04.2022)**

Particulars	Existing provisions	After amendment
Tax liability in updated return	2,00,000	2,00,000
Advance tax claimed in original return	60,000	60,000
Assessed tax *(Tax liability less credit for taxes paid including advance tax)*	**1,40,000**	**1,40,000**
Amount on which interest under section 234B was required to be computed	80,000 *(Amount by which the advance tax paid falls short of the assessed tax = Assessed tax less advance tax)*	1,40,000 *(Assessed tax)*

Comments/Observations

- This amendment intends to remove the defect in computation of interest under section 234B at the time of filing of updated return

Decriminalization of section 276A

[Clause 118] **(w.e.f 01.04.2023)**

- The liquidator who:
  i. fails to give notice in accordance with section 178 (1); or
  ii. fails to set aside the amount as required by 178(3) or parts with any of the assets of the company or the properties in contravention of the provisions of the said section

is punishable with rigorous imprisonment up to two years

Proposed amendment

Section 276A is proposed to be amended to provide a sunset clause to this section with effect from 31.03.2023. Thus, no fresh prosecution shall be initiated under section 276A on or after 01.04.2023

Comments/Observations

- The amendment is intended to decriminalize minor offences, as a step towards improving ease of doing business

Decriminalization of section 276A

[Clause 118] **(w.e.f 01.04.2023)**

It is clarified in the memorandum explaining the provisions of the Finance Bill, 2023 that the already initiated prosecutions will continue

The memorandum explaining the provisions of the Finance Bill, 2023 further clarifies the intent for providing the sunset as under:

- Section 178 imposes personal liability on liquidator for the non-compliance of the provisions of sub-sections (1) and (3) to the extent of tax due to the company;

- IBC, 2016 provides the waterfall mechanism for payment of dues for companies under liquidation;

Decriminalization of section 276A

[Clause 118] **(w.e.f 01.04.2023)**

- Section 178(6) provides that the section shall not have effect when provisions of the IBC are in contradiction;

- Moreover, the liquidator is now working under the oversight of this specific law [IBC]

- Pertinently, it will be appreciated that there was no substantive litigation around the said provision

TRANSFER PRICING

Section 92BA – Amendment in definition of specified domestic transaction

[Clause 45] **(w.e.f. 01.04.2024)**

- Section 115BAE is proposed to be inserted to provide for beneficial tax rate of 15% for new manufacturing co-operative societies

- A corresponding amendment is proposed to be made in section 92BA to include a transaction between a manufacturing co-operative society covered under section 115BAE and a person having close connection with such society, in the ambit of specified domestic transaction

Thin Capitalization Rules – amending section 94B to exempt NBFCs

[Clause 47] **(w.e.f. 01.04.2024)**

- Section 94B, inserted vide Finance Act, 2017, is based on the recommendations of Action Plan 4 of the OECD BEPS Project. The genesis of thin capitalization rules lie in the distinction between tax treatment of debt and equity
- Section 94B seeks to disallow excess interest payments (defined as interest payments in excess of 30% of EBITDA of the borrower in the previous year or interest payments to AEs for that previous year) made to non-resident AE by a borrower, being a domestic company or permanent establishment ('PE') of a foreign company
- Sub-section (3) of section 94B created a carve out for companies engaged in the business of banking or insurance

Thin Capitalization Rules – amending section 94B to exempt NBFCs

[Clause 47] **(w.e.f. 01.04.2024)**

❖It is proposed to extend the aforesaid carve out to NBFCs, which are engaged in the business of financing since they are undertaking similar functions and are now subject to similar regulations and compliances. The exclusion is proposed for such class of NBFCs as may be notified by the Central Government and which qualify as NBFCs as defined in clause (f) to section 45I of the RBI Act, 1934

Comments/Observations

❖Interest expense is usually the major cost for an NBFC; in that their principal source of income is the arbitrage between funds borrowed and the funds lent

❖Under the extant provisions of section 94B, there was greater tax outflow in case the NBFC was funded by a non-resident AE and interest expense exceeded the threshold limit, whereas banks and insurance companies engaged in similar business were not affected as such; the dichotomy stands addressed with the proposed amendment

Section 92D - Reducing time for furnishing TP report

[Clause 46] **(w.e.f. 01.04.2023)**

❖Section 92D provides that every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the information and documents as provided under Rule 10D of the Rules

❖Sub-section (3) of section 92D provides that the Assessing Officer or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish the documentation within a period of thirty days from the date of receipt of a notice issued in this regard

❖On an application made by the assessee the time period of thirty days may be extended by an additional period of thirty days

Section 92D - Reducing the time for furnishing TP report

- It has been represented by the Revenue that in several instances due to limited time available for TP proceedings it may not be practically possible to provide minimum thirty days for producing the TP documentation which in any case is in possession of the assessee

- It is proposed to amend sub-section (3) of section 92D to provide that the assessing officer or the Commissioner (Appeals) may require the assessee to furnish transfer pricing documentation prescribed under Rule 10D of the Rules within a period of ten days from the date of receipt of a notice

- On an application made by the assessee the time-period of ten days may be extended by an additional period of thirty days