



India Budget 2022

A Detailed Clause by Clause Analysis
of Direct Tax Amendments

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Date: 03/02/2022

India Budget 2022: Topics Covered

- Direct Tax Proposals
 - Executive Summary of Amendments
 - Detailed clause-by-clause analysis



Executive Summary

Direct Tax Proposals – Budget 2022

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
A. Taxation of Virtual Digital Assets					
1	2	Insertion	Virtual Digital Asset defined	01-04-2022	‘Virtual digital asset’ is defined as “any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically
2	115BBH	Insertion	Income from Virtual Digital Assets to be taxed @30%	01-04-2023	Income from transfer of such assets to be taxed at flat 30%. No deduction, expenditure, allowance or set-off of any loss would be allowed. No losses from such assets can be set off against other income
3	194S	Insertion	TDS on Virtual Digital Assets	01-07-2022	TDS @1% applicable on transfer of Virtual Digital assets to a resident on sum being paid exceeding INR 10,000. No TDS for payment by Individual or HUF (whose business income is less than 1 crore or professional income is less than 50 lakhs or not having any income under the head PGBP) and payment for transfer is not exceeding INR 50,000

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
A. Taxation of Virtual Digital Assets					
4	56	Amendment	Gift of Virtual Digital Asset to be taxable	01-04-2023	Virtual Digital asset received as gift to be taxable as income from other sources u/s 56(2)(x)
B. Updated Return of Income					
5	139(8A)	Insertion	S. 139(8A) inserted for facilitating Updated return	01-04-2022	Taxpayers would be able to file an updated return within 24 months from end of AY. No return of loss or fresh claim of refund or decreasing the tax liability or increasing refund can be filed
6	140B	Insertion	Tax calculation for updated return	01-04-2022	<p>Apart from normal tax and interest applicable, additional amount as follows is to be paid:</p> <p>a) 25% of tax and interest payable if filed within 12 months from end of AY</p> <p>b) 50% of tax and interest payable if filed after 12 months but before 24 months from the end of AY</p>
7	276CC	Amendment	Updated return reference included for failure to furnish ROI	01-04-2022	No prosecution to be launched if a person files an updated return and has missed filing the original ROI

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
B. Updated Return of Income					
8	234A	Amendment	Reference made for Updated Return	01-04-2022	Provisions updated for calculation of interest for updated return cases
9	234B	Amendment			
10	144	Amendment	To include Updated Return	01-04-2022	A reference is included for updated return
C. Relief for Individuals for receiving Covid related expenditure and ex-gratia and other deductions					
11	17	Amendment	Covid related expenses paid to employee by the employer shall not be perquisite	01-04-2020	Income-tax exemption shall be provided for medical expenses paid by the employer for treatment of employee or his family member on account of COVID-19 and will not be considered as perquisite
12	56	Amendment	Amounts received for covid treatment or as ex gratia for deceased member on account of Covid shall not be Income from Other sources	01-04-2020	Any amount received by any individual for medical treatment of his family members or self shall be exempt and ex-gratia up to INR 10 lakhs received on death of a person or family member shall not be treated as Income from other sources

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
C. Relief for Individuals for receiving Covid related expenditure and ex-gratia and other deductions					
13	80CCD	Amendment	Increased deduction for NPS contribution to State Govt employees	01-04-2020	It is proposed to increase the limit of deduction from the existing 10% to 14% in respect of contribution made by the State Government to the account of its employee.
14	80DD	Amendment	Condition of releasing of annuity to a disabled person	01-04-2023	It is proposed to allow the deduction even if the policy is taken till the disabled dependent attains 60 yrs. of age. Further, the annuity paid by the Insured after the dependent attaining 60 years of age shall not be deemed income
D. Faceless Schemes deferred for TP,DRP and ITAT and other TP related amendments					
15	92CA	Amendment	Faceless TP proceedings deferred	01-04-2022	Faceless TP proceedings deferred till 31-03-2024
16	253	Amendment	Faceless ITAT procedures deferred	01-04-2022	Faceless ITAT procedures deferred till 31-03-2024
17	144C	Amendment	Faceless DRP proceedings deferred	01-04-2022	Faceless DRP proceedings deferred till 31-03-2024
18	263	Amendment	Commissioners (TP) powers expanded	01-04-2022	Pr CC or CC or the Pr C or Commissioner (TP) may revise TPO orders if found to be erroneous and prejudicial to the interests of revenue.

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
E. Extension of Incentives to Start-ups & Manufacturing entities					
19	80-IAC	Amendment	Extension of date of incorporation for eligible start up for exemption	01-04-2022	It is proposed to amend the provisions of section 80-IAC of the Act to extend the period of incorporation of eligible start-ups to 31st March, 2023 for those entities to be eligible for claim of deduction @100% of profits for any 3 AYs out of first 10AYs
20	115BAB	Amendment	Extension of timeline for setting up manufacturing entity for lower rate of 15%	01-04-2022	The date of commencement of manufacturing or production of an article or thing, extended from 31st March, 2023 to 31st March, 2024 and hence entities commencing by the extended timeline would be eligible for 15% tax rate
F. Amendments for calculation of Business Income					
21	35	Amendment	Donation to Research Institutions	01-04-2021	Drafting error corrected - Donation made to specified institutions to be disallowed in the hands of donor unless such research association, university, college or other institution or company files the statement of donations
22	37	Amendment	Benefits in violation of IMCR or expenses which are offence under foreign law	01-04-2022	Explanation inserted under Section 37 to provide that expense incurred - for offence / compounding of same in India or outside India - any benefit or perquisite paid in violations of law, rules, regulations or guidelines will be disallowed and cannot be claimed

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
F. Amendments for calculation of Business Income					
23	40	Amendment	Cess and Surcharge disallowance related explanation	01-04-2005	Explanation inserted retrospectively to clarify that the term “tax” includes and shall be deemed to have always included any surcharge or cess, by whatever name called and therefore is to be disallowed
24	43B	Amendment	Conversion of interest unpaid to debenture or loan not allowed as deduction	01-04-2023	Amending Explanations of section 43B to provide that conversion of interest payable into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.
25	14A	Amendment	Explanation Inserted	01-04-2022	The provisions are made Non-obstante and any expense incurred related to exempt income though such income is not arising or earned during year would be disallowed
G. Clarifications for calculation of capital gains					
26	2	Amendment	Definition of slump sale updated	01-04-2021	The word sale was erroneously included in the definition of slump sale. The same is modified to include the word transfer
27	50	Amendment	Reduction of goodwill from block of assets to be transfer	01-04-2021	For the purposes of section 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset shall be deemed to be transfer

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
H. Proposals for M&A Transactions					
28	170	Amendment	Proceedings of predecessor in business reorganizations to be valid	01-04-2022	The assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor
29	170A	Insertion	Modified returns can now be filed due to business reorganizations	01-04-2022	Upon business reorganisations, the entities involved can now file a modified return for all the periods as per Orders of NCLT, HC etc. withing 6 months from end of the month in which order is issued
30	94	Amendment	Scope of taxing the avoidance of tax on account of bonus and dividend stripping now expanded	01-04-2023	Section amended to include even securities to prevent tax evasion through bonus stripping. Further unit definition is amended to include units of InvIT, REIT and AIF units apart from MF units
31	115BBD	Amendment	Dividend received from specified foreign company to be taxed at normal rates	01-04-2023	Reduced rate of 15% for dividend received by Indian Company from a foreign company in which such Indian Company holds 26% of equity shares shall not be available from FY 2022-23

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
H. Proposals for M&A Transactions					
32	156A	Insertion	AO to issue updated Notice of demands / modify them for Companies under IBC	01-04-2022	Any demands reduced by Adjudicating authority or later modified by NCLT, HC or SC now would be required to be given effect to modify demands under Income-tax Act
I. Proposal for TDS / TCS related provisions					
33	194-IA	Amendment	TDS now to be deducted on sale consideration or SDV whichever is higher	01-04-2022	TDS @1% on sale of immovable property now needs to be deducted on sale consideration or Stamp Duty value whichever is higher. TDS not applicable if both such values do not exceed INR 50 lakhs
34	194R	Insertion	TDS introduced on benefits of perquisites which are business income for the receiver	01-07-2022	Payment of benefit or perquisite related to business of resident receiver exceeding INR 25000 during FY liable for TDS @10%
35	201	Amendment	Interest for default in TDS/TCS deposit/collection	01-04-2022	Interest to be paid as per AO order for default of TDS/TCS provisions
36	206C	Amendment			

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
I. Proposal for TDS / TCS related provisions					
37	206AB	Amendment	Widening applicability of increased TDS/TCS rate	01-04-2022	Specified person will now be deductees in whose case TDS/TCS exceed INR 50,000 in previous year instead of 2 years provided earlier and would require TDS/TCS at higher rate if ROI is not filed during such previous year by the deductees 206AB not to be applicable for individuals and HUF deductors u/s 194-IA, 194-IB and 194M
38	206CCA	Amendment			
39	194-IB	Amendment	TDS rate u/s 194-IB not to be increased for 206AB cases	01-04-2022	Reference to Section 206AB is removed
40	248	Amendment	Appeal for refund of TDS where such liability was grossed up	01-04-2022	Mandatory appeal to be filed before CIT(A) for refund of TDS deducted on gross up basis where Taxpayer believes the same is not deductible now removed
41	239A	Insertion		01-04-2022	Section inserted to allow the Taxpayer to file an application before the AO for claim of TDS as mentioned above
42	246A	Amendment		01-04-2022	Order passed u/s 246A shall be appealable order

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
I. Proposal for TDS / TCS related provisions					
43	276B	Amendment	Anomaly removed	01-04-2022	Language correction for launching of prosecution for failure under Section 194B - TDS on Winning from lottery or crossword puzzle
44	278A	Amendment	Inclusion of TCS related offence for punishment	01-04-2022	Prosecution included for offence committed for failure to pay TCS
45	278AA	Amendment	Inclusion of TCS related offence for no punishment if reasonable cause shown	01-04-2022	No prosecution for failure to pay TCS shall be initiated if a reasonable cause is provided
46	271C	Amendment	Anomaly removed	01-04-2022	Language correction for levy of penalty for failure under Section 194B - TDS on Winning from lottery or crossword puzzle
J. Assessments, Search, Seizure and other litigation related amendments					
47	132	Amendment	Rationalized	01-04-2022	Provisions amended to include various orders for retaining of books
48	132B	Amendment	Rationalized	01-04-2022	Provisions amended to include various orders for retaining of books

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
J. Assessments, Search, Seizure and other litigation related amendments					
49	133A	Amendment	Authorities for conducting survey defined	01-04-2022	Sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner to be the specified authorities for conducting survey
50	143	Amendment	Including provisions for violations of provisions of Section 10(23C) and 11	01-04-2022	Where the AO is satisfied that any trust or institution under first or second regime has committed any specified violation then reference shall be made to PCIT etc.
51	144B	Amendment	Revamped procedure for Faceless Assessment provided	01-04-2022	Updated procedure for Faceless Assessment provided for assessments under 143(3), 144 and 147
52	148	Amendment	No approval required where order passed u/s 148A(d) and others	01-04-2022	Approval to issue notice under section 148 shall not be required to be taken by the Assessing Officer if he has passed an order under 148A(d) with prior approval in that case stating that the income is escaping assessment.
53	148A	Amendment	Consequential amendments for change in 148	01-04-2022	Consequential amendments for change in 148

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
J. Assessments, Search, Seizure and other litigation related amendments					
54	148B	Insertion	AO to be JC or above in certain cases	01-04-2022	No order of assessment or reassessment or recomputation under this Act shall be passed by an AO below the rank of JC, in specified cases
55	149	Amendment	Rationalizing of provisions	01-04-2022	Notice under Section 148 shall be issued only after 3 years but before 10 years where the AO has in his possession books of account/ other documents which show income escaped in excess of INR 50 lakhs and notices to be issued accordingly
56	153	Amendment	Exclusion of time for search, seizure and survey for material requisitioned	01-04-2021	Exclusion of period of limitation provided for the purpose of assessment, reassessment or recomputation, (not exceeding 180 days) for 132/132A cases for obtaining of material requisitioned by AO.
57	153B	Amendment		01-04-2021	Time limit for completion of assessment under section 153A to exclude time for obtaining material requisitioned by AO
58	158AA	Amendment	To include option for dept to defer filings on matters pending before HC/SC	01-04-2022	A sunset clause is inserted in sub-section to provide that no direction (when in an appeal by revenue an identical question of law is pending before Supreme Court) shall be given on or after 1st April, 2022
59	158AB	Insertion		01-04-2022	Revenue to defer filing of appeal for decision on CIT(A) or ITAT case before ITAT or HC respectively, till a decision is arrived upon in HC or SC appeal pending for similar question of law (Assessee to agree)

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
K. Charitable Trusts and Institutions					
60	10	Amendment	Amendments made for Charitable Institutions	01-04-2023	Provisions updated for consistency, transparency and effective monitoring of Charitable Trusts and Institutions
61	11	Amendment	Rationalisation of the provision of Charitable Trust and Institutions	01-04-2023	Provisions updated for consistency, transparency and effective monitoring of Charitable Trusts and Institutions
62	12A	Amendment			
63	12AB	Amendment			
64	13	Amendment			
65	115BBI	Insertion	Specified income of 10(23C) or Section 11 institutions to be taxed	01-04-2023	Specified income to be taxed at flat 30%. No deduction, expenditure, allowance or set-off of any loss would be allowed. Specified income would mean income accumulated for the violations stated therein
66	115TD	Amendment	Provisions to be applicable for first regime Trust and institutions	01-04-2023	Taxation of accreted income of the trust and institutions to be applicable for first regime cases also
67	115TE	Amendment			
68	115TF	Amendment			

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
K. Charitable Trusts and Institutions					
69	271AAE	Amendment	Penalty for passing on unreasonable benefits to trustee or specified persons	01-04-2023	Penalty provided for Trusts and Charitable Institutions
L. Amendments for IFSC					
70	10	Amendment	Exemptions inserted for IFSC	01-04-2023	New exemptions provided for IFSC
71	56	Amendment	Securities premium received from AIFs under IFSC in excess of FMV of shares not to be taxed as Income from other sources	01-04-2023	Category I and II AIFs under IFSC included under specified fund under 56(2)(viib) and thereby any securities premium received in excess of FMV from such AIFs under IFSC will not be charged as Income from other sources
72	80LA	Amendment	Extended deduction to IFSC for transfer of leased ships	01-04-2023	Leased ships are now also included apart from leased aircrafts and any income arising from transfer of ship to an IFSC will be allowed as deduction if commenced before 31-03-2024

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
M. Other Amendments					
73	115JC	Amendment	AMT rate for co-op societies reduced to 15%	01-04-2023	Definition of AMT and the rate amended to reduce the rate of AMT from 18.5% to 15% on par with corporates
74	115JF	Amendment			
75	285B	Substitution	Reporting in Form 52A extended to additional activities	01-04-2022	Statement of payment exceeding INR 50000 in Form 52A to be furnished by not only the producer of cinematographic films but also persons paying in relation to event management, documentary production, production of programs for telecasting on television or OTT or any other similar platform, sports event management, other performing arts or any other activity as CG may specify
76	68	Amendment	Loan or borrowing to be unexplained cash credit in certain cases	01-04-2023	Loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider
77	79	Amendment	Facilitating strategic disinvestment of public sector companies	01-04-2022	PSUs part of strategic disinvestment can carry forward losses even if there is a change in the shareholding when compared to the year in which such losses are incurred even if there is change in shareholding more than 51%. However, the ultimate holding company of the PSUs shall continue to hold 51% of voting power of directly/indirectly through subsidiaries

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
M. Other Amendments					
78	79A	Insertion	Set off of loss in search cases	01-04-2022	Not set-off of losses or unabsorbed depreciation against undisclosed income found vide Search u/s 132/132A or survey u/s 133A
79	119	Amendment	CBDT can issue instruction for 234F relief	01-04-2022	CBDT can now issue directions for removing genuine hardship arising from imposition of fee under Section 234F
80	179	Amendment	Title of the Section updated	01-04-2022	Updated title to be Liability of directors of private company instead of private company under liquidation
81	245MA	Amendment	Order giving effect to directions of DRC	01-04-2022	To enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the DRC
82	271AAB	Amendment	Penalty now may be levied by CIT(A) for search matters	01-04-2022	Commissioner (Appeals) to levy penalty under these sections to the along with AO.
83	271AAC	Amendment			
84	271AAD	Amendment			

Executive Summary of Direct tax amendments

S.	Section	Type of proposal	Change	W.E.F. (AY)	Summary of Impact
M. Other Amendments					
85	272A	Amendment	Increase in penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc.	01-04-2022	Penalty increased from INR 100 per day to INR 500 for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc., for the requirements in sub-section(2) of 272A
86	276AB	Amendment	Section made inapplicable	01-04-2022	Launching of prosecution made inapplicable as the corresponding sections are not in vogue
87	10	Amendment	Exemptions removed	01-04-2023	The following exemptions are now removed: a) Technical assistance income of individuals for projects and programmes as per agreement signed between CG and foreign government b) Remuneration or fee received by Consultant for rendering technical services in India in connection with any technical assistance programme or project entered between CG and international agency c) Exemption to the income of the family members of any individual or consultant referred above

Detailed Clause-by- clause analysis

Direct Tax Proposals – Budget 2022

Taxation of Virtual Digital Assets

Taxation of Virtual Digital Assets

Relevant Sections: 2(47A), 56(2)(x), 115BBH, 194S

What is a “virtual digital asset”?

- One of the key amendments proposed vide Budget 2022 is taxation of ‘virtual digital assets’ i.e. crypto currencies. A new section 2(47A) has been inserted to define ‘virtual digital assets’. This amendment will take effect from 01-04-2022.
- ‘Virtual digital asset’ is defined as *“any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically.”*

Taxation of Virtual Digital Assets

Relevant Sections: 2(47A), 56(2)(x), 115BBH, 194S

Taxation of Income on Virtual Digital Asset

- Budget 2022 has brought in much needed clarity on taxation of income earned from crypto currencies.
- A new section 115BBH has been inserted to provide that any income from transfer of virtual digital asset shall be **taxed @ 30%**
- This amendment is applicable from FY 2022-23
- Only cost of acquisition to be allowed as deduction. No deduction in respect of any other expenditure / loss allowed for computing such income
- Further, no set off/ carry forward of any loss arising from transfer of virtual digital asset shall be allowed against any other income

Taxation of Virtual Digital Assets

Relevant Sections: 2(47A), 56(2)(x), 115BBH, 194S

Transfer of Virtual Digital Assets

- Section 56(2)(x) has been amended to include 'virtual digital asset' in the definition of 'property'. Accordingly, receipt of virtual digital asset for a value less than the deemed fair market value in the hands of the receiver (i.e. gift is taxable)
- Finance Bill proposes to insert Section 194S providing for deduction of tax at source @1% on payment for transfer of virtual digital asset to a resident. Where the transfer is in exchange of another digital asset or partly in cash and partly in kind, the payer shall ensure that the tax has been paid in respect of such consideration – *Applicable w.e.f. 01-07-2022*
- Threshold for TDS is INR 50,000 in a FY in case of specified persons and INR 10,000 in any other case
- Where tax is required to be deducted under Section 194-O along with proposed Section 194S, the tax shall be deducted under Section 194S and not Section 194-O
- 'Specified Persons' defined as: Individual or HUF having turnover from business not exceeding INR 1 Cr or income from profession not exceeding INR 50 lakh and Individual/ HUF having income under any head apart from PGBP

New Updated Return of Income & Modified Return of Income

New Concept of Updated Return of Income

Relevant Sections: 139, 140B

Updated Return of Income - Background

- Section 139 provides for the various provisions related to filing of Income Tax Return by taxpayers. It is the responsibility of all assesseees to file the accurate and correct information related to income before the due dates prescribed in the section 139(1).
- If the assessee fails to furnish its Return before the due dates, section 139(4) provides that an assessee can file a belated Return after the expiry of original due date. The due date for all the assesseees for furnishing the belated return is 31st December i.e. three months prior to the end of relevant AY.
- Moreover, section 139(5) provides another opportunity to the assessee to rectify the mistakes, omission or wrong statement given in the earlier return filed which is within the due date as specified in section 139(1) by filing a revised return u/s 139(4). The due date for filing revised return is 31st December i.e. 3 months before the end of relevant AY or before the assessment is completed, whichever is earlier.

New Concept of Updated Return of Income

Relevant Sections: 139, 140B

Updated Return of Income

- The Finance Bill, 2022 proposes to insert a new sub-section (8A) in Section 139 for furnishing updated return within 24 months from the end of the relevant AY.
- Section 139(8A) shall not apply if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined or increasing the total refund due on the basis of return furnished under Section 139(1), 139(4) or 139(5).
- A person shall not be eligible to furnish an updated return under Section 139(8A) if:
 - (i) Search has been conducted u/s 132 or books have been requisitioned u/s 132A; or
 - (ii) Survey has been conducted u/s 133A; or
 - (iii) Notice has been issued to the effect that any money, bullion or jewellery or any books of accounts seized or requisitioned under Section 132 or Section 132A in the case of any other person belongs to such person/ relates to such person.

New Concept of Updated Return of Income

Relevant Sections: 139, 140B

Updated Return of Income

- Also no updated return shall be furnished where:
 - (i) An updated return has already been filed for relevant AY; or
 - (ii) Proceedings for assessment/reassessment is pending or completed; or
 - (iii) Assessing Officer has communicated possession of information under Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; or
 - (iv) Information under agreement u/s 90/90A has been received and is communicated to him; or
 - (v) Prosecution proceedings under Chapter XXII have been initiated; or
 - (vi) Such person or class of persons as may be notified by the Board.
- Updated return filed u/s 139(8A) shall be treated as defective unless such return is accompanied by the proof of payment of tax as required under Section 140B.

New Concept of Updated Return of Income

Relevant Sections: 139, 140B

Updated Return of Income

- The Finance Bill, 2022 inserts new Section 140B to provide for the tax required to be paid for opting to file an updated return.
- The Assessee shall be liable to pay the tax due together with interest and fee payable under any provision of the Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, after taking into account advance tax, TDS/TCS, relief u/s 89, FTC u/s 90/91/90A, MAT credit and self-assessment tax paid u/s 140A, if any.
- The additional tax payable at the time of furnishing updated return u/s 139(8A) shall be 25% of total tax and interest due, if updated return is filed after expiry of time available u/s 139(4)/(5) but before 12 months from end of relevant AY.
- The additional tax payable at the time of furnishing updated return u/s 139(8A) shall be 50% of total tax and interest due, if the updated return is filed after 12 months.

New Concept of Updated Return of Income

Relevant Sections: 139, 140B

Updated Return of Income

- Interest u/s 234B shall be computed on 'assessed tax' declared in the updated return after giving credit for TDS/TCS, relief u/s 89, FTC u/s 90/91/90A, MAT credit and self-assessment tax paid u/s 140A.
- Interest u/s 234C shall be computed treating the income under updated return as returned income.
- Proposes consequential amendments in Section 144, Section 153, Section 234A and Section 234B and 276CC.
- ***These amendments will take effect from 01-04-2022***

Modified Income Tax Return – Business Reorganisation

Relevant Sections: 170, 170A, 156A

- The Finance Bill, 2022 proposes to insert Section 170A to enable the entities going through business reorganization, for filing of modified returns for the period between effective date and the date of issuance of final order of the competent authority.
- The proposed Section 170A has an over-riding effect on Section 139 and provides that in case of a business reorganisation where prior to the HC / ITAT / or Adjudicating Authority's order, any return of income has been furnished by the successor under the provisions of Section 139 for any assessment year relevant to the previous year to which such order applies, a modified return in the prescribed form and manner can be furnished by the successor within six months from end of the month in which the order (competent authority such as NCLT in case of merger/demerger) was issued.
- In the course of business reorganisations, there are instances wherein the Court / Tribunal or Adjudicating Authority recast the entire liabilities to ensure future viability of sick entities and modify the tax demands created vide various proceedings in the past. Presently, there is no procedure or mechanism provided in the Income-tax Act to reduce such demands from the outstanding demand register.

Modified Income Tax Return – Business Reorganisation

Relevant Sections: 170, 170A, 156A

- The Finance Bill, 2022 proposes to insert Section 156A to give effect to orders of the competent authority and to modify such demands in accordance with the directions.
- Proposed Section 156A provides that where any tax, interest, penalty, fine or any other sum for which a notice of demand was issued under Section 156 is reduced as a result of the Court / Tribunal / Adjudicating Authority's order, the AO shall modify the demand payable in conformity with such order and shall thereafter serve a notice of demand specifying the sum payable on the assessee.
- It also proposes that where such order is modified by the NCLAT or the SC, the modified notice of demand shall be revised accordingly.

Tax Incentives to IFSCs

Tax incentives to units in IFSCs

Relevant Sections: 10(4E), 10(4F), 10(4G), 80LA(2)

International Financial Services Centre (IFSC)

- Various measures have been announced to incentivize units in IFSCs
- Section 10(4E) has been amended to provide tax exemption to non-residents for income arising from transfer of off-shore derivative instruments or over-the-counter derivatives entered into with an off-shore banking unit of an IFSC
- Section 10(4F) has been amended to include tax exemption to non-residents for royalties or interest income arising from lease of a “Ship” by an IFSC unit, which has commenced operations on or before 31-03-2024
- Section 10(4G) has been inserted to provide tax exemption to non-residents for income arising from portfolio of securities / financial products / funds managed by a portfolio manager in IFSC, received in an account maintained with an off-shore banking unit in IFSC, to the extent such income is not deemed to accrue or arise in India
- Section 80LA(2)(d) has been amended to extend deduction u/s 80LA(1A) to income arising from transfer of “Ship” leased by an IFSC unit to any person subject to the condition that the unit has commenced operation on or before 31-03-2024

Rationalization of Charitable Trusts & Institutions' Provisions

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Rationalisation of provisions pertaining to Charitable Trusts & Institutions

- Income of any fund or institution or trust referred to in Section 10(23C) or any trust or institution registered u/s 12AA or 12AB of the Act is exempt, subject to fulfilment of the conditions provided under various sections
- The exemption to these trusts or institutions is available under the two regimes:
 - Exemption Regime I: Section 10(23C)
 - Exemption Regime II: Section 12AA / 12AB
- The Finance Bill 2022 proposes to rationalise the provisions of both the exemption regimes by ensuring their effective monitoring and implementation; bringing consistency in the provisions of the two exemption regimes; and providing clarity on taxation in certain circumstances
- Further, to ensure effective monitoring and Implementation of both the exemption regimes, the Bill has introduced the requirement to maintain books of account and other documents in such form and manner as may be prescribed

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Penalty for passing on unreasonable benefits to trustee or specified persons

- The Finance Bill proposed to insert a new section 271AAE to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year.
- The proposed Section seeks to operate without prejudice to any other provision of chapter XXI. Thus, if any penalty is leviable under any of the other provisions of this chapter, in addition to the proposed penalty, that penalty would also be applicable.
- It is also proposed to be provided that if during any proceeding, it is found that the Trust or Institution has passed on any unreasonable benefit to the trustee or any other specified person, the AO may levy a penalty of a sum equal to the aggregate amount of income applied, directly or indirectly for benefit of person referred to in 13(3) where the violation is noticed for the first time, and a sum equal to two hundred percent on violation in subsequent previous years

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Reference for the cancellation of registration/approval

- In view of the differences in the provisions related to cancellation of trusts under both the regimes, the registration of trusts or institutions under automated approval system and no prescribed time limit prescribed for the PCIT/CIT to decide on references for the withdrawal of approval, there were certain issues requiring addressal.
- The Finance Bill 2022 proposes to amend Section 12AB and Section 10(23C) with an intention to address the emergent issues.
- Section 12AB(4) is proposed to be substituted to provide that where registration or provisional registration of a trust or an institution has been granted under Section 12AB(1)(a)/(b)/(c) or Section 12AA(1)(b) and subsequently:
 - PCIT/CIT has noticed occurrence of one or more specified violations during any previous year;
 - PCIT/CIT has received a reference from the AO under the second proviso to Section 143(3) for any previous year, or
 - such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year, the PCIT or CIT shall:

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Reference for the cancellation of registration/approval

- (i) call for such documents or information from the trust or institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;
 - (ii) pass an order in writing cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation have taken place;
 - (iii) pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violation;
 - (iv) forward a copy of the order under clause (ii) or (iii), as the case may be, to the Assessing Officer and such trust or institution.
- It is also proposed to insert an Explanation to Section 12AB(4) to define the term ‘specified violation’
 - The Finance Bill, 2022 proposes to substitute Section 12AB(5) to provide that that the order under Section 12AB(4)(ii)/(iii) shall be passed before expiry of the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after 01-04-2022, calling for any document or information, or for making any inquiry, under Section 12AB (4)(i)

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Reference for the cancellation of registration/approval

- It is also proposed to amend Section 10(23C), fifteenth proviso on similar lines as the above amendment.
- The Finance Bill, 2022 also proposes to amend Section 143(3) by inserting a proviso providing that where the AO is satisfied that any trust or institution under first or second regime has committed any specified violation, as defined in the proposed amendments, he shall:
 - (i) send a reference to the PCIT or CIT to withdraw the approval or registration, as the case may be; and
 - (ii) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the PCIT or CIT under Section 10(23C), fifteenth proviso or Section 12AB(4).
 - (iii) Consequential amendments are also proposed to amend the provisions of Section 153(iii) by deleting the reference to trusts or institution under the first regime and the period from making a reference as above to receipt of order by the AO is excluded in computing the period of limitation.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Bringing consistency in the provisions of two exemption regimes

- The Finance Bill, 2022 proposes to amend Section 11(3) to provide that any income referred in Section 11(2) which is not utilised for the purpose for which it is accumulated or set apart shall be deemed to be the income of the previous year being the last previous year of the period, for which the income is accumulated or set apart under Section 11(2)(a).
- It is proposed to insert Explanation 3 to the third proviso to Section 10(23C) to provide that for determining the application under this proviso, where eighty-five per cent of the income referred to in clause (a) of the third proviso, is not applied, wholly and exclusively to the objects for which the trust or institution under the first regime is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income on fulfilment of certain conditions.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Bringing consistency in the provisions of two exemption regimes

- It is also proposed to insert a proviso to proposed Explanation 3 to third proviso to Section 10(23C) to provide that in computing the period of five years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.
- It is also proposed to insert an Explanation 4 to Section 10(23C) to provide that any income referred to in the proposed Explanation 3 shall be deemed to be the income of the previous year in which the following takes place:
 - (i) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or
 - (ii) the income ceases to remain invested or deposited in any of the forms or modes specified in 11(5), or the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of the proposed Explanation 3, or
 - (iii) the income is credited or paid to any trust or institution under the first or second regime.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 271AAE

Bringing consistency in the provisions of two exemption regimes

- Explanation 5 is proposed to be inserted to Section 10(23C), third proviso to enable the AO to allow trusts or institutions under the first regime in circumstances beyond their control, to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions.
- It is also proposed to insert a proviso to proposed Explanation 5 to Section 10(23C), third proviso to provide that the AO shall not allow the application of any accumulated income, as referred to in the proposed Explanation 3, to be credited or paid to any trust or institution under the first or second regime, as referred to in the proposed Explanation 4, clause (d) to Section 10(23C), third proviso.
- Further, it is also proposed to insert twenty first proviso to Section 10(23C) to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in Section 13(3) such income or part of income or property shall be deemed to be the income of such person of the previous year in which it is so applied and the provisions of Section 13(2)/(4)/(6) shall also apply to Trusts registered under the first regime.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 115TD, 115T, 115TF, 271AAE

Applicability of Section 115TD

- The provisions of the Chapter XII-EB have been made applicable to only the trusts or institutions under the second regime, i.e. under Section 12AA/ 12AB
- The Finance Bill, 2022 proposes to amend the provisions of Section 115TD, 115TE and 115TF to make them applicable to any trust or institution under the first regime.

Filing of Return by person claiming exemption u/s 10(23C)

- The Finance Bill, 2022 proposes to insert twelfth proviso to Section 10(23C) to provide that for the purpose of exemption under this clause, any trust or institution under the first regime is required to furnish the return of income for the previous year in accordance with Section 139(4C).

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 13, 115BBI

Providing clarity of Taxation in certain circumstances

- There is presently lack of clarity on computation of taxable income in case of non-availability of exemption in these cases. For example, if the exemption is denied to the trust or institution for the late submission of the audit report, its entire receipts may be subjected to taxation and no deduction for any application may be allowed.
- It is proposed to insert Section 13(10) to provide that where Section 13(8) is applicable to any Trust or where the Trust violates the provisions of Section 12A(1)(b)/(ba), income chargeable to tax will be computed after allowing deduction for expenditure incurred for its objects, subject to certain conditions.
- It is also proposed to insert an Explanation to Section 10(13) to provide that for determining amount of expenditure, provisions of Section 40(a)(ia)/ 40A(3)/(3A) shall be applicable.
- Section 13(11) is proposed to be inserted to provide that for the purposes of computing income chargeable to tax no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision. Similar amendments are proposed in the context of Section 10(23C).

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 13, 115BBI

Taxation of certain income of trusts or institutions under both regimes at special rate

- There is need for special provision to ensure that the income applied in violation is taxed at special rate without deduction.
- The Finance Bill, 2022 proposes to amend Section 13(1)(c) to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.
- It is also proposed to insert twenty first proviso to Section 10(23C) to specifically provide that where the income of any trust under the first regime, or any part of the such income or property, has been applied directly or indirectly for the benefit of any person referred to in Section 13(3), such income or part of income or property shall be deemed to be income of such person of the previous year in which it is so applied. Further, the provisions of Section 13(2)/(4)/(6) shall also apply to it.
- Section 13(1)(d) is proposed to be amended to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 13, 115BBI

Taxation of certain income of trusts or institutions under both regimes at special rate

- Proposes to insert Explanation 4 to Section 10(23C), third proviso to specifically provide that income accumulated which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.
- Proposes to inserts a new Section 115BBI to provide that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of:
 - (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and
 - (ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i)
- Further no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision in computing specified income.

Charitable Trusts & Institutions

Relevant Sections: 10(23C), 11, 12AA, 12AB, 13, 115BBI

Taxation of certain income of trusts or institutions under both regimes at special rate

- ‘Specified Income’ is defined by an Explanation to the proposed Section 115BBI to mean:
 - (i) income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions or
 - (ii) deemed income referred to in Explanation 4 to third proviso to Section 10(23C) or Section 11(3) or Section 11(1B); or
 - (iii) any income which is not exempt under Section 10(23C) on account of violation of the provisions of Section 10(23C)(b) or not to be excluded from total income under the provisions of Section 13(1)(d); or
 - (iv) any income which is deemed to be income under the twenty first proviso to Section 10(23C), twenty first proviso or which is not excluded from total income under Section 13(1)(c); or
 - (v) any income which is not excluded from total income under Section 11(1)(c).

Rationalization of Tax Litigation (Faceless assessments, DRP, Re-assessments, Appellate proceedings)

Faceless TP, DRP & Appellate proceedings

Relevant Sections: 92CA, 144C, 253

Faceless TP assessments

- As part of the process of making the tax administration transparent and efficient, provisions for notifying faceless schemes under sections 92CA (TP assessments), 144C (DRP), 253 (Appeals to Appellate Tribunals) and 255 (procedure of Appellate Tribunal) were introduced in the Act. The time limits for notifying such schemes under the stated Sections are slated to expire on March 31, 2022 (except Section 255, for which the time limit is March 31, 2023).
- The Finance Bill, 2022 proposes to extend the timelines to issue direction for application of the faceless assessment scheme to TP assessments and DRP proceedings to 31-03-2024.
- It is to be noted that for notification of scheme under sections 253 and 255, procedures will need to be formulated after due consultations with the Ministry of Law & Justice.

AO to pass Order considering DRC Directions

Relevant Sections: 245MA

- The Finance Bill, 2022 proposes to insert a new sub-section (2A) to Section 245MA to enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the Dispute Resolution Committee (DRC).
- The existing provisions of Section 245MA do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the DRC under the said Section.
- Therefore, the Bill proposes to insert the enabling provisions wherein AO shall pass the final order (of assessment, reassessment, recomputation) in conformity with the directions by the DRC, within a period of one month from the end of the month in which such order is received.

Extension of Time limits for Faceless scheme of TP Assessments, DRP and Appeals

Relevant Sections: 253, 255

- As part of the process of making the tax administration transparent and efficient, provisions for notifying faceless schemes under Sections 92CA (TP assessments), 144C (DRP), 253 (Appeals to the Appellate Tribunals) and 255 (procedure of Appellate Tribunal) were introduced in the Act. The time limits for notifying such schemes under the stated Sections are slated to expire on March 31, 2022 (except Section 255, for which the time limit is March 31, 2023)
- To avoid delay in stabilization of the current information technology structure and systems, Finance Bill, 2022 proposes to extend the timeline for issuing directions for the purposes of faceless procedures under these Sections till March 31, 2024

Power to Revise the TPO Orders

Relevant Sections: 263

- The Finance Bill, 2022 proposes to amend Section 263 wherein the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner (who is assigned the jurisdiction of transfer pricing) would be granted revisionary authority over orders passed by TPO.
- As per the existing provisions of Section 92CA, the Assessing Officer with the approval of the Principal Commissioner or Commissioner could refer the computation of arm's length price to the Transfer Pricing Officer (TPO) and consequently, based on such determination by the TPO, the AO is to determine the final income. However, it is not clear as to who has the power under Section 263 to revise the order of the TPO passed under said Section 92CA.

Mitigation of Litigation

Relevant Sections: 158AA, 158AB

- The Finance Bill, 2022 proposes to insert new Section 158AB with an aim to manage litigation with respect to appeals filed by the Revenue on similar issues as already pending before the SC or jurisdictional HC.
- It proposes for establishment of collegium comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board.
- The proposed section provides that based on consultation and directions of the collegium, the Commissioner or Principal Commissioner may defer filing an appeal to the ITAT or HC, where the question of law arising in the present case of the assessee for any assessment year is identical with a question of law already raised in case of the assessee himself or any other Assessee and the same is pending before jurisdictional HC or SC.
- The above deferment of filing of appeal by Revenue can be done only after receipt of acceptance from the assessee to the effect that the question of law in the other case is identical to that arising in the present case.

Mitigation of Litigation

Relevant Sections: 158AA, 158AB

- The option to file an appeal once the question of law reaches finality in the other case is available by making an application by the AO to the Appellate Tribunal or jurisdictional HC to this effect.
- With the introduction of Section 158AB, a sunset clause is proposed to be inserted in sub-section (1) of Section 158AA to provide that no direction shall be given under the said sub-section on or after April 1, 2022.

Rationalization of Reassessment Provisions

Relevant Sections: 132, 148, 148A, 148B, 149, 153B

- The Finance Bill, 2022 proposes to insert a new proviso to Section 148 whereby approval to issue notice under Section 148 shall not be required where the AO, with the prior approval of the specified authority has passed an order under Section 148A(d) that it is a fit case to issue a notice. Also proposes to omit the requirement of obtaining approval of specified authority for providing an opportunity to show cause against reassessment to the assessee before issuance of notice u/s 148.
- Also proposes to correct inadvertent drafting error in Section 148 by omitting the word ‘flagged’ in Explanation 1(i) explaining the meaning of the phrase “the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means any information ‘flagged’..... in accordance with the risk management strategy formulated by the Board....”
- Proposes to amend Section 132(8) and include assessment/reassessment under Section 143(3), 144 or 147 within its scope It is also proposed to amend Sections 132B(1)(i) and 132B(4) to include assessment or reassessment or recomputation within its scope.

Rationalization of Reassessment Provisions

Relevant Sections: 148, 148A, 148B, 149, 153B

- Section 149(1)(b) is proposed to be amended to provide that notice under Section 148 shall be issued only after 3 years but before 10 years where the AO has in his possession books of account/ other documents revealing – “income chargeable to tax represented in the form of an asset, expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account”, has escaped assessment amounting to Rs. 50 lakh or more.
- The Finance Bill, 2021 proposes to insert sub-section (4) in Section 153B to exclude search u/s 132 and requisition u/s 132A from its scope on or after Apr 1, 2021
- Also proposes to amend first proviso to Section 149(1) to provide that no notice u/s 148 shall be issued before Apr 1, 2021, if a notice u/s 148 or 153A or 153C could not be issued for being issued beyond the specified time limit in Section 149(1)(b), 153A or 153C.
- Proposes to amend Section 153B by inserting new clause to exclude the period commencing from date of initiation of search to date on which seized books of accounts, bullion, cash, jewellery etc. is handed over to Assessing Officer having jurisdiction over the Assessee, from the period of limitation.

Time Limit for Completing Assessment Consequent to Revised TPO'S Order

Relevant Sections: 153

- The Bill proposes to amend the provisions of Section 153 by inserting Sub-section (5A), wherein, two months' time will be allowed to the AO from the date of receipt of TPO's order passed consequent to exercise of such revisionary powers, to finalise the assessment.

Assessment Proceedings

Relevant Sections: 143, 144, 144B

- Section 144B was inserted in the Act to provide the procedure for faceless assessment with effect from April 1, 2021. However, in view of the difficulties faced by the administration as well as taxpayers in the operation of the faceless assessment procedure, Finance Bill, 2022 proposes to substitute the existing provisions of sub-sections (1) to (8) of Section 144B with a new sub-section (1) to (8) of Section 144B, which entail the following features:
- The provisions shall apply to faceless assessments, re-assessments or re-computation in the cases specified in Section 143(3) or Section 144 or Section 147 of the Act.
- The National Faceless Assessment Centre (NaFAC) shall assign the cases selected for faceless assessment to a specific Assessment Unit (AU) and intimation in this regard shall be sent to the Assessee.
- Notices under Section 143(2) and 142(1) shall be served on the Assessee through NaFAC and the Assessee must respond within the time prescribed in such notice. The details filed by the Assessee in response to such notices will be forwarded to the AU.

Assessment Proceedings

Relevant Sections: 143, 144, 144B

- Upon receipt of request from the AU, the NaFAC shall:
 - (i) Issue a notice for obtaining further information, documents or evidence from the Assessee or any other person;
 - (ii) Request the Verification Unit (VU) to conduct an enquiry or verification; or
 - (iii) Refer to the Technical Unit (TU) for determining the arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter;
- The NaFAC shall send the report received from the VU or the TU to the concerned AU.
- If the Assessee fails to comply with any notice issued by the NaFAC, a show cause notice under Section 144 may be served on the Assessee giving him the opportunity to explain as to why the assessment in his case should not be completed to the best of its judgement.
- After taking into account the relevant material available on record, the AU shall prepare an income or loss determination proposal. A show cause notice shall be served on the Assessee in respect of the variations proposed to the income or loss declared in the return of income.

Assessment Proceedings

Relevant Sections: 143, 144, 144B

- After considering the response of the assessee or on failure of receipt of such response, and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, and after receipt of approval from NaFAC, the AU shall prepare a draft order. The AU may also assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.
- Upon receipt of the review report from the RU, the AU may accept or reject some or all of the modifications proposed and prepare a draft order accordingly, after recording the reasons in writing for rejecting the modifications proposed by the RU.
- In case of a draft order under Section 144C proposing to make any modifications prejudicial to the assessee, the NaFAC shall serve such draft order to the Assessee, wherein the Assessee has the option to either file acceptance to such proposed modifications or file objections with the DRP and the NaFAC within the period specified under Section 144C(2).

Assessment Proceedings

Relevant Sections: 143, 144, 144B

- In any case, other than that of an eligible assessee under Section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order and thereby pass a final assessment order and also to initiate penalty proceedings, if any.
- The NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice to the assessee.
- After completion of assessment, the NaFAC shall transfer all the electronic records of the case to the jurisdiction AO for any action as may be required under the Act.
- For the purposes of faceless assessment, the CBDT may set up and specify the functions and jurisdiction of the NaFAC, AU, VU, RU and TU. The said units have been defined under the new Section 144B.
- It is proposed that all communications among the AU, RU, VU or TU or with the assessee or any other person as may be necessary for the purposes of making a faceless assessment shall only be through the NaFAC. Further, all communications between the NaFAC and the assessee, or his authorised representative, or any other person and all internal communications between the NaFAC and various units shall be exchanged exclusively by electronic mode by affixing digital signature.

Assessment Proceedings

Relevant Sections: 143, 144, 144B

- Having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interest of the revenue, the AU may, upon recording of reasons in writing, request the NaFAC to invoke the provisions of Section 142(2A) of the Act by forwarding the case to the jurisdictional PCCIT, CCIT, PCIT or CIT. If such request is not accepted, the AU shall proceed to complete the assessment in accordance with the procedure laid down in the proposed Section.
- It is further proposed to omit Section 144B(10).
- Section 144B(9) of the Act provides that the assessment proceedings shall be void if the procedure mentioned in Section 144B was not followed. However, a large number of disputes were raised under this sub-section on account of technical issues arising due to use of information technology, leading to unnecessary litigation.
- Accordingly, it is proposed to omit Section 144B(9) from the date of its inception.

Section 14A, Expenses incurred for COVID treatment, Donation to Research Institutions

Expenditure incurred towards Exempt Income

Relevant Sections: 14A

Deductibility of expenditure incurred in earning exempt income

- Currently, taxpayers are considering the expenditure incurred for earning exempt income as non-deductible only if such exempt income has accrued, arisen or received during the year.
- The Finance Bill, 2022 proposes to amend Section 14A(1) to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary in the Act.
- It is also proposed to insert an Explanation to clarify that notwithstanding anything to the contrary contained in this Act, Section 14A shall apply and shall be deemed to have always applied in a case where exempt income has not accrued / arisen or not received during the previous year and the expenditure in relation to such exempt income has been incurred during the said previous year.

Exemption of amount received towards COVID-19

Relevant Sections: 17(2), 56(2)(x)

Exemption of amount received on account of COVID-19

- The Finance Bill, 2022 proposes to insert a new sub-clause in the proviso to Section 17(2), to provide that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of “perquisite”.
- An amendment is also proposed in Section 56(2)(x) to provide that any amount received by an individual, from any person, towards medical treatment of self or family member will not be considered as income from other sources.
- It is also provided that any amount received by a family member of deceased person from the employer is tax exempt. Further, an amount of up to INR 10 lakhs received from any person other than employer would be tax exempt. Tax exemption is subject to receiving amount within 12 months of death and fulfillment of other conditions as may be notified.
- ***The amendment formalizes the press release in June 2021, which announced COVID-19 relief for individual taxpayers.***

Disallowance of Donation to Research Institutions

Relevant Sections: 35(1A)

Amendment to Section 35(1A)

- The existing Section 35(1A) has made it mandatory for the research association, university, college or other institution referred to in Section 35(1)(ii)/(iii) or company referred to in clause (iia) to file the statement of donations received by these entities from the donors
- Presently, the Section reads as no deduction shall be allowed to the research association, university etc. if such statement of donations is not filed. The legislative intent was to disallow the deduction claimed by donor in such cases, similar to amendment in Section 80G
- The Finance Bill, 2022 proposes to amend Section 35(1A) to provide that the deduction claimed by the donor with respect to the donation given to research association, university, college or other institution referred to in Section 35(1)(ii)/(iii) or company referred to in clause (iia) shall be disallowed unless such research association, university, college or other institution or company files the statement of donations
- ***This amendment will take effect RETROSPECTIVELY from 01-04-2021***

Clarification on Section 37 deductions

Clarifications on claiming Tax Deductions

Relevant Sections: 37

Amendments & clarifications on allowability of expenses u/s 37

- The Finance Bill, 2022 clarifies that the claim of any expense incurred in providing various benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under Section 37(1) being an expense prohibited by the law. Discussing a plethora of rulings on this issue, the Memorandum has clarified that ITAT decisions allowing such expenditure are clearly not in line with the intention of the legislation.
- To discourage the claim of deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, the Finance Bill, 2022 proposes to amend Section 37 by inserting Explanation (3) to clarify the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law” under Explanation 1.

Clarifications on claiming Tax Deductions

Relevant Sections: 37

Amendments & clarifications on allowability of expenses u/s 37

- Such expression shall include and deemed to have included:
 - (a) expenditure incurred for any purpose which is an offence under or which is prohibited by any law for the time being in force, in India or outside India; or
 - (b) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or
 - (c) to compound an offence under any law for the time being in force, in India or outside India
- ***It has accordingly been clarified that deduction will not be allowed for expenditure incurred for a purpose that is an offence under any law; or for compounding of an offence under any law; or for providing any benefit or perquisite to a person where acceptance of such benefit or perquisite violates any law.***

Clarification on allowability of Cess & Surcharge

Clarification on allowability of Cess & Surcharge

Relevant Sections: 40(a)(ii)

Allowability of Cess & Surcharge as business expense

- Section 40(a)(ii) provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head PGBP.
- In the following judgements, the High Courts after relying upon the CBDT Circular No.91/58/66-ITJ(19) dated 18-05-1967 in view of the interpretation made by the CBDT have held that ‘education cess’ can be claimed as an allowable deduction while computing the income chargeable under the heads “profits and gains of business or profession”.
 - *Sesa Goa Limited Vs JCIT (2020) 117 taxmann.com, Bombay High Court*
 - *Chambal Fertilizers & Chemicals Ltd Vs. JCIT: D.B Income-tax Appeal No.52/2018 decided on 31-07-2018, Rajasthan High Court*
- Based on these decisions, ITAT in various judgements have followed the same reasoning and have allowed deduction on account of payment of ‘Cess’

Clarification on allowability of Cess & Surcharge

Relevant Sections: 40(a)(ii)

Allowability of Cess & Surcharge as business expense

- In the above-mentioned circular issued by CBDT, 'cess' is to be allowed under section 40(a)(ii). However, it is to be noted that 'Cess' is imposed not only by the Central Government through Finance Act for a financial year, but also by various State Governments.
- It is pertinent to mention that in the above referred circular, there is no reference to the 'cess' imposed by the Central Government through Finance Act for a particular year. This CBDT circular needs to be seen from the perspective that 'Education Cess' imposed by Finance Act 2004 and subsequent Acts and then designated as 'Education and Health Cess' are actually tax in the form of additional surcharge, as stated clearly in each of the relevant Finance Act imposing such 'cess'.
- It is only called 'cess' since they were imposed for a particular purpose of fulfilling the commitment of the Government to provide and finance quality health services and universalized quality basic education and secondary and higher education.

Clarification on allowability of Cess & Surcharge

Relevant Sections: 40(a)(ii)

Allowability of Cess & Surcharge as business expense

- This circular was in reference to 'cess' imposed by State Government which is actually of the nature of 'cess' and not of the nature of 'Additional Surcharge' being termed as 'cess' in the relevant Finance Act. When an additional surcharge is imposed by the Central Government and it is named as 'cess', then its allowability needs to be examined whether an additional surcharge is allowed to be a deduction or not. Hon'ble Supreme Court in the case of K Srinivasan has held that 'surcharge' and 'additional surcharge' are tax. Hence, the additional surcharge named as 'cess' and imposed by the Central Government through the Finance Act is nothing but a tax and hence, needs to be disallowed under 40(a)(ii) of the Act.
- Since the judgements of Rajasthan High Court and Bombay High Court did not consider the judgement of Hon'ble Supreme Court discussed above, the judgements of these two High Courts appear to be per incuriam. It may be mentioned that in paragraph 578 at page 297 of Halsbury's Laws of England, Fourth Edition, the rule of per incuriam is stated as follows:

Clarification on allowability of Cess & Surcharge

Relevant Sections: 40(a)(ii)

Allowability of Cess & Surcharge as business expense

- *”A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must be decided which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.”*
- Therefore, to bring the intension of the legislature and in line with the judgement of Hon’ble Supreme Court, to make it free from any misinterpretations, it is proposed to include the explanation to clarify that the term “tax” includes and shall be deemed to have always included any surcharge and cess, by whatever name called, on such tax. Amendment is made retrospectively to make clear the position irrespective of the circular of the CBDT.
- ***This proposal will be in effect retrospectively from 01-04-2005 and will apply in relation to the AY 2005-06 and subsequent AYs.***

Clarification on Section 43B,
treatment of Goodwill as 'transfer',
rationalization of Section 68

Clarification on deductibility of Interest

Relevant Sections: 43B

Deduction on payment of interest only on actual payment

- Section 43B provides for certain deductions to be allowed only on actual payment. Explanation 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution / NBFC / scheduled bank or a co-operative bank under clause (d), clause (da) and clause (e) of this section respectively, shall be allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid.
- Several courts have upheld that conversion of interest into debenture or other securities is a constructive discharge of interest liability and hence amounted to actual payment and therefore allowable u/s 43B.
- To bring clarity it is proposed to amend Explanation 3C, Explanation 3CA and Explanation 3D of section 43B to provide that conversion of interest payable under clause (d), clause (da) and clause (e) of section 43B, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid

Reduction of Goodwill from BoA is ‘Transfer’

Relevant Sections: 43, 50

- After Finance Act, 2021, goodwill of a business or profession is not considered as a depreciable asset. In case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains u/s 48 of the Act and whereas depreciation was obtained by the assessee in relation to such goodwill prior to the AY 2021-22, then WDV value should be considered as the cost of acquisition.
- It is further proposed to clarify that for the purposes of Section 50, reduction of the amount of goodwill of a business or profession, from the block of asset shall be deemed to be transfer.
- ***As the goodwill amendment has been made applicable from AY 2021-22, the above amendment to section 50 will take effect RETROSPECTIVELY from 01-04-2021 and will accordingly apply in relation to the AY 2021-22 and subsequent AYs.***

Onus to prove unexplained Cash Credits

Relevant Sections: 68

Cash credits u/s 68

- Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The assessee has to only establish identity and creditworthiness of creditor and genuineness of transactions for explaining the source of funds in the hands of the creditor.
- The Finance Bill, 2022 proposes to amend the provisions of section 68 to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider.
- This proposal aims to clarify that the onus of satisfactorily explaining the credits remains with the Assessee and extends to explaining the source of funds in the hands of the creditor.
- ***This proposal will be effective from AY 2023-24 and subsequent AYs.***

Amendment to Section 79 (C/f & set off of losses)

Divestment of PSU – Carry forward of losses

Relevant Sections: 79

Strategic Disinvestment of Public Sector Companies

- In order to facilitate the disinvestment of public sector companies, the Finance Bill, 2022 proposes to amend Section 79 to provide that the Section 79(1) (which restricts set-off of brought forward losses in case of change of shareholding) shall not apply to an erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one per cent of the voting power of the erstwhile public sector company in aggregate.
- It is also proposed that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

Set off of loss in Search cases

Relevant Sections: 79A, 132, 132A, 133A

Insertion of new section 79A for set off of losses in Search cases

- A new section 79A is proposed to be inserted to provide that where consequent to search initiated u/s 132 or a requisition made u/s 132A or a survey conducted u/s 133A, the total income of any previous year of an assessee includes any undisclosed income, no set off, against such undisclosed income, of any loss, whether b/f or otherwise, or unabsorbed depreciation shall be allowed in computing his total income for such PY.
- The term 'undisclosed income' is proposed to be defined as under:
 - Any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of search u/s 132 or a requisition made u/s 132A or a survey conducted u/s 133A, other than conducted under sub-section (2A) or section 133A, which has
 - (a) not been recorded on or before the date of search or requisition or survey, in the books of account or other documents maintained in the normal course relating to such previous year; or
 - (b) not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, or

Set off of loss in Search cases

Relevant Sections: 79A, 132, 132A, 133A

Insertion of new section 79A for set off of losses in Search cases

- Any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is found to be false and would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.
- ***This amendment will take effect from 01-04-2022 and will accordingly apply in relation to AY 2022-23 and subsequent AYs.***

Personal Taxation Amendments

Amendments to Personal Taxation

Relevant Sections: 80CCD (NPS)

National Pension Scheme (NPS) for State Government employees

- Presently, contribution made to NPS by Central Government is deductible upto 14% of salary whereas the limit is 10% of salary for contribution made by any other employer.
- In order to extend the same benefit to state government employees, it is proposed to increase the existing limit of contribution of 10% to 14% of salary.
- ***This amendment will take effect retrospectively from 01-04-2020 i.e. AY 2020-21 & subsequent AYs.***

Amendments to Personal Taxation

Relevant Sections: 80DD

Relaxation in Conditions for deduction of Annuity u/s 80DD (differently abled)

- Section 80DD provides for deduction in respect of expenditure for medical treatment or amount paid to LIC or any insurer for maintenance of a disabled dependent. The deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the disabled dependent, in the event of the death of that insured individual or the member of the HUF in whose name subscription to the scheme has been made.
- Further, section 80DD(3) provides that if the dependent with disability, predeceases the individual or the member of the HUF, the amount deposited in such scheme shall be deemed to be the income of the assessee of the previous year in which it is received.
- Supreme Court in *Ravi Agrawal v. Union of India* observed that that there could be harsh cases where handicapped dependents may need payment of annuity or lump sum basis even during lifetime of their parents/guardians. It was further observed that the Centre may take into consideration all the aspects, including those where a disabled dependent might need payment on annuity or lump sum basis even during the lifetime of the parents or guardians.

Amendments to Personal Taxation

Relevant Sections: 80DD

Relaxation in Conditions for deduction of Annuity u/s 80DD (differently abled)

- The Finance Bill, 2022 proposes to allow the deduction also during the lifetime, i.e. upon attaining age of sixty years or more of the individual or the member of the HUF in whose name subscription to the scheme has been made and where payment or deposit has been discontinued.
- It is also proposed that Section 80DD(3) shall not apply to the amount received by the dependent, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment.

Extension of sunset for Start-ups and set
up of manufacturing companies

Extension of sunset for Start-ups exemption

Relevant Sections: 80-IAC

Extension of Date of Incorporation for Eligible Start ups for exemption

- Eligible start-ups incorporated on or after 01-04-2016 but before 01-04-2022 and fulfilling other prescribed conditions are eligible for 100% deduction of the profits / gains derived from an eligible business for a specified period.
- The Finance Bill, 2022 proposes to amend the provisions of Section 80-IAC to extend the period of incorporation of eligible start-ups to 31-03-2023.

Manufacturing Companies – Concessional Tax

Relevant Sections: 115BAB

Extension of Concessional Tax Regime for Manufacturing Companies

- Section 115BAB(2)(a) provides that new domestic manufacturing company is required to be set up and registered on or after 01-10-2019 and is required to commence manufacturing or production of an article or thing on or before 31-03-2023.
- Due to ongoing pandemic, registration of domestic companies as well commencement of manufacturing / production by companies already set up is getting delayed.
- The Finance Bill, 2022 proposes to amend Section 115BAB to extend the date of commencement of manufacturing or production of an article or thing, from 31-03-2023 to 31-03-2024.

Rationalization of Bonus & Dividend stripping, withdrawal of concessional tax rate on foreign dividend income

Bonus & Dividend Stripping

Relevant Sections: 94

AIFs/REITs/InvITs

- The existing provisions pertaining to the prevention of tax evasion through bonus stripping and dividend stripping do not apply to units of Infrastructure Investment Trust (InvIT), Real Estate Investment Trust (REIT) and Alternative Investment Funds (AIFs). Further, the existing provisions of bonus stripping are not applicable to securities.
- The Finance Bill, 2022 proposes to amend sub-section (8) of Section 94, to extend applicability of bonus stripping provisions to 'securities'. In addition, the Explanation to the Section is amended to redefine "units" to include units of InvIT, REIT and AIFs. As a consequence, the Bill also proposes to extend the provisions of bonus stripping and dividend stripping provisions to aforementioned units.
- ***These amendments will take effect from 01-04-2023 and will accordingly apply in relation to the AY 2023-24 & onwards***

Withdrawal of Section 115BBD

Relevant Sections: 115BBD

- The Finance Bill, 2022 proposes to withdraw the concessional rate of tax (15%) on dividend received from foreign companies wherein at least 26% equity was held by Indian company.
- Given the abolition of the DDT regime, the proposal aims for uniformity in tax treatment where dividends are received by Indian Companies from specified foreign companies as compared to dividends received from a domestic company.
- ***This amendment will take effect from 01-04-2023 and accordingly, the provisions of this section shall not apply to AY 2023-24 and onwards.***

Rationalization of AMT on Co-operative societies

AMT on Co-operative Societies

Relevant Sections: 115JC

- Presently, the alternate minimum tax (AMT) payable by co-operative societies is at the rate of 18.5% whereas the Minimum Alternate Tax (MAT) rate for companies was reduced to 15% by the Taxation Laws (Amendment) Act, 2019.
- The Finance Bill, 2022 proposes to amend Section 115JC(4) to reduce the AMT rate for co-operative societies to 15%.
- Consequentially, Section 115JF is also proposed to be amended in relation to the definition of “alternate minimum tax”
- ***These amendments will take effect from 01-04-2023 and will accordingly be applicable from AY 2023-24 and onwards.***

Income Tax Administrative provisions – Powers expanded

Extension of CBDT Powers

Relevant Sections: 119

Power of CBDT in Genuine cases of Late filing of Return

- Section 119 empowers CBDT to issue orders, instructions and directions to other income-tax authorities for proper administration of the Income-tax Act. It also provides power to provide relaxation of provisions of certain sections such as 115P, 115S, 115WD, 139, 234A, 234C, 234E etc. by way of general or special orders.
- Whereas at present the section 234F i.e., payment of late filing fees of return under section 139 is not specifically covered under section 119.
- Therefore, looking into the genuine hardship of the person and not to impose a fee for a default which is beyond the control of the assessee, it is proposed to insert section 234F and include it in the list of sections mentioned under section 119.
- ***This proposal will be effective from 01-04-2022 and will apply in relation to the AY 2022-23 and onwards.***

Income-tax Authorities for purpose of S.133A

Relevant Sections: 133A

- The Finance Bill, 2022 proposes to amend the ambit of income tax authority in clause (a) of the Explanation after sub-section 6 and provides that income tax authority shall be subordinate to the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner, as may be specified by the Board as against existing provisions which provides for any income-tax authority who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS).
- ***This proposal will be effective from 01-04-2022 and will apply in relation to the AY 2022-23 and onwards.***

Extending Power to CIT(A)

Relevant Sections: 271AAB, 271AAC, 271AAD

- The Finance Bill, 2022 proposes to amend Section 263 wherein the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner (who is assigned the jurisdiction of transfer pricing) would be granted revisionary authority over orders passed by TPO.
- As per the existing provisions of Section 92CA, the Assessing Officer with the approval of the Principal Commissioner or Commissioner could refer the computation of arm's length price to the Transfer Pricing Officer (TPO) and consequently, based on such determination by the TPO, the AO is to determine the final income. However, it is not clear as to who has the power under Section 263 to revise the order of the TPO passed under said Section 92CA.

Rationalization of TDS, TCS & prosecution provisions, Refund of withholding taxes & extending reporting requirement in Form 52A

Rationalisation of TDS and TCS

Relevant Sections: 201,206C, 206AB,206CCA

- The Finance Bill, 2022 proposes to insert a proviso to Section 201(1A) to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said Section, the interest shall be paid by the person in accordance with the order made by the AO in this regard.
- Further, proviso to Section 206C(7) is proposed to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said Section, the interest shall be paid by the person in accordance with the order made by the AO in this regard.
- It is also proposed to amend Sections 206AB and 206CCA to reduce the two years requirement to one year.
- “Specified person” shall mean a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected and the amount of tax collected or deducted at source is Rs. 50,000 or more in the said previous year.
- It is also proposed that provisions of Section 206AB will not be applicable to Individual and HUF assesseees covered under Sections 194-IA, 194-IB and 194M.

Rationalisation of TDS and TCS

Relevant Sections: 194R

- The Finance Bill, 2022 proposes to insert Section 194R to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of 10% of the value or aggregate of value of such benefit or perquisite.
- In cases where the benefit or perquisite is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit of perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite
- No tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed Rs. 20,000 during the financial year.
- These provisions shall not apply to an individual or a HUF, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such benefit or perquisite is provided.

Rationalisation of TDS and TCS

Relevant Sections: 194IA

- The provisions of Section 194-IA presently provide for deduction of tax at source on the consideration paid by the transferee to the transferor, and do not take the stamp duty value of the property into account. However, for computation of income under Sections 43CA and 50C the stamp duty value is also considered.
- The Finance Bill, 2022 proposes to amend Section 194-IA with a view to remove this inconsistency
- It is proposed to amend Section 194-IA of the Act to provide that in case of transfer of an immovable property (other than agricultural land), tax is to be deducted at 1% of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher.
- In cases where the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under Section 194-IA.

Refund of Withholding Taxes made erroneously

Relevant Sections: 239A, 246A, 248

- The Finance Bill, 2022 proposes to insert a new Section 239A to provide that a person, who has made the deduction of tax under such an agreement or arrangement and borne the tax liability (i.e. a grossing-up of tax in international payments), when no tax deduction was required, then he may file an application before the Assessing Officer for refund of such tax deducted.
- Appeal against the order of the Assessing Officer for application made under Section 239A can be filed before CIT(A) under Section 246A.
- The Finance Bill, 2022 proposes that the provisions of Section 248 shall not be applicable in cases where the date of tax payment, to the credit of Central Government is on or after Apr 1, 2022, as a taxpayer has no recourse to approach the Assessing Officer with a request for refund of tax deducted with respect to any income paid to a non-resident and claimed to have no requirement for such tax deduction. The taxpayer in such case had to go through the compulsory appellate proceedings for obtaining the refund.

Prosecution Proceedings

Relevant Sections: 276AB, 276B, 278A, 278AA

- The Finance Bill, 2022 proposes to amend Section 276AB to provide that no fresh prosecution cases involving transfer of immovable property (under Section 269UC, 269UE and 269UL) shall be initiated under Section 276AB effective on or after April 1, 2022. The amendment in the Section has been proposed to bring it into line
- with the stated provisions of the Act that have been made inapplicable in the past (i.e. 2002) and as launching prosecution against offences committed more than twenty years ago, that is prior to 2002 would be beyond reasonable time.
- Recognizing the similarities between nature of offences that are punishable under Section 276B and 276BB (failure to pay to the credit of Central Government, the tax collected at source) with Sections 278A and 278AA that are related to punishment with prosecution against persons for failure to pay tax deducted to the credit of Central Government, the Bill proposes to amend Sections 278A and 278AA by including Section 276BB under them. Section 278A deals with punishment for second and consequent offences and 278AA deals situations where punishment not to be imposed.

Extending Reporting requirements in Form 52A

Relevant Sections: 285B

- The Finance Bill, 2022 proposes to amend Section 285B, to extend the reporting requirements (Form 52A) to persons engaged in specified activities such as event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.
- Section 285B currently provides for the producer of cinematographic films to furnish within 30 days from the end of the financial year or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over Rs.50,000/- in the aggregate made by him or due from him to each person engaged by him.

Thank You



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