THE FINANCE BILL 2023

EK SAMIKSHA...

SAPTARISHI

7 PRIORITIES OF BUDGET 2023-2024

(For Private Circulation Only)

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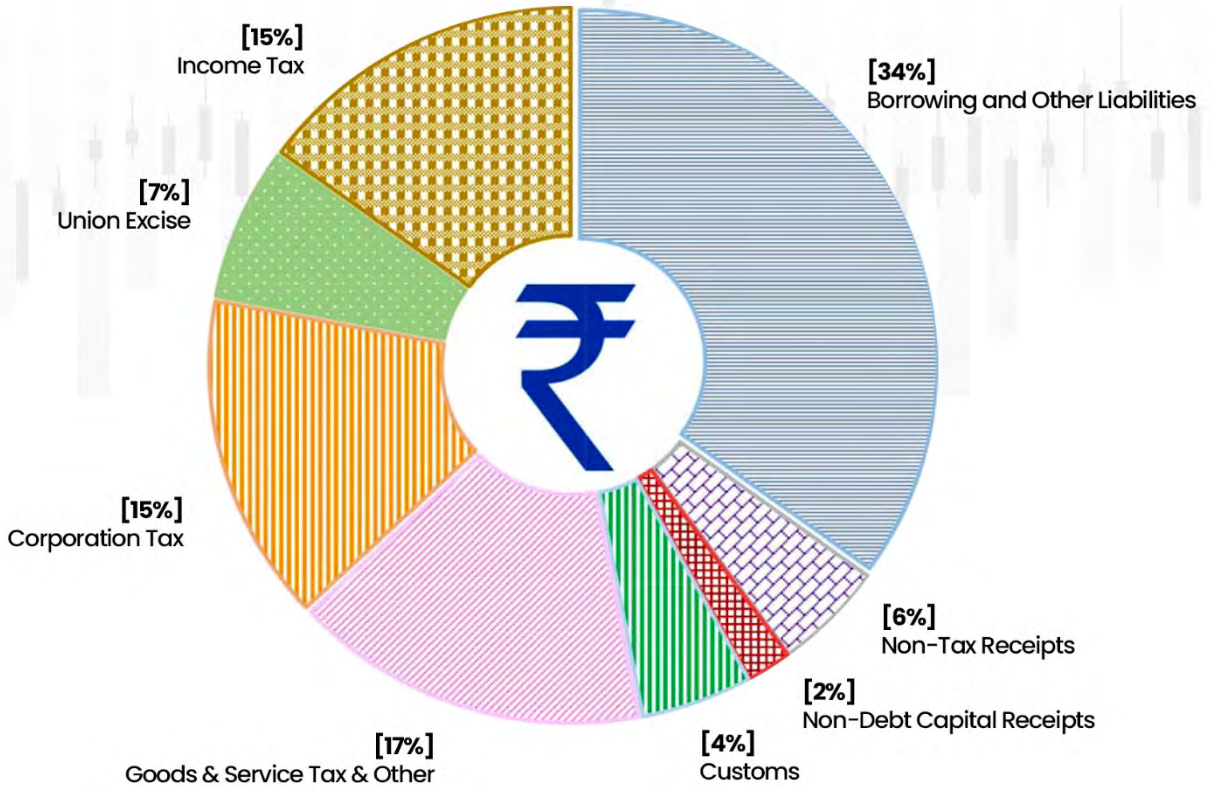
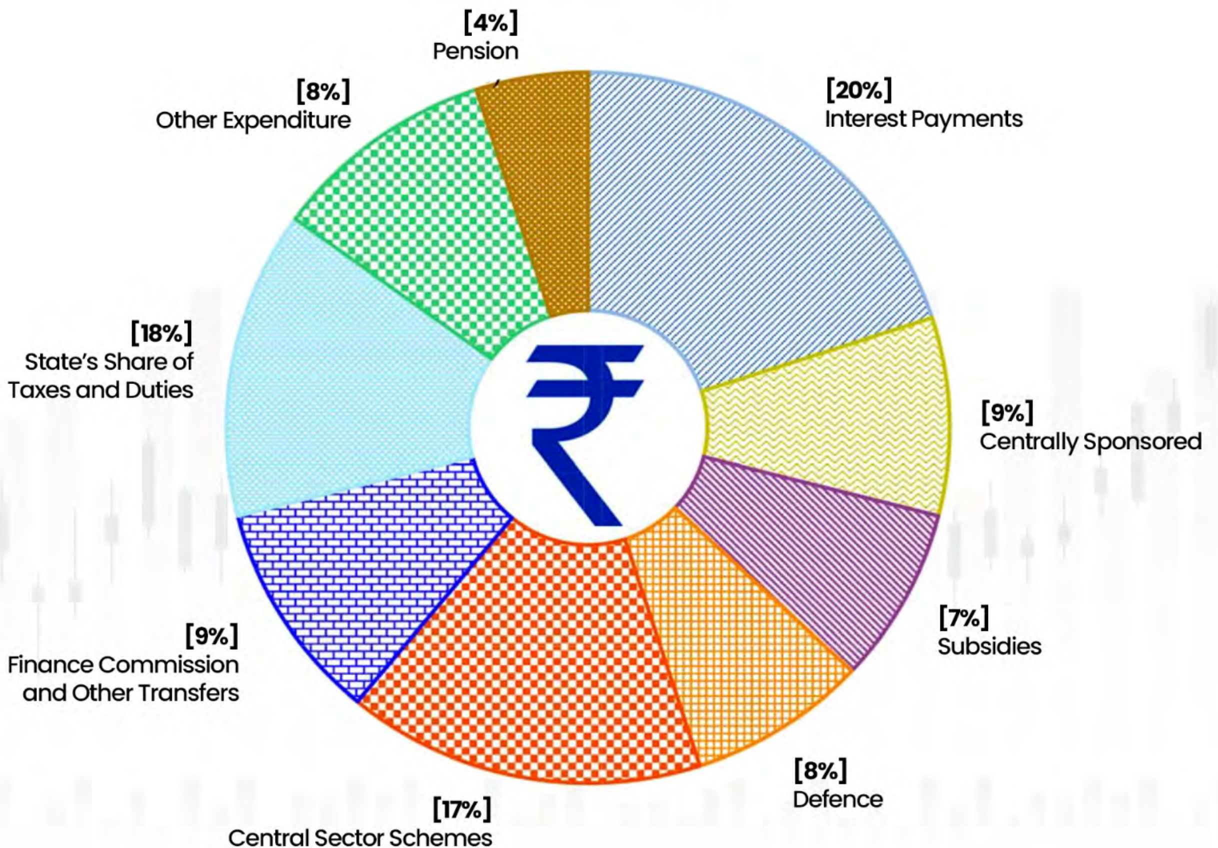
Rupee comes from



Rupee goes to



Date: 6th February, 2023

Dear Madam/Sir,

Namaste!!

The Hon'ble Finance Minister (FM) Smt. Nirmala Sitharaman presented Union Budget for the financial year 2023-24 for the fifth year in row. The budget proposals aims at an economy which is technology-driven and knowledge-based with strong public finances, and a robust financial sector. It is guided by principles and priorities of Saptarishi. The proposals may have plus and minus. In our understanding, amongst others, the following are the best part of these proposals:

1. Our economic growth is estimated at 7%.
2. Fiscal deficit is estimated at 5.9% of GDP for the current year.
3. Not much of a tinkling with the provisions in Direct Tax, consistency of the tax proposals is at most desired which is seen in this budget.
4. It is stated that more than 39,000 compliances have been reduced and more than 3,400 legal provisions have been decriminalized.
5. For realizing the vision of "Make AI in India and Make AI work for India", three centres of excellence for Artificial Intelligence will be set-up in top educational institutions.

No extra income tax burden for any individual and some concession in tax to a class of individuals is a very welcome move. There are proposals for more discipline and governance for charitable organizations.

The changes in substantive part of the income tax are minimal and lot of changes have been proposed on the procedural part. We have dealt with these proposals in detail in our Study Note enclosed herewith. As like all these years we restrict our Notes on Finance Bill, 2023- Direct Tax Proposals.

This Study Note of ours titled "The Finance Bill, 2023 – Ek Samiksha" is enclosed herewith. After you had an opportunity to go through the same, we may discuss this further at your convenience. We welcome any feedback / suggestions for improvement.

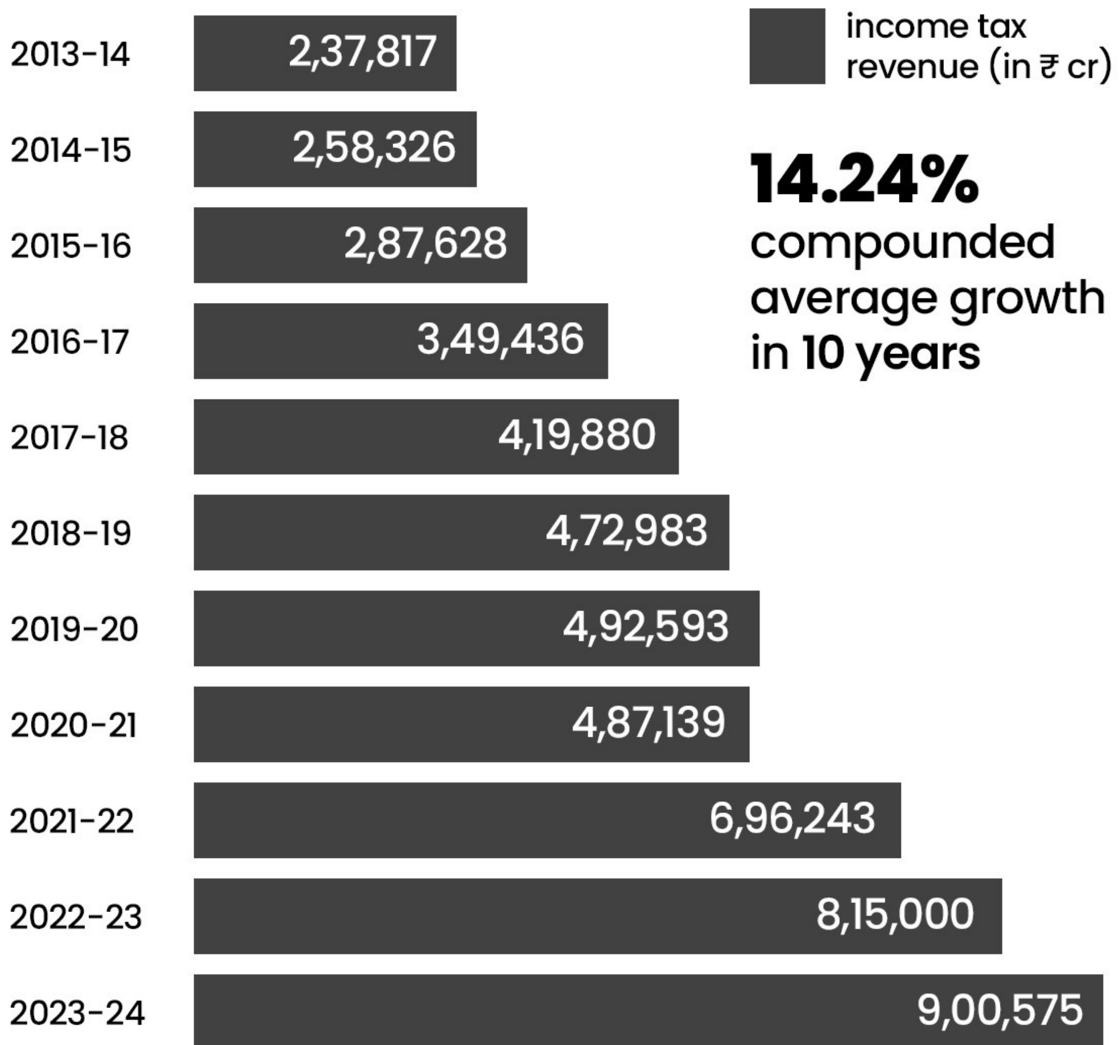
Happy Reading!

With Regards,

Yours Truly,

Team – S. S. Jhunjhunwala & Co.

Strong contribution by
income tax to the exchequer



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In this note an attempt has been made to summarize various proposals of The Finance Bill, 2023 – Direct Tax Proposals. Specific guidance may be obtained before acting on the proposals and provisions.

It should be noted that the Finance Bill, 2023 will be discussed in the Parliament and is subject to any amendments that may be made pursuant to such discussion.

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

In every Budget: Poor gets subsidy and Rich gets rebate. Middle class see TV and debate 😂

Recap of Capital Gain Tax on Shares and Securities

Nature of Security	Period of holding for Long-Term Capital Asset	Rate of Capital Gain Tax	
		Long-Term Capital Gains	**Short-Term Capital Gains**
Equity Shares	12 months	Gains up to Rs. 1 lakh exempt. Balance taxable at 10% without indexation*	15%*
Equity Mutual Funds	12 months		15%*
Debt Mutual Funds	36 months	20% with indexation	Tax at slab rate
Listed Tax Free Bonds	12 months	10% without indexation	Tax at slab rate
Listed Debentures	12 months		Tax at slab rate

* On payment of STT on purchase and sale

These rates are untouched in Finance Bill, 2023

FINANCE BILL, 2023 – AN INTRODUCTION

Finance Bill

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

The provisions of Finance Bill, 2023 (hereafter referred to as "FB 23"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act') to continue reforms in direct tax system through tax-reliefs, removing difficulties faced by taxpayers and rationalization of various provisions.

INCOME TAX PROVISIONS

In this chapter, we have dealt with the proposed amendments to the Act by FB 23. We have made references from Notes on Clauses and Memorandum explaining the provisions of FB 23.

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

1. Effective Dates:

- The amendments in income tax provisions are proposed to be effective from 1st April, 2024 relevant to the Assessment Year 2024–2025 unless otherwise specified.
- The amendments proposed in procedural section are effective for the proceedings taken on or after the date as specified.
- The amendments made in substantive sections are effective from the first day of the Assessment Year from which it is proposed to be effective.

2. Rates of Taxes:

a) Finance Act 2020 introduced alternate tax calculation regime (the new regime) for individuals and HUFs under section 115BAC of the Act. Individual / HUF are given an option whether to follow old regime or go for the new regime. From AY 2024-25, new tax regime is proposed to be treated as the default tax regime. However, taxpayers would continue to have the option to select the old tax regime.

Tax Rates under Old Regime:

There is no change in basic limit and/or slab rates for the financial year 2023-24 relevant to assessment year 2024-25 under the old tax regime.

Income Slab	Age less than 60 years	Age 60 years or more but less than 80 years – Senior Citizen	Age 80 years or more – Very Senior Citizen
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Above Rs. 10,00,000	30%	30%	30%

Rebate under Section 87A of the Act is available to a resident individual if his total income does not exceed Rs. 5,00,000/-. The amount of rebate shall be 100% of income-tax or Rs. 12,500, whichever is less.

Tax Rates under New Regime:
On satisfaction of certain conditions, an individual, HUF, AOP, BOI and Artificial Juridical Person shall, from the 1st April, 2023 pay tax in respect of the total income at the following amended rates [by insertion of sub-section (1A) in section 115BAC of the Act] unless they opt for the Old Regime:

Income Slab	Existing Rate of Tax	Proposed Rate of Tax
Upto Rs. 2,50,000/-	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%
From ₹ 5,00,001 to ₹ 6,00,000	10%	5%
From ₹ 6,00,001 to ₹ 7,50,000	10%	10%
From Rs. 7,50,001 to Rs. 9,00,000	15%	10%
From ₹ 9,00,001 to ₹ 10,00,000	15%	15%
From Rs. 10,00,001 to Rs. 12,00,000	20%	15%
From ₹ 12,00,001 to ₹ 12,50,000	20%	20%
From Rs. 12,50,001 to Rs. 15,00,000	25%	20%
₹ 15,00,001 and above	30%	30%

Rebate under Section 87A: The rebate proposed to be available to a resident individual who has opted to pay tax under new regime if his total income does not exceed Rs. 7,00,000/-. The amount of rebate proposed is upto 100% of income-tax or Rs. 25,000, whichever is less.

The aforesaid proposed rates of New Regime would be considered as default rates for AY 2024-25 and succeeding AYs unless an option is exercised under proposed Section 115BAC (6) for availing tax rates under old regime.

Such individuals or HUFs may exercise this option each year at the time of filing their income-tax returns. However, for those individuals and HUFs whose income consists of “income from business or profession”, and who choose to opt out of the default regime (i.e. the New Regime under section 115BAC), they will only be permitted to opt back into the New Regime (i.e. Section 115BAC) once (and not annually).

Income tax payable would be computed without allowing any exemption or deduction as per proposed Section 115BAC(2)(i) of the Act but providing

a. standard deduction under Section 16(ia),
b. deduction for family pension under Section 57(iia)
c. deduction as per proposed Section 80CCH [Refer Para 8 below] for contribution to Agniveer Corpus Fund and
d. deduction u/s. 80JJA (for new employment)

An individual, HUF, AOP, BOI or Artificial Juridical Person opting for taxation under the newly inserted sub-section (1A) of 115BAC of the Act shall not be entitled to the following exemptions/ deductions:

(i) Leave travel concession as contained in clause (5) of section 10;

(ii) House rent allowance as contained in clause (13A) of section 10;

(iii) Some of the allowance as contained in clause (14) of section 10;

(iv) Allowances to MPs/MLAs as contained in clause (17) of section 10;

(v) Allowance for income of minor as contained in clause (32) of section 10;

(vi) Exemption for SEZ unit contained in section 10AA;

(vii) Deduction for entertainment allowance and employment/professional tax as contained in section 16;

(viii) Interest under section 24 in respect of self-occupied or vacant property referred to in sub-section (2) of section 23. (Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law);

(ix) Additional deprecation under clause (iia) of sub-section (1) of section 32;

(x) Deductions under section 33AB, 33ABA and 32AD;

(xi) Various deduction for donation for or expenditure on scientific research contained in sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35;

(xii) Deduction under section 35AD or section 35CCC;

(xiii) Any deduction under chapter VIA (like section 80C, 80CCC, 80CCD, 80D, 80DD, 80DDB, 80E, 80EE, 80EEA, 80EEB, 80G, 80GG, 80GGA, 80GGC, 80IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, etc). However, deduction under sub section (2) of section 80CCD (employer contribution on account of employee in notified pension scheme), section 80JJAA (for new employment)

and sub-section (2) of proposed section 80CCH (Central Government contribution to Agniveer Corpus Fund) can be claimed.

The Hon'ble FM in response to a query on new personal income tax regime stated that we want to make the new tax regime, which is without exemption, attractive enough for people to think this will be the best option. But if there are people who think that being in the exemption regime, which is the old regime, benefits them, they are welcome to continue. But the ultimate aim is to make the new regime attractive.

b) The rate of surcharge on individual and HUF remains unchanged for **old regime** i.e. they are same for financial year 2023-24 relevant to Assessment Year 2024-25. However, there is a change in the rate of surcharge under the new proposed regime.

The rates of surcharge are as under:

Existing		**Proposed**		
Income at which surcharge is leviable	**Rate of surcharge under old and new regime**	**Income at which surcharge is leviable**	**Rate of surcharge under old regime**	**Rate of surcharge under new regime**
Above Rs. 50 lakhs but upto Rs. 1 crore	10%	Above Rs. 50 lakhs but upto Rs. 1 crore	10%	10%
Above Rs. 1 crore but upto Rs. 2 crore	15%	Above Rs. 1 crore but upto Rs. 2 crore	15%	15%
Above Rs. 2 crore but upto Rs. 5 crore	25%	Above Rs. 2 crore but upto Rs. 5 crore	25%	25%
Above Rs. 5 crores	37%	Above Rs. 5 crores	37%	25%

The FB 23 proposes to restrict the surcharge rate in the highest tax bracket to 25% (as opposed to current rate of 37%), reducing the effective tax rate to 39%. However, the reduced surcharge rate is applicable only for individuals and HUFs opting for the New Tax Regime, and the highest effective tax rate under the Old Regime continues to be 42.74%.

Surcharge on income by way of dividend or income chargeable under section 111A or any long term capital gain shall continue to not exceed 15 percent.

The above rate of surcharge is applied on the tax amount. Provisions for marginal relief are provided. The surcharge is leviable on the total tax on crossing of the threshold of the total income provided. Thus, if an individual has a total income above Rs. 5 crores, surcharge at the rate of 37% (now proposed to 25% under New Regime) is on the total tax on the income irrespective of different slabs of surcharge at different level.

c) Surcharge remains unchanged in case of Association of Person consisting of only companies as its members on the amount of income-tax shall not exceed 15 percent.

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

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

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

Individuals having Total Income	**F.Y. 2022-23**	
	Rate of Surcharge	**Effective tax rate**
Above Rs. 15 lakhs upto Rs. 50 lakhs	Nil	31.20%
Above Rs. 50 lakhs upto Rs. 1 crore	10%	34.32%
Above Rs. 1 crore upto Rs. 2 crore	15%	35.88%
Above Rs. 2 crore upto Rs. 5 crore	25%	39.00%
Above Rs. 5 crore	37%	42.74%

The FB 23 has left the old regime untouched.

Individuals having Total Income	**F.Y. 2023-24**			
	Under Old Regime		**Under New Regime (as proposed)**	
	Rate of Surcharge	**Effective tax rate**	**Rate of Surcharge**	**Effective tax rate**
Above Rs. 15 lakhs upto Rs. 50 lakhs	Nil	31.20%	Nil	31.20%
Above Rs. 50 lakhs upto Rs. 1 crore	10%	34.32%	10%	34.32%
Above Rs. 1 crore upto Rs. 2 crore	15%	35.88%	15%	35.88%
Above Rs. 2 crore upto Rs. 5 crore	25%	39.00%	25%	39.00%
Above Rs. 5 crore	37%	42.74%	25%	39.00%

Concessional rate of tax under the new regime is welcome but saving also needs to be encouraged and incentivized.

Shri Sanjay Malhotra in post budget interview, in reply to certain questions says:

> "**Question:** Since the new tax regime becomes the default regime, will there be any impact on tax deducted at source (TDS)?

Answer: TDS rates are not dependent on which scheme you opt for. TDS rates would not be impacted irrespective of the scheme, either old or new regime, chosen by taxpayers.

Question: How many taxpayers do you expect will shift to the new tax regime?
Answer: Conservatively speaking, more than a majority will shift to the new regime – which is more than 50 percent."

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

Co-operative Societies are given an option whether to follow old regime or go for new regime.

A new section 115BAE is proposed to be inserted, wherein a new manufacturing co-operative society set up on or after 01.04.2023, which commences manufacturing on or before 31.03.24 and does not avail of the specified incentives and deductions, may opt to pay tax at a concessional rate of 15% for Assessment Year 2024-25 onwards. Surcharge would be at 10% on such tax. (Refer Para 37 below)

Apart from the above insertion of new section 115BAE of the Act, there is no other change in basic limit and/or slab rates for the financial year 2023-24 relevant to Assessment Year 2024-25.

Total Income	**Income tax**	**Surcharge**	**Health Education cess**	**Proposed Effective Rate**	**Existing effective rate**
	%	**%**	**%**	**%**	**%**
Co-operative Societies not opting for Section 115BAD:					
i) For income upto Rs. 10,000/-	10	Nil	4	10.40	10.40
ii) For income exceeding Rs. 10,000/- but not exceeding Rs. 20,000/-	20	Nil	4	20.80	20.80
iii) For income exceeding Rs. 20,000/- but not exceeding Rs. 1 crore	30	Nil	4	31.20	31.20
iv) For income exceeding Rs. 1 crore but upt to Rs. 10 crore	30	7	4	33.43	34.94
v) For income exceeding Rs. 10 crore	30	12	4	34.94	34.94

Resident Co-operative Societies opting for Section 115BAD:					
i) For any amount of income	22	10	4	25.17	25.17

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

Resident Co-operative Societies opting for Section 115BAE (as proposed):					
i) For any amount of income	15	10	4	17.16	NA

Note: Subject to conditions referred to in Section 115BAE of the Bill. [Refer Para 37 below]

h) **Rate of tax for Firms, LLP, Local authorities continues to be the same. The effective rates for Financial Year 2023-24 (Assessment Year 2024-25) are as under:**

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

i) **Rate of tax for Company - domestic and Company – foreign continues to be the same: The effective rates for Financial Year 2023-24 (Assessment Year 2024-25) are as under:**

Company – Domestic:					
	Income tax %	**Surcharge %**	**Health and Education cess %**	**Proposed Effective Rate %**	**Existing effective rate %**
i) For Companies incorporated on or after 01.03.2016 subject to conditions by Finance Act, 2016 specified u/s 115BA					

a) For income upto Rs. 1 crore b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore c) For income exceeding Rs. 10 crore	25 25 25	Nil 7 12	4 4 4	26.00 27.82 29.12	26.00 27.82 29.12
ii) Option of reduced rate of tax on giving up prescribed exemptions/ deduction / benefits as per section 115BAA as inserted by Taxation Laws (Amendment) Act, 2019	22	10	4	25.168	25.168
iii) Manufacturing company set up and registered on or after 1st October, 2019, as per conditions laid down by Taxation Laws (Amendment) Act, 2019 specified u/s 115BAB	15	10	4	17.16	17.16
iv) For Companies where total turnover or gross receipts of the **previous year 2021-22 does not exceed Rs. 400 crore** a) For income upto Rs. 1 crore b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore c) For income exceeding Rs. 10 crore	 25 25 25	 Nil 7 12	 4 4 4	 26 27.82 29.12	 N.A. N.A. N.A.
v) Others a) For income upto Rs. 1 crore	30	Nil	4	31.20	31.20

b) For income exceeding Rs. 1 crore but not exceeding Rs. 10 crore	30	7	4	33.38	33.38
c) For income exceeding Rs. 10 crore	30	12	4	34.94	34.94

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

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

Sr. No.	**Particulars**	**Do you comply with this – Yes / No**	**Basic Rate of Tax**
i)	Are you a new manufacturing company set up and register on or after 1st October, 2019 (u/s 115BAB)	(if yes)	15%
ii)	Are you willing to give up all exemptions / deduction / benefits under the tax (u/s 115BAA)	(if yes)	22%
iii)	Whether your gross turnover / receipt for the financial year 2021-22 was upto Rs. 400 crores	(if yes)	25%
iv)	Any other		30%

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

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

l) **Rate of MAT / AMT**

The existing MAT of 15% and AMT of 18.5% continues to be same for Financial Year 2023-24. The effective rates under the MAT and AMT for the Financial Year 2023-24 relevant to Assessment Year 2024-25 would be as under:

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

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

Co-operative Society not opting for provisions of Section 115BAD/115BAE					
For income upto Rs. 1 crore	15	Nil	4	15.60	15.60
For income exceeding Rs. 1 crore but upto Rs. 10 crores	15	7	4	16.692	16.692
For income exceeding Rs. 10 crores	15	12	4	17.472	17.472

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

For Individual, HUF, AOP, BOI, Artificial Juridical Person not opting for provisions of section 115BAC, the rate of AMT would be					
For income upto Rs. 50 lakhs	18.5	Nil	4	19.24	19.24
Above Rs. 50 Lakhs but upto Rs. 1 crore	18.5	10	4	21.16	21.16

Above Rs. 1 crore but upto Rs. 2 crores	18.5	15	4	22.12	22.12
Above Rs. 2 crores but upto Rs. 5 crores	18.5	25	4	24.05	24.05
Above Rs. 5 crores	18.5	37	4	26.36	26.36

Individual and HUF opting for rate of tax u/s 115BAC (New Tax Regime) of the Act, then provisions of AMT and AMT Credit are not applicable.

In reply to a question, Shri Sanjay Malhotra says:

> "**Question:** Do you think there is more scope for rationalizing personal income tax rates, as the corporation tax rate is much lower?
> **Answer:** There will always be and should be differences between corporation tax rates and personal income tax rates, because the former is subjected to double taxation. Corporate taxes suffer another tax when it is given out as a dividend. That's not money in the hands of people who can spend, money remains with companies, which are actually not distributed. Even globally, corporate taxes are lower."

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

Below is the section which is proposed to be newly inserted:

Sr. No.	Section	TDS to be deducted by	Rates
1.	194BA (w.e.f. 01st July, 2023) (Refer para 38 below)	Person responsible for paying any person any income by way of winnings from any online game	Rates in force [30% as per proposed section 115BBJ]

Also, for other changes in TDS provisions refer respective paras below.

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

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

3. Taxability of certain Life Insurance Policies[Section 2(24), 10(10D) and 56(2)(xiii)]:

Clause (10D) of section 10 of the Act provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a

condition that the premium payable for any of the years during the terms of the policy should not exceed ten per cent of the actual capital sum assured.

It is explained that the legislative intent of providing exemption under clause (10D) of section 10 of the Act has been to further the welfare objective by subsidizing the risk premium for an individual's life and providing benefit to small and genuine cases of life insurance coverage. However, over the years it has been observed that several high net worth individuals are misusing the exemption provided under clause (10D) of section 10 of the Act by investing in policies having large premium contributions (as it is acting as an investment policy) and claiming exemption on the sum received under such life insurance policies.

Finance Act, 2021, amended clause (10D) of section 10 of the Act to, inter-alia, provide that the sum received under a ULIP (barring the sum received on death of a person), issued on or after the 01.02.2021 shall not be exempt if the amount of premium payable for any of the previous years during the term of such policy exceeds Rs 2,50,000. It was also provided that if premium is payable for more than one ULIPs, issued on or after the 01.02.2021, the exemption under the said clause shall be available only with respect to such policies where the aggregate premium does not exceed Rs 2,50,000 for any of the previous years during the term of any of the policy. Circular no 02 of 2022 dated 19.01.2022 was issued to explain how the exemption is to be calculated when there are more than one policies.

After the enactment of the above amendment, while ULIPs having premium payable exceeding Rs 2,50,000/- have been excluded from the purview of clause (10D) of section 10 of the Act, all other kinds of life insurance policies are still eligible for exemption irrespective of the amount of premium payable.

It is proposed to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. This income shall be taxable under the head "income from other sources". Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier. The proposed provision shall apply for policies issued on or after 1st April, 2023. There will not be any change in taxation for polices issued before this date. Hence, it is proposed to amend the Act so as to-

(i) insert a new proviso (sixth proviso) to clause (10D) of the section 10 of the Act to provide that nothing contained in this clause shall apply (meaning no exemption will be available under this clause) with respect to any life insurance policy (other than a unit linked insurance policy) issued on or after the 1st April, 2023, if the amount of premium payable for any of the previous year during the term of such policy exceeds five lakh rupees;

(ii) insert a new proviso (seventh proviso) to clause (10D) of section 10 of the Act to provide that if the premium is payable by a person for more than one life insurance policy (other than unit linked insurance policy), issued on or after the 1st April, 2023, the provisions of this clause shall apply only with respect to those life insurance policies (other than unit linked insurance policies),

where the aggregate amount of premium does not exceed the amount (i.e. Rs. 5 lakh) referred to in the sixth proviso in any of the previous years during the term of any of those policies;

(iii) amend the existing sixth proviso (new proposed eighth proviso) to clause (10D) of section 10 of the Act to provide that the provisions of the fourth, fifth, sixth and seventh provisos shall not apply to any sum received on the death of a person. Amount received by the legal heirs on death of the person on such policies will be exempt under this clause;

(iv) insert clause (xiii) in sub-section (2) of section 56 of the Act to provide where any sum is received (including the amount allocated by way of bonus) at any time during a previous year, under a life insurance policy, which is not exempt under clause (10D) of section 10 of the Act, the sum so received as exceeds the aggregate of the premium paid during the term of such life insurance policy shall be chargeable to income-tax under the head "Income from other sources". If the premium paid had been claimed as deduction in any other provision of the Act such premium will not be reduced from sum so received. Computation mechanism shall be prescribed. This would not apply to ULIP or Keyman insurance policies whose taxation is governed by other existing provisions of the Act

(v) insert an Explanation to clause (xiii) in sub-section (2) of section 56 of the Act to provide that for the purposes of this clause, "unit linked insurance policy" shall have the same meaning as assigned to it in Explanation 3 to clause (10D) of section 10 of the Act;

(vi) insert sub-clause (xviid) in clause (24) of section 2 of the Act to provide that income shall include any sum referred to in clause (xiii) of sub-section (2) of section 56 of the Act.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

4. Amount received by Unit Holders from Business Trusts [Section 2(24), 56(2)(xii) and 115UA]:

Finance (No.2) Act, 2014 introduced a special taxation regime for Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts]. The special regime was introduced in order to address the challenges of financing and investment in infrastructure. The business trusts invest in special purpose vehicles (SPV) through equity or debt instruments.

Keeping in mind the business structure, the special taxation regime under section 115UA of the Act, inter-alia, provides a pass-through status to business trusts in respect of interest income, dividend income received by the business trust from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT. Such income is taxable in the hands of the unit holders unless specifically exempted.

Sub-section (1) of section 115UA of the Act, inter-alia, provides any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by the business trust.

Further, Sub-section (3) of section 115UA of the Act, inter-alia, provides that if the "distributed income" received by a unit holder from the business trust is of the nature as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act i.e., is either rental income of the REIT or interest or dividend received by the business trust from the SPV, then, such distributed income or part thereof shall be deemed to be income of such unit holder.

It has been noticed in certain cases that business trusts distribute sums to their unit holders which are categorized in the following four categories:

(a) Interest;
(b) Dividend;
(c) Rental income;
(d) Repayment of debt.

As has been stated above, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder. However, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder.

It is stated that dual non-taxation of any distribution made by the business trust i.e. which is exempt in the hands of the business trust as well as the unit holder, is not the intent of the special taxation regime applicable to business trusts.

In view of the above, it is proposed to make such sum received by unit holder taxable in his hands. However, provision is also proposed for a situation when the sum received by unit holder represents redemption of unit held by him. Hence it is proposed to amend the Act by way of,-

(i) insertion of clause (xii) in sub-section (2) of section 56 of the Act to provide that income chargeable to income-tax under the head "income from other sources" shall also include any sum, received by a unit holder from a business trust, which-

    (a) is not in the nature of income as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act; and

    (b) is not chargeable to tax under sub-section (2) of section 115UA of the Act;

(ii) insertion of a proviso to the said clause to provide that where the sum received by a unit holder from a business trust is for redemption of unit or units held by him, the sum received shall be reduced by the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received;

(iii) insertion of sub-section (3A) in section 115UA of the Act to provide that the provisions of sub - sections (1), (2) and (3) of this section, shall not apply in respect of any sum, as referred to in clause (xii) of sub-section (2) of section 56 of the Act, received by a unit holder from a business trust;

(iv) insertion of sub-clause (xviic) in clause (24) of section 2 of the Act to provide that income shall include any sum referred to in clause (xii) of sub-section (2) of section 56 of the Act.

The point for consideration is whether repayment of debt is an income?

The FB 23 is provided that the amount will be taxable in the hands of the unit holders as the income from other sources. No TDS obligation has been provided for resident investors. However, still for non-resident investors the business trust has to deduct tax u/s 195 of the Act.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

5. Capital Gain Tax on conversion of Gold to Electronic Gold Receipt and vice-a-versa [Section 2(42A), 47(viid) and 49]:

Section 47 of the Act deals with transactions not regarded as transfers.

It is proposed to insert a new clause (viid) in section 47 of the Act so as to include conversion of gold into Electronic Gold Receipt (EGR) or Electronic Gold Receipt into gold to not be regarded as transfer for the purposes of the said section.

Thus, on conversion of physical gold into EGR it will not amount to a transfer and therefore, not be liable for capital gain tax. Similarly, when EGR is converted into physical gold, it will not amount to transfer and not be liable for capital gain tax.

Let us assume that a person holds 20 grams of physical gold. He converts it into EGR. The underlying asset remains the same. It is only the mode of holding which has undergone change and therefore, rightly it is treated as not a transfer and hence not liable for capital gain tax and vice-a-versa. In the example suppose, on a specified date he converts EGR into physical gold. He will get back his 20 grams of physical gold. Thus, ultimately there is no gain or loss and therefore, it is proposed to be treated as not a transfer and consequently not liable for capital gain tax.

Further, it is proposed to define the expressions “Electronic Gold Receipt” and “Vault Manager” to mean Electronic Gold Receipt and Vault Manager defined respectively in clauses (h) and (l) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Vault Managers) Regulations, 2021.

To promote the concept of electronic gold, it is proposed to insert this new clause.

Sub-section (42A) of section 2 defines “short-term capital asset” and the Explanation 1 of the said clause provides for determining the period for which any capital asset is held by the taxpayer.

It is proposed to insert a new sub-clause (hi) in clause (i) to the Explanation 1 of the said clause so as to provide that in the case of capital asset, being Electronic Gold Receipt or gold being capital asset, the holding period for the purpose of capital gain shall include the period for which the gold or Electronic Gold Receipt, was held by the taxpayer prior to conversion into Electronic Gold Receipt or gold, as the case may be.

Further, a new sub-section (10) in section 49 of the Act is proposed to be inserted. The new sub-section (10) will have two sub-clauses:

The first sub-clause provides that where the physical gold is converted into Electronic Gold Receipt issued by a vault manager as referred to under proposed clause (viid) of section 47, the cost of acquisition of the EGR shall be deemed to be a cost of gold in the hands of the person in whose name EGR is issued.

The second sub-clause provides that where gold is released against an EGR, which became the property of the person as consideration for a transfer referred to clause (viid) of section 47, the cost of acquisition of the gold shall be deemed to be a cost of EGR in the hands of such person.

If we extend the example given above, the proposed scheme of provisions fits in. The Taxpayer is holding 20 grams gold at the cost of say Rs. 20,000/-. When he gets it converted into EGR, it will not be treated as a transfer as per proposed section 47(viib) and the cost of acquisition of EGR will be treated as Rs. 20,000/-.

Against the said EGR, after a period of time, the gold is released, it will be 20 grams physical gold. Now in this case, the cost of EGR is treated at Rs. 20,000/-. This becomes the cost of acquisition on the 20 grams of physical gold which is now released.

The underlying asset remains the same. It is only the mode of holding which has undergone change and therefore this provision has been proposed to be inserted so

that no variation takes place in the cost of acquisition and its period of holding, when no capital gain tax has been considered on the same.

Effective Date
These amendments will take effect from 1st April, 2024, and will accordingly apply in relation to the A.Y. 2024-2025 and subsequent assessment years.

6. Taxability of Gift given to not ordinarily resident [Section 9]:

Under the Act, income which, inter-alia, is deemed to accrue or arise in India during a year is chargeable to tax. Sub-section (1) of section 9 of the Act is a deeming provision providing the types of income deemed to accrue or arise in India.

Finance (No. 2) Act, 2019 inserted clause (viii) to sub-section (1) of section 9 of the Act to provide that the any sum of money exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India, on or after 5th July, 2019, shall be income deemed to accrue or arise in India. Sum of money is referred to in sub-clause (xviia) of clause (24) of section 2 of the Act.

The above amendment was introduced as an anti-abuse provision, as certain instances were observed where gifts were being made by persons resident in India to non-residents and were claimed to be non-taxable in India by such non-residents.

It is stated in the Memorandum that it has come to notice that certain persons being not ordinarily residents are receiving the gifts from persons resident in India and not paying tax on it.

The gift from one resident to another resident is covered under a tax net. Gift from resident to non-resident was included by Finance (No. 2) Act, 2019. Then was there any doubt that resident but not ordinarily resident will not be covered. Be it so, now the position is stated to have been clarified.

In view of the above, it is proposed to substitute clause (viii) of the said sub-section so as to provide that income deemed to accrue or arise in India shall include income arising outside India, being any sum of money referred to in sub-clause (xviia) of clause (24) of section 2, paid by a person resident in India -

(a) on or after 5th July, 2019 to a non-resident, not being a company, or to a foreign company; or

(b) on or after 1st April, 2023 to a person not ordinarily resident in India within the meaning of clause (6) of section 6.

It is proposed to amend clause (viii) of sub-section (1) of section 9 of the Act so as to extend this deeming provision to sum of money exceeding fifty thousand rupees, received by a not ordinarily resident, without consideration from a person resident in India.

Section 9(1)(viii) of the Act with proposed amendment will bring this receipt in the scope of income. Once it is included in the scope of income u/s 56(2)(x) of the Act,

the exemption provided under this section 56(2)(x) of the Act will be applicable. Thus, if the gift is received from relative, as defined, it will continued to be exempt u/s 56(2)(x) of the Act.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

7. Incentives to International Financial Service Centre [Section 10(4E), 47(viiad) and 115UB]:

Over the past few years several tax concessions have been provided to units located in International Financial Services Centre (IFSC) under the Act to make it a global hub of financial services sector.

In order to further incentivize operations from IFSC, it is proposed to provide the following:

(i) It is proposed to amend clause (b) of the Explanation to clause (viiad) of section 47 of the Act to extend the date for transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund in case of relocation to 31st March, 2025 from current limitation of 31st March, 2023.

(ii) Income of non-residents on transfer of Offshore Derivative Instruments (ODI) entered into with IFSC Banking unit is exempt under section 10 (4E) of the Act. Under the ODI contract, the IFSC Banking Unit (IBU) makes the investments in permissible Indian Securities. Income earned by the IBU on such investments is taxed as capital gains, interest, dividend under section 115AD of the Act. After the payment of tax, the IBU passes such income to the ODI holders. Presently, the exemption is provided only on the transfer of ODIs and not on the distribution of income to the non-resident ODI holders, hence this distributed income is taxed twice in India i.e. first when received by the IBU and second, when the same income is distributed to non-resident ODI holders. Therefore, in order to remove the double taxation, it is proposed to amend clause (4E) of section 10 of the Act, to also provide exemption to any income distributed on the ODIs, entered into with an offshore banking unit of an IFSC as referred to in sub-section (1A) of section 80LA, which fulfils such conditions as may be prescribed. It has also been provided that such exempted income shall include only that amount which has been charged to tax in the hands of the IBU under section 115AD.

(iii) IFSCA (Fund Management) Regulations, 2022 has come into force from May 19, 2022. To bring the reference of the said regulation in the provisions of the Act, it is proposed to amend the definition of “Specified Fund”, “Resultant Fund” and “Investment Fund” to include the reference of IFSCA (Fund Management) Regulations, 2022 in the Act.

Effective Date:

The above amendments referred to in para (i) and (iii) above will take effect from the 1st April, 2023 and accordingly apply to A.Y. 2023-24 and subsequent assessment years. The amendment in Para (ii) above will take effect from the 1st April, 2024 and accordingly apply to assessment year 2024-25 and subsequent assessment years.

8. Payment under Agnipath Scheme, 2022 [Section 10(12C), 17(1), 80CCH and 115BAC]:

The Ministry of Defence has introduced the Agnipath Scheme, 2022 (the Scheme) for enrolment of Agniveers in Indian Armed Forces. It has come into force on 1st November, 2022. In pursuance of the Government's decision to implement the Agnipath Scheme, 2022, the Competent Authority has decided to create a non-lapsable dedicated Agniveer Corpus Fund in the interest-bearing section of the Public Account head. The package given to an Agniveer from Agniveer Corpus Fund is called as 'Seva Nidhi'.

In the Scheme, the Agniveer Corpus Fund is defined as a Fund in which consolidated contributions of all the Agniveers and matching contributions of the Government along with interest on these contributions would be held in their respective accounts. The scheme will be administered and the Fund will be maintained under the aegis of Ministry of Defence (MoD) with the following features –

(i) Each Agniveer is to contribute 30% of his monthly customized Agniveer Package to the individual's Agniveer Corpus Fund. Further the Government will also contribute a matching amount to the 'Agniveer Corpus Fund'. The Government will also pay to the subscriber interest as approved from time to time on the contributions standing in his account.

(ii) On completion of the engagement period of four years, Agniveers will be paid one time 'Seva Nidhi' package, which shall comprise of their contribution including interest thereon and matching contribution from the Government equal to the accumulated amount of their contribution including interest.

In order to allow deduction from the computation of total income of Agniveer, any contribution made by him or the Central Government to his Agniveer Corpus Fund account and to exempt from tax any payment received by Agniveer or his nominee, from the Agniveer Corpus Fund, it is proposed to make the following amendments:

(i) It is proposed to insert a new clause (12C) in section 10 of the Act to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.

(ii) It is further proposed to insert a new section 80CCH to the Act to provide that an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after 1st November, 2022, shall be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income.

(iii) For the purposes of this proposed clause (12C) of section 10 and section 80CCH, it is proposed to define 'Agnipath scheme' as a scheme for the enrolment in Indian Armed Forces introduced by the Central Government, and 'Agniveer Corpus Fund' as a fund defined in para 2(c) of Agnipath Scheme notified by the Central Government.

(iv) It is also proposed to insert a new sub-clause in clause (1) of section 17 of the Act so as to provide that the contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in section 80CCH shall be considered as salary of that individual. A corresponding deduction of the same has been provided as mentioned above.

(v) Further, it is proposed to provide that even in the new tax regime of section 115BAC an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund shall get a deduction of the government contribution to his Seva Nidhi [sub-section (2) of section 80CCH].

Let us see the flow of transaction and its taxability with an example. Let us assume monthly customized Agniveer Package is Rs. 50,000/-, yearly it would be Rs. 6 lakhs.

Sr. No.	Particulars	Amount (Rs.)	Whether taxable	Section
a)	Contribution of Agniveer – 30%	1,80,000	No	
b)	Equivalent contribution by Central Government	1,80,000	Yes	17(1)
c)	Deduction available in respect of both, Agniveer's own contribution as well as Central Government's contribution	3,60,000	-	80CCH
d)	Interest on both the contribution	Rate to be specified	No	--
e)	Amount receivable at the time of maturity of the scheme (Seva Nidhi)	3,60,000 plus interest to be multiplied by number of years	No	10(12C)

Effective Date:
These amendments will take effect from the 1st April, 2023 and will apply in relation to A.Y. 2023-24 and subsequent assessment years.

9. Removal of exemption of News Agency [Section 10(22B)]:
Clause (22B) of section 10 of the Act, inter alia, provides that any income of a notified news agency set up in India solely for collection and distribution of news shall not be included in total income, provided that the news agency applies its

income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members. It has also been provided that the provisions of this clause are applicable to a notified news agency for a specified period of time not exceeding three assessment years.

It is now proposed to insert fourth proviso to clause (22B) of said section so as to provide that nothing contained in this clause shall apply to any income of the news agency of the previous year relevant to the assessment year beginning on or after 1st April, 2024.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

10. Exemption to North Eastern Development Finance Corporation Limited, Credit Guarantee Fund Trust, Trust for Small Industries [Section 10(23BBF) and 10(23EB)]:
It is proposed to omit the said clauses with effect from 1st April, 2023.

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

11. Taxation of Charitable Trust [Section 10(23C), 11, 12A, 12AB and 80G]:
For tax purposes the charitable institutions can be divided broadly in two categories:

a) Any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 of the Act (hereinafter referred to as "Section 10(23C) Trust"); or

b) any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections (hereinafter referred to as "Section 11 Trust").

The tax regime in both the categories is more or less similar with some basic distinction. A charitable trust has to opt for one of the two regimes depending on whether the Trust can comply with the conditions of section 10(23C) of the Act. In this Note we are discussing tax provisions in respect of Section 11 Trust and will make a reference of section 10(23C) Trust at the end.

Tax provisions of charitable trust is a favourite subject of CBDT and the Central Government. There has been changes and amendments proposed and enacted in each of the Finance Bill and Act in respect of taxation of charitable trust. Year on year attempt has been made to tighten the proposals relating to it. Keeping the trend, this year also various amendments have been proposed and we are dealing with the same under the 11 headings (A to K below):

A. Application of Income out of Corpus Fund:

Voluntary Contribution made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 of the Act maintained specifically for such corpus.

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

It was noted that conditions that are required to be satisfied in the case of application for charitable or religious purposes must also be satisfied while making the application from the corpus or loan or borrowing. These conditions are as follows:

(i) Such application should not be in the form of corpus donation to another trust [Explanation 2 to sub-section (1) of section 11 of the Act];

(ii) TDS, if applicable, should be deducted on such application [Explanation 3 to sub-section (1) of section 11 of the Act];

(iii) Application whereby payment or aggregate of payments made to a person in a day exceeds Rs 10,000 in other than specified modes (such as cash) is not allowed (Explanation 3 to sub-section (1) of section 11 of the Act);

(iv) Carry forward and set off of excess application is not allowed [Explanation 5 to sub-section (1) of section 11 of the Act];

(v) Application is allowed in the year in which it is actually paid [Explanation to section 11 of the Act];

(vi) Application should not directly or indirectly benefit any person referred to in sub-section (1) of section 13 of the Act and the income of the trust or institution should not ensure any benefit to such person [clause (c) of sub-section (1) of section 13 of the Act];

(vii) Application should be in India except with the approval of the Board in accordance with the provisions of clause (c) of sub-section (1) of section 11 of the Act.

To allow the reinvestment as application of income of the year in which it is reinvested, the following amendments are now proposed:

(a) To provide that there is no violation in conditions [as per clauses (i) to (vii) above] at the time the application was made from the corpus.

(b) Such reinvestment or redeposit has to be made within a period of 5 years from the end of the previous year in which such application was made from corpus.

(c) To provide that no application will be allowed for reinvestment of any amount utilized on or before 31st March, 2021 from the corpus.

Effective Date:
These amendments will take effect from 1st April, 2023 and will accordingly apply to A.Y. 2023-24 and subsequent years.

B. Application of Income out of Loans and Borrowings:
Similar provisions as applicable to application from corpus fund are applicable to application out of loans and borrowings

Application out of the loans and borrowings shall not be considered as application for charitable or religious purposes in the year when it is applied. In the year in which it is repaid from the income of the previous year, such amount shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

It was noted that conditions that are required to be satisfied in the case of application for charitable or religious purposes must also be satisfied while making the application from the loan or borrowing. These conditions are the same as in the case of application from corpus fund. Please refer sub-clauses (i) to (vii) in Para A above.

To allow the repayment as application of income of the year in which it is repaid, the following amendments are now proposed:

(a) To provide that there is no violation in conditions [as per clauses (i) to (vii) above] at the time the application was made from the loans and borrowings.

(b) Such repayment has to be made within a period of 5 years from the end of the previous year in which such application was made from loans and borrowings.

(c) To provide that no application will be allowed for repayment of any amount utilized on or before 31st March, 2021 from the loans and borrowings.

Effective Date:
These amendments will take effect from 1st April, 2023 and will accordingly apply to A.Y. 2023-24 and subsequent years.

C. Treatment of Donation to other Trusts:
The income of Section 11 Trust is exempt subject to the fulfilment of certain conditions. Some of such conditions are as follows:

a) at least 85% of the income of the trust should be applied during the year for charitable or religious purposes to ensure bare minimum application for charitable or religious purposes.

b) Trusts or institutions are allowed to either apply mandatory 85% of their income either themselves or by making donations to the other trusts with similar objectives.

c) If donated to other trusts or institutions, the donation should not be towards corpus to ensure that the donations are applied by the donee trust or institutions.

d) Thus, trust or institution is allowed to accumulate 15% of its income each year.

It is stated in the Memorandum that instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

In order to ensure intended application towards charitable or religious purposes, it is proposed that only 85% of the eligible donations made by a trust or institution to another trust shall be treated as application. Accordingly, the amendments are proposed in the respective sections.

This was required as some of the taxpayers are taking this unintended benefit. If a group has five registered trusts, what ultimately they will be required to mandatorily spend on charitable object would be only 44.37 percentage of the original amount, that to, if application for accumulation is not made u/s 11(2) of the Act. If application for accumulation u/s 11(2) is so made, it is further postpone for 5 years.

Let us understand this with a hypothetical example:

Details of the Trust	**Income of the year**	**Donation to another trust**	**Permissible Accumulation**
Trust 1	100.00	Trust 2 – 85.00	15.00
Trust 2	85.00	Trust 3 – 72.25	12.75
Trust 3	72.25	Trust 4 – 61.41	10.84
Trust 4	61.41	Trust 5 – 52.20	9.21
Trust 5	52.20	Actual charity – 44.37	7.83

With the proposed amendment the amount to be utilized as an application for charitable purposes would be 85% of the income irrespective of a number of trusts through which it is routed and the same can be seen extending the above example:

Details of the Trust	**Income of the year**	**Donation to another trust**	**Permissible Accumulation**
Trust 1	100.00	Trust 2 – 100.00	Nil
Trust 2	100.00	Trust 3 – 100.00	Nil
Trust 3	100.00	Trust 4 – 100.00	Nil
Trust 4	100.00	Trust 5 – 100.00	Nil
Trust 5	100.00	Actual charity – 85.00	15.00

There is a flip side to this proposed amendment. Currently to maintain the internal control, the charity trust have been advised that instead of making payment for school fees to the individual, pay the fees directly to the school trusts or instead of paying medical expenses (for hospitalization) to the individual, make payment directly to the hospital trusts. Such payments will also now be allowed as application to the extent of 85% only. This will mean that such trust has to spend 100% of their income in that year and the cushion of 15% will not be available to them.

Effective Date:
This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

D. Omission of redundant provisions related to roll back of exemption:
There are roll back provisions for Section 11 Trust. Sub-section (2) of section 12A of the Act provides that where an application for registration under section 12AB of the Act has been made, the exemption shall be available with respect to the assessment year relevant to the financial year in which the application is made and subsequent assessment years.

Second, third and fourth proviso to sub-section (2) of section 12A of the Act have become redundant after the amendment of section 12A of the Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Now the Section 11 Trusts are required to apply for provisional registration before the commencement of their activities and therefore there is no need of roll back provisions provided in second and third proviso to sub-section (2) of section 12A of the Act.

It is therefore proposed to omit the second, third and fourth proviso to sub-section (2) of section 12A of the Act.

Effective Date:
These amendments will take effect from 1st April, 2023.

E. Combining provisional and regular registration in some cases
Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration by amending the first and second proviso to clause (23C) of section 10 of the Act, clause (ac) of sub-section (1) of section 12A of the Act and first and second proviso to sub-section 5 of section 80G of the Act. The amended provisions, inter-alia, provide the following:

a) New trusts or institutions under both regimes as well under section 80G regime need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/ approval shall be valid for a period of 3 years.

b) Provisionally registered/approved trusts or institutions under both regimes and section 80G regime will again need to apply for regular registration/approval at least six months prior to expiry of period of the provisional registration/ approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval shall be valid for a period of 5 years.

c) The trusts and institutions under both regimes and section 80G regime will need to apply at least six months prior to the expiry of regular registration/approval.

It has also been brought to the notice that trusts and institutions are facing the following difficulties:

a) Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.

b) Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.

It is therefore proposed to allow for direct final registration/approval in such cases. To achieve this, following amendments are proposed:

a) Section 11 trusts shall be allowed to make application for the provisional registration only before the commencement of activities under proposed item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A of the Act.

b) Section 11 trusts under section 80G regime shall be allowed to make application for the provisional approval only before the commencement of activities under proposed sub-clause (A) of clause (iv) of the first proviso to sub-section (5) of section 80G of the Act.

c) The section 11 trusts, which have already commenced their activities, shall make application for a regular registration under item (B) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A of the Act.

d) The section 11 trusts under section 80G regime, which have already commenced their activities, shall make application for a regular approval under the proposed sub-clause (B) of clause (iv) of the first proviso to sub-section (5) of section 80G of the Act.

e) Such application shall be examined by the Principal Commissioner or Commissioner as per the procedure provided under clause (ii) of the second proviso to clause (23C) of section 10 of the Act for the Section 10(23C) trusts and institutions, under clause (b) of sub-section (1) of section 12AB of the Act

for the Section 11 trusts and institutions and under clause (ii) of the second proviso to sub-section (5) of section 80G of the Act.

f) Where the Principal Commissioner or Commissioner is satisfied about the objects and genuineness of the activities and compliance of other requirements provided in law, registration or approval in such cases shall be granted for 5 years.

g) The Principal Commissioner or the Commissioner shall pass an order granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received.

Effective Date:
These amendments will take effect from 1st October, 2023.

F. Specified violations under section 12AB and fifteenth proviso to clause (23C) of section 10:
Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration by amending the first and second proviso to clause (23C) of section 10 of the Act, and clause (ac) of sub-section (1) of section 12A of the Act. Now the new trusts are required to apply for the provisional registration/approval which is valid for a period of 3 years or till six months from the commencement of activities whichever is earlier. Section 10(23C) and Section 11 trusts and institutions, already registered or approved, were required to furnish the application in form 10A for re-registration/approval. The process of granting the provisional approval/registration for the new trusts and re-registration/approval for the trusts already registered is automated. Application is filed by the trust or institution on e-filing portal and provisional approval/registration or the approval/registration in such cases is granted in an automated manner without verification.

It has come to the notice that in some cases the form furnished by the trusts for provisional approval/registration and for re-registration/approval are defective and since the process of registration/approval/provisional registration/approval is automated, registration has been granted by the CPC. At present the approval/registration and the provisional approval/registration of the trusts can be cancelled by the PCIT/CIT for certain specified violations.

In order to rationalize the provisions, it is proposed to insert clause (g) in Explanation to sub-section (4) of section 12AB of the Act to provide that "specified violation" shall also include the case where the application referred to in clause (ac) of subsection (1) of section 12A of the Act is not complete or it contains false or incorrect information.

Effective Date:
These amendments will take effect from 1st April, 2023.

G. Trusts or institutions not filing the application in certain cases:
Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration. The amended provisions provide the following:

a) All the existing trusts and institutions were required to apply for re-registration/ approval on or before 31.03.2021. The due date for re-registration / approval has been extended by the Central Board of Direct Taxes till 25.11.2022 *vide* Circular No. 22 of 2022 dated 01.11.2022. Such re-registration/approval shall be valid for a period of 5 years.

b) New trusts and institutions are required to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval shall be valid for a period of 3 years.

c) Provisionally registered/approved trusts and institutions will again need to apply for regular registration/approval at least six months prior to expiry of the period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier.

d) The trusts and institutions are required to apply at least six months prior to the expiry of re-registration/approval.

It is stated that instances have come to the notice where-

- certain trusts and institutions have not applied for the regular registration after taking the provisional registration.
- some trusts and institutions have not applied for the re-registration/approval.
- the trusts and institutions will not apply for re-registration after the expiry of 5 years/3 years.

This will result in the following unintended consequences:

a) Once a trust or institution enters into exemption regime, it is allowed to exit on payment of tax at the rate of maximum marginal rate on its accreted income (difference between the fair market value of assets and liabilities). This is

because of the reason that the income of the trust or institution has been exempted from tax and the accreted income of the trust represents the income on which tax has not been paid and appreciation thereof.

b) By not applying for re-registration/approval or registration/approval, the trust gets an easy route to exit without payment of the tax on accreted income.

In view of the above, the following amendments are proposed:

i) If any trust or institution fails to make an application in accordance with the provisions as may be applicable within the period specified in the said clauses, it shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which such period expires.

ii) Principal Officer or the trustee of the specified person, and the specified person shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from the end of the previous year.

iii) Date of conversion shall also mean the last date for making an application for registration under the relevant clause of Section 12A/10(23C), as the case may be.

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

A new Chapter XIIEB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act by the Finance Act, 2016.

This chapter seeks to impose a levy in the nature of an exit tax which is attracted when a charitable organization is converted into a non-charitable organization or gets merged with a non-charitable organization or a charitable organization with dissimilar objects or does not transfer the assets to another charitable organization.

The main elements of these provisions are:

(i) The accretion in income (accreted income) of the trust or institution is taxable on conversion of trust or institution into a form not eligible for registration under section 12 AA or section 12AB of the Act or on merger into an entity not having similar objects and registered under Section 12AA or section 12AB of the Act or on non-distribution of assets on dissolution to any charitable institution registered under section 12AA of the Act or approved under clause (23C) of section 10 of the Act within a period of twelve months from the end of the month of dissolution.

(ii) Accreted income is the amount of aggregate of Fair Market Value (FMV) of total assets as reduced by the liability as on the specified date. The method of valuation has been prescribed in rules.

(iii) The taxation of accreted income is at the maximum marginal rate.

(iv) This levy is in addition to any income chargeable to tax in the hands of the entity.

With proposed amendments, a Trust that commit the smallest mistake in filing of renewal application just a few days late will completely destroy its wealth as well as activities.

H. Alignment of the time limit for furnishing the form for accumulation of income and tax audit report:

The section 11 trusts and institutions are required to get their accounts audited as per the provisions of sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Act. The audit report is required to be furnished at least one month before the due date for furnishing the return of income.

Clause (c) of sub-section (2) of section 11 of the Act provides that where the trust or institution accumulates or sets apart its income, such trust or institution is required to furnish a statement in the prescribed form (Form 10) on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for the previous year.

Clause (2) of *Explanation 1* to sub-section (1) of section 11 of the Act provides that where the trust or institution deems certain income to be applied, such trust or institution is required to furnish a statement in the prescribed form (Form 9A) on or before the due date specified under sub-section (1) of section 139 of the Act for furnishing the return of income for the previous year.

The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income. The due date for furnishing audit report in form 10B/10BB is one month before the due date for furnishing return of income.

The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing audit report in Form 10B/10BB is one month before the due date of furnishing the ITR, it is difficult to provide such details in Auditors' Report.

It is proposed to provide for filing of Form No. 10/9A at least two months prior to the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year. Necessary amendments in this regard are proposed.

As the law stands today, the due date for filing the return of income for the A.Y. 2023-24 is 31st October, 2023. Accordingly, as per proposed amendments, the due dates for filing various forms and particulars for financial year 2022-23 relevant to A.Y. 2023-24 would be as under:

Sr. No.	Particulars	Due Date	Reference of Section
1.	Form 9A (Accumulation for 1 year)	31st August, 2023	clause (2) of *Explanation 1* sub-section (1) of section 11 of the Act
2.	Form 10 (Accumulation for 5 years)	31st August, 2023	clause (c) of sub-section (2) of the said section 11 of the Act
3.	Form 10B (Audit Report)	30th September, 2023	Sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Act
4.	Income Tax Return (ITR-7)	31st October, 2023	139(1) / 139(4A)

The amount of accumulation for preparing information in Form 9A / 10 can be determined only when the accounts are finalized. Thus, the accounts of all the charitable trusts are now required to be finalized by latest 15th August, 2023, so that on line application in Form 9A / 10 can be filed by 31st August, 2023.

Please note these proposed amendments are effective from A.Y. 2023-24. Thus, it will apply to the current financial year ending on 31st March, 2023.

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

I. Denial of exemption where return of income is not furnished within time:
As per the provisions of clause (ba) of sub-section (1) of section 12A of the Act, if the return of income is not furnished by a section 11 trust or institution within the time under section 139 of the Act, exemption under section 11, 12 of the Act shall not be available to such trust or institution.

Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.

Thus, it seemed that the exemption u/s 11 and 12 of the Act would be available to the trusts where they furnish updated return of income.

It is now provided that the exemption under section 11, 12 of the Act will be available only if the return of income has been furnished within the time allowed under sub-section (1) or sub-section (4) of section 139 of the Act.

Hence, it is proposed to amend clause (ba) of sub-section (1) of section 12A of the Act to provide that the person in receipt of the income shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139 of the Act, within the time allowed under sub-section (1) or sub-section (4) of that section.

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

J. Removal of certain funds from section 80G:
Section 80G of the Act, provides for the procedure for granting approval to certain institutions and funds receiving donation and the allowable deductions in respect of such donations to the taxpayer making such donations.

Sub-section (2) of section 80G of the Act, *inter alia,* provides the list of these funds to which any sum paid by the taxpayer in the previous year as donations is allowed as a deduction to an extent of 50%/100% of the amount so donated.

It has been observed that there are following three funds based on names of the persons in the said section:

Sr. No.	Name of the Trust / Institution / Fund	Reference of the Clause
1.	The Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964;	Clause (ii) of Section 80G(2)
2.	The Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985;	Clause (iiic) of Section 80G(2)
3.	The Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991;	Clause (iiid) of Section 80G(2)

In order to remove such funds, it is proposed to omit sub-clauses (ii), (iiic) and (iiid) of clause (a) of sub-section (2) of section 80G of the Act.

Is it a tax driven decision?

Effective Date:
This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

K. Amendments to Section 10(23C) Trust:
The amendments on similar lines have been proposed for section 10(23C) Trusts. The same will also be effective from the dates mentioned hereinabove for Section 11 Trusts. It is, therefore, not discussed again in this Study Notes. While reading and working on provisions of Section 10(23C) of the Act, the above proposed amendments should also be considered. The proposed amendments have been made in the related sub-sections, explanations and clauses of section 10(23C) of the Act.

12. Omission of sections 10(26A) and 10(41):

Clause (26A) of section 10 of the Act, provides income tax exemption to any income accruing or arising to any person from any source in the district of Ladakh or outside India in any previous year relevant to any assessment year commencing before 1st April, 1989, where such person is resident in the said district in that previous year.

Clause (41) of section 10 of the Act, provides income tax exemption to any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before 31st March, 2006, to the Indian company notified under sub-clause (a) of clause (v) of sub-section (4) of section 80-IA.

It is proposed to omit the said clauses with effect from 1st April, 2023.

Effective Date:

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

13. Income arising to body or authority or Board or Trust or Commission [Section 10(46) and 10(46A)]:

Clause (46) of section 10 of the Act provides exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which-

(a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;

(b) is not engaged in any commercial activity; and

(c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

The restriction on undertaking commercial activities by anybody or authority or Board or Trust or Commission notified under clause (46) of section 10 has been a litigated issue.

Recently, Hon'ble Supreme Court of India in the case of Assistant Commissioner of Income-tax (Exemptions) vs Ahmedabad Urban Development Authority in Civil Appeal No 21762 of 2017 vide its order dated 19.10.2022 (reported in 449 ITR 1) held that in sub-clause (b) of clause (46) of section 10 of the Act, "commercial" has the same meaning as "trade, commerce, business" in clause (15) of section 2 of the Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity".

However, the Hon'ble Court has also made a fine distinction in respect of statutory authorities, boards etc. which have been established by the State government or Central governments, for achieving essentially "public functions/services". In such cases, the court have held that the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the mischief of business or commercial receipts as their objects are essential for advancement of public purposes/ functions.

In view of the above, it is proposed to amend the Act so as to exclude income of a body or authority or Board or Trust or Commission, not being a company, from the scope of clause (46) of section 10 of the Act and insert a new clause (46A) in section 10 of the Act.

To provide that any income arising to a body or authority or Board or Trust or Commission not being a company, which-

(a) has been established or constituted by or under a Central Act or State Act with one or more of the following purposes, namely:

  (i) dealing with and satisfying the need for housing accommodation;

  (ii) planning, development or improvement of cities, towns and villages;

  (iii) regulating, or regulating and developing, any activity for the benefit of the general public; or

  (iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created; and

(b) is notified by the Central Government in the Official Gazette for the purposes of this clause,

shall not be included in total income;

Consequentially, it is proposed to amend clause (46) of the said section 10 so as to exclude any income arising to a body or authority or Board or Trust or Commission (by whatever name called) that are covered under clause (46A) of the said section 10 from the provisions of the said clause.

Effective Date:
These amendments will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

14. Increase in exemption limit for Leave Encashment [Budget Speech]:
The Hon'ble FM in her speech has proposed to increase the exemption on leave encashment on retirement of non-government salaried employees from Rs. 3 lakhs to Rs. 25 lakhs. However, there is no proposal in the Finance Bill in respect of the same. May be inadvertently it is left to be included. One needs to wait till any clarification in this regard is issued (Para 151).

15. Special provision in respect of units in Special Economic Zone [Section 10AA and 155]:

Section 10AA of the Act, inter alia, provides fifteen years tax benefit to a Unit established in a Special Economic Zone which begins to manufacture or produce articles or things or provide any services on or after 1st April, 2005. The deduction is available for Units that begin operations before 1st April, 2020, which has been extended to 30th September, 2020 through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and is allowed in the manner specified therein.

The claiming of deduction under the said section for Units established in Special Economic Zone is time bound as it is available to only those Units which begin to manufacture or produce articles or things or provide any services on or after 1st April, 2005 but before 1st April, 2020 (extended to 30th September, 2020).

Following amendments are proposed:

a) It is proposed to insert a proviso to sub-section (1) of the said section 10AA so as to provide that no such deduction under that sub-section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.

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

c) It is also proposed to provide an Explanation to define the expression "Competent Authority" and also to provide that the export proceeds from the sale of goods or provision of services referred to in this sub-section shall be deemed to have been received in India where such export turnover is credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

d) It is also proposed to substitute clause (i) of Explanation 1 to define the term "convertible foreign exchange" and give reference to new sub-section (4A) in the definition of "Export Turnover".

e) It is also proposed to amend sub-section (11A) of section 155 of the Act to provide that where in the assessment for any year, the deduction under section 10AA has not been allowed on the ground that such income has not been or partly received in convertible foreign exchange in India and subsequently such income or part thereof has been received in, or brought into India, the Assessing Officer shall amend the order of assessment so as to allow such deduction later.

Effective Date:
These amendments will take effect from 1st April, 2024 and will accordingly apply in relation to A.Y. 2024-25 and subsequent assessment years.

16. Valuation of perquisite in respect of Residential Accommodation [Section 17]:
As per clause (2) of section 17 of the Act, "perquisite" inter alia includes value of rent-free accommodation or value of any concession in the matters of rent provided to employees by the employer. The employer may be either Central/State Government or other than that, with different methodologies of valuation of perquisites for the two categories of employers.

However, the methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of the Income-tax Rules, 1962 (the Rules), while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanations to the clause (2) of section 17.

In order to prescribe a uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers, it is proposed to amend sub-clauses (i) and (ii) of clause (2) of section 17 of the Act. It is proposed to take the power of prescription of the method for computation of the value of rent-free accommodation provided to the taxpayer by his employer and the value of any accommodation provided to the taxpayer by his employer at a concessional rate.

Further, it is proposed to amend the Explanation 1 to sub-clause (ii) of clause (2) of section 17 of the Act so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee.

Further, it is proposed to delete the Explanation 2, Explanation 3 and Explanation 4 of sub-clause (ii) of clause (2) of section 17 of the Act to specify the method of computation for the value the accommodation provided to employee by his employer through proper prescription of the Rules.

The method will be specified in due course.

Effective Date:
This amendment is proposed to take effect from the 1st April, 2024 and shall accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

17. Benefit and Perquisites in Cash [Section 28(iv) and 194R]:
Section 28 of the Act provides for income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". Clause (iv) of this section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. This provision was inserted through the Finance Act 1964 and the Circular no 20D dated 7th July 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind. Therefore, the intention of the legislation while

introducing this provision was also to include benefit or perquisite whether in cash or in kind. However, Courts have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of section 28 of the Act.

It is now proposed to amend clause (iv) of section 28 of the Act to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

Section 194R of the Act inserted by the Finance Act 2022 provides for deduction of tax on benefit or perquisite provided to a resident arising from business or exercise of a profession.

Sub-section (1) of said section provides for tax deduction at source at the rate of 10% of the value or aggregate of value of such benefit or perquisite. The responsibility of tax deduction at source has been fixed on a person who is responsible for providing to a resident any benefit or perquisite, whether convertible into money or not, arising from a business or the exercise of a profession by such resident.

First proviso to sub-section (1) provides that in a case where the benefit or perquisite, as the case may be, 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 or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

Sub-section (2) provides for issuance of guidelines by CBDT (with the approval of the Central Government) for the purpose of removing difficulties. Accordingly Circular No 12 dated 16th June, 2022 was issued. This circular, inter-alia, provides that tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind.

Accordingly, it is proposed to clarify by way of insertion of an Explanation to section 194R of the Act to provide that provisions of sub-section (1) apply to benefit or perquisite whether in cash or in kind or partly in cash and partly in kind.

Effective Date:
This amendment will take effect from 1st April, 2023.

18. Amortization of Preliminary Expenses [Section 35D]:
Section 35D of the Act provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc.

This section provides that the work in connection with the preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services would need to be carried out either by the taxpayer himself or by a concern which is approved by the Board.

In order to ease the process of claiming amortization of these preliminary expenses it is proposed to amend section 35D of the Act to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board. Instead, the taxpayer shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

19. Payment to Micro or Small Enterprise [Section 43B]:
Section 43B of the Act provides for certain deductions to be allowed only on actual payment basis. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.

In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of section 43B of the Act. Accordingly, it is proposed to insert a new clause (h) in section 43B of the Act to provide that any sum payable by the taxpayer to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. However, it is also proposed that the proviso to section 43B of the Act shall not apply to such payments.

Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the proposed amendment to section 43B of the Act will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

As an illustration, when the invoice of MSME is dated say 20th March of a year and it is payable within 45 days. The deduction in respect of this will be allowed only if the invoice is paid within 45 days i.e. upto 4th May of the next year. If it is paid beyond 4th May, then it will not be allowed as deduction in year 1 but it will be allowed as deduction in year 2 on the basis of actual payment.

It will definitely benefit the cash flow of MSME. However, the flip side of this amendment is that the larger companies will try to avoid dealing with MSME wherever feasible, to avoid any such disallowance. Also, instances are seen where the MSME and the party agrees to a payment beyond 45 days, say 90 days in this

example. Irrespective of that if the payment is not made by 4th of May next year, it will be disallowed as an expense in year 1.

Also, there is a requirement of reporting under Schedule III of Companies Act.

Although MSME is agreeing to a larger credit to its customers, the Companies Act and the Income Tax Act require disclosure and a possible disallowance. This may create an issue in the growth of MSME. The coverage scope of MSME has been enlarged.

The provisions of this section will apply in respect of those MSME who are registered under MSMED Act, 2006.

Thus, one should be careful before registering oneself under this Act.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

20. Interest payable to Non-Banking Financial Corporation [Section 43B and 43D]:
Section 43B of the Act provides, that any sum payable by the taxpayer as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company shall be allowed as deduction on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

Section 43D of the Act provides, for special provision in case of income of deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Interest income in relation to certain categories of bad or doubtful debts received by such deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

Section 43B and section 43D of the Act currently use two erstwhile categories of NBFC namely, Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Such classification for non-banking financial companies is no longer followed by the Reserve Bank of India for the purposes of asset classification.

In view of the above, it is proposed to amend section 43B and section 43D of the Act, to substitute the words, "a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company", for the words "such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf".

It is further proposed to define the expression "Non-Banking Financial Company" in Explanation (h) to section 43D as under:

> "(h) the expression "non-banking financial company" shall have the meaning assigned to it in clause (vii) of the Explanation to clause (viia) of sub-section (1) of section 36."

Effective Date:
These amendments will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

21. Increasing threshold limit for Presumptive Taxation Scheme [Section 44AB, 44AD and 44ADA]:

The existing provisions of Section 44AD of the Act, provide for a presumptive income scheme for small businesses. This scheme applies to certain resident taxpayers (i.e. an individual, HUF or a partnership firm other than LLP) carrying on eligible business and having a turnover or gross receipt of two crore rupees or less. Under this scheme, a sum equal to 8% or 6% of the turnover or gross receipts is deemed to be the profits and gains from business subject to certain conditions. If taxpayer has claimed to have earned higher sum than 8% or 6%, then that higher sum is taxable.

Section 44ADA of the Act provides for a presumptive income scheme for small professionals. This scheme applies to certain resident taxpayers (i.e., an individual, partnership firm other than LLP) who are engaged in any profession referred to in subsection (1) of section 44AA, and whose total gross receipts do not exceed fifty lakh rupees in a previous year. Under this scheme, a sum equal to 50% of the gross receipts is deemed to be the profits and gains from business. If taxpayer has claimed to have earned higher sum than 50%, then that higher sum is taxable.

It is proposed to increase the threshold limits for presumptive scheme in section 44AD and section 44ADA of the Act on fulfilment of certain conditions.

It is proposed to provide that:

- under section 44AD of the Act, for eligible business, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts, a threshold limit of three crore rupees will apply.

- under section 44ADA of the Act, for professions referred to in sub-section (1) of section 44AA of the Act, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total gross receipts, a threshold limit of seventy-five lakh rupees will apply.

- the receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash.

- provision of section 44AB of the Act shall not apply to the person, who declares profits and gains for the previous year in accordance with the

provisions of sub-section (1) of section 44AD of the Act or sub-section (1) of section 44ADA of the Act, as the case may be.

Effective Date:
These amendments will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

22. Presumptive Tax for Non-Resident providing on certain services or facilities [Section 44BB and 44BBB]:

Section 44BB of the Act provides for presumptive scheme in the case of a non-resident taxpayer who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils. Under the scheme, a sum equal to 10% of the aggregate of the amounts specified in sub-section (2) of the said section is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Section 44BBB of the Act provides for presumptive scheme in the case of a non-resident foreign company who is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to ten per cent of the amount paid or payable (whether in or out of India) to the said taxpayer or to any person on his behalf on account of such civil construction, erection, testing or commissioning is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Both sections provide that a taxpayer may claim lower profits and gains than the profits and gains specified if he keeps and maintains such books of account and other documents as required under sub-section (2) of section 44AA of the Act and gets his accounts audited and furnishes a report of such audit as required under section 44AB of the Act.

It is seen that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years. Conceptually, if taxpayer is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting off of losses computed as per books of account with income computed on presumptive basis.

To avoid such misuse, it is proposed to insert a new sub-section to section 44BB and to section 44BBB of the Act to provide that notwithstanding anything contained in subsection (2) of section 32 and sub-section (1) of section 72, where a taxpayer declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the taxpayer for such previous year.

Effective Date:
These amendments will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

23. Cash consideration under Joint Development Agreement [Section 45(5A)]:
Sub-section (5A) of section 45 of the Act, inter alia, provide that on the capital gain arising to a taxpayer being an individual or a Hindu Undivided Family, from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in 'cash'.

The FB 23 seeks to amend the provisions of sub-section (5A) of section 45 of the Act so as to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by a cheque or draft or by any other mode.

Taxpayers have been inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax under sub-section (5A) of section 45 of the Act. The provisions of section 194-IC of the Act which, provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in sub-section (5A) of section 45, paid to the deductee in cash or by way of issue of a cheque or draft or any other mode.

Accordingly, it is proposed to include consideration received by cash or by a cheque or draft or by any other mode shall be deemed to be full value of consideration of the capital asset as a result of the transfer of the capital asset.

Effective Date
This amendment will take effect from the 1st April, 2024 and shall accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

24. Mode of Computation [Section 48]:
Section 48 of the Act provides mode of computation of capital gains. It provides that the income chargeable under the head "Capital gains" shall be computed by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Section 24 of the Act provides that the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction in computation of income from house property.

It is proposed to insert a proviso in clause (ii) of the said section so as to provide that the cost of acquisition of the asset or the cost of improvement thereto shall not include the deductions claimed on the amount of interest under clause (b) of section 24 or under the provisions of Chapter VIA of the Act.

In some cases there is a double deduction of interest possible. The Taxpayer may claim interest as a deduction u/s 24 and/or under Chapter VI-A of the Act. He may claim the same interest again as cost of asset or cost of improvement as the case may be. It is stated that some of the Taxpayers have been claiming such double deduction and therefore, it is proposed to insert this clause so that the interest which is allowed as a deduction u/s 24 and/or under Chapter VI-A of the Act is again not allowed as deduction in computation of capital gain u/s 48 of the Act.

Effective Date
These amendments will take effect from 1st April, 2024, and will, accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

25. Special provision for computation of capital gains in case of market linked debentures [Section 50AA]:
A new section 50AA is proposed to be inserted.

‘Market Linked Debentures’ are listed securities. They are currently being taxed as long term capital gain at the rate of 10% without indexation. However, these securities are in the nature of derivatives which are normally taxed at applicable rates.

In order to tax the capital gains arising from the transfer or redemption or maturity of these securities as short-term capital gains at the applicable rates, it is proposed to insert a new section 50AA in the Act to treat the full value of the consideration received or accruing as a result of the transfer or redemption or maturity of the “Market Linked Debentures” as reduced by the cost of acquisition of the debenture and the expenditure incurred wholly or exclusively in connection with transfer or redemption of such debenture, as capital gains arising from the transfer of a short term capital asset.

It is further proposed to define the expression ‘Market linked Debenture’ to mean a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and includes any security classified or regulated as a Market Linked Debenture by the Securities and Exchange Board of India.

The Government has proposed higher taxes on MLDs by imposing short term capital gain irrespective of the investment time frame. As of now, investments in MLDs for more than a year qualify for long-term capital gains tax at 10%. With the change in taxation, investors will have to pay tax at their slab rate, which can be as high as 30%.

With the attractiveness of the MLDs and big ticket insurance investments diminished, HNIs may allocate more towards debt mutual funds.

Effective Date:
These amendments will take effect from 1st April, 2024, and will, accordingly, apply in relation to the A.Y. 2024-25 and subsequent assessment years.

26. Cap on exemption on acquiring a residential premises [Section 54 and 54F]:
Sub-section (1) of section 54 of the Act, allows exemption on the capital gains arising from the transfer of long-term capital asset, being building or land appurtenant thereto, and being a residential house, if the Taxpayer, within a period of one year before or two years after the date on which the transfer took place, purchased one residential property in India, or within a period of three years after that date, constructed one residential property in India.

Currently there is no monetary limit on cost of new residential premises for granting exemption u/s 54 of the Act.

Section further provides that where the Taxpayer has not utilized the capital gains for purchase or construction of new asset before the date of furnishing the return of income u/s 139 of the Act, he shall deposit the amount in the bank account as specified before the due date of furnishing the return of income u/s 139 of the Act. The amount so deposited shall be deemed to be cost of new asset for the purpose of calculating the exemption u/s 54 of the Act.

It is proposed to insert a third proviso to the said sub-section so as to provide that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of that sub-section.

Thus, now it is proposed to be provided that where the cost of new residential premises is more than Rs. 10 crores, the capital gain will be calculated allowing exemption in respect of new residential premises upto Rs. 10 crores.

For example-

Facts in the Example	Amount (Rs.)
A Taxpayer has acquired a house on 1st April, 1999	50,00,000
Value as on 1st April, 2001	60,00,000
Index Factor for financial year 2023-24 (assumed to be)	350
The indexed cost would be	2,10,00,000
Sale price in May 2023	15,00,00,000
Taxpayer acquires another house in June 2024	14,00,00,000

As per the proposed amendment the capital gains for the A.Y. 2024-25 will be calculated as under:

Particulars	Existing Amount (Rs.)	Proposed Amount (Rs.)
Sale Price	15,00,00,000	15,00,00,000
Indexed cost as above	2,10,00,000	2,10,00,000
Long Term Capital Gain	12,90,00,000	12,90,00,000

Cost of new house (Rs. 14,00,00,000) restricted to	12,90,00,000	10,00,00,000
Long Term Capital Gain (taxable)	Nil	2,90,00,000

Without proposed amendment a Taxpayer would have got full exemption of Rs. 12,90,00,000/- as the cost of acquisition of the new residential premises was more than the capital gain. However, as per proposed amendment for the purpose of computing capital gain, the cost of new residential house will be capped at Rs. 10,00,00,000/- in calculation of exemption u/s 54 of the Act. Accordingly, post proposed amendment, the Taxpayer will have taxable long term capital gain of Rs. 2,90,00,000/-.

It is further proposed to insert a proviso to provide that the amount of capital gain deposited in capital gain scheme account (along with amount utilized) in excess of Rs. 10 crore will not be taken in to account for the purposes of exemption.

Similarly, sub-section (1) of section 54F of the Act, allows exemption on the capital gains arising from the transfer of long-term capital asset, not being a residential house, if the Taxpayer, within a period of one year before or two years after the date on which the transfer took place, purchased one residential property in India, or within a period of three years after that date, constructed one residential property in India.

Currently there is no monetary limit on cost of new residential premises for granting exemption u/s 54F of the Act.

Section further provides that where the Taxpayer has not utilized the sales consideration for purchase or construction of new asset before the date of furnishing the return of income u/s 139 of the Act, he shall deposit the amount in the bank account as specified before the due date of furnishing the return of income u/s 139 of the Act. The amount so deposited shall be deemed to be cost of new asset for the purpose of calculating the exemption u/s 54F of the Act.

It is proposed to insert a second proviso to the said sub-section so as to provide that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of that sub-section.

Thus, now it is proposed to be provided that where the cost of new residential premises is more than Rs. 10 crores, the capital gain will be calculated allowing exemption in respect of new residential premises upto Rs. 10 crores.

It is further proposed to insert a proviso to provide that the amount of sale consideration deposited in capital gain scheme account (along with amount utilized) in excess of Rs. 10 crore will not be taken in to account for the purposes of exemption.

The reason given is that it has been observed that high networth Taxpayers are purchasing very expensive residential houses to claim the exemption and it is defeating the purpose of this section.

Effective Date
These amendments will take effect from 1st April, 2024, and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

27. Sections 54EA, 54EB, 54EC and 54ED:

Section	Particulars	Existing Provisions
54EA	Capital gain on transfer of long term capital assets not to be charged in the case of investment in specified securities	Sub-section (3) provides that where the cost of specified securities has been taken into account for the purposes of this section a rebate with reference to such cost shall not be allowed u/s 88.
54EB	Capital gain on transfer of long term capital assets not to be charged in certain cases	Sub-section (3) provides that where the cost of long term specified asset has been taken into account for the purposes of this section a rebate with reference to such cost shall not be allowed u/s 88.
54EC	Capital gain not to be charged on investment in certain bonds	Sub-section (3)(a) provides that where the cost of long term specified asset has been taken into account for the purposes of this section a rebate with reference to such cost shall not be allowed u/s 88.
54ED	Capital gain on transfer of certain listed securities or unit not to be charged in certain cases	Sub-section (3)(a) provides that where the cost of specified equity shares has been taken into account for the purposes of this section a rebate with reference to such cost shall not be allowed u/s 88.

Sub-section (3) of section 54EA is proposed to be omitted.
Sub-section (3) of section 54EB is proposed to be omitted.
Sub-section (3)(a) of section 54EC is proposed to be omitted.
Sub-section (3)(a) of section 54ED is proposed to be omitted.

Under Section 88, no deduction is allowable from the A.Y. 2006-07. Since it is not operative, it is proposed to be omitted and as a consequence thereof the amendment has been proposed in above four sections.

Effective Date
These amendments will take effect from 1st April, 2023.

28. Meaning of "adjusted", "cost of improvement" and "cost of acquisition" [Section 55]:
Section 55 of the Act, inter alia, defines the expressions 'cost of any improvement' and 'cost of acquisition' for the purposes of computing capital gains. In respect of capital assets being goodwill of a business or profession, or a trade mark or brand name associated with the business or profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights or stage carries permits, or room hours, it is provided that where the Taxpayer

and/or the previous owner has not paid any purchase price for acquiring that asset, then the cost of the asset is to be taken as Nil.

The FB 23 seeks to amend section 55 of the Act to provide that the 'cost of improvement' or 'cost of acquisition' of a capital asset being any intangible asset or any other right (other than those already mentioned in the said section) shall be 'Nil' where no consideration has been paid for its acquisition.

Accordingly, the words "or any other intangible asset" and "or any other right" has been inserted in the definition of cost of improvement u/s 55(1) of the Act and cost of acquisition u/s 55(2) of the Act.

The amendment is proposed because there are intangible assets or any sort of right for which no consideration is paid for acquisition and the Courts have held that for taxability as capital gains there has to be a definite cost of acquisition or it should be deemed to be Nil under the Act. In absence of specific provision providing the cost as Nil, the transfer of such assets has been held to be not taxable.

Effective Date
This amendment will take effect from the 1st April, 2024 and shall accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

29. Tax on high premium from Non-Resident [Section 56(2)(viib)]:
Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act.

Clause (viib) of sub section (2) of section 56 of the Act was inserted vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.

Clause (a) of the explanation to Section 56(viib) of the Income Tax Act states that FMV shall be the greater of the value:

- Determined by way of a prescribed method; and
- As may be substantiated by the company to the satisfaction of the income tax authorities.

The "prescribed method" under Rule 11UA of the Income-tax Rules, 1962 allows a taxpayer to value the unquoted shares of a company either on the basis of the net asset value per share, or by way of the discounted cash flow ("DCF") method, determined by a merchant banker.

Despite it being a "prescribed method" under Rule 11UA for the purpose of Section 56(2)(viib), some ITAT decisions reveal that tax authorities had gone so far as to challenge the application of the DCF method (refer Innoviti Payment Solutions P. Ltd. v/s ITO (2019) 102 taxmann.com 59 (Bangalore – Trib); GSE Commerce Pvt. Ltd. v/s ACIT SP No. 91/Bang/2020..

Further, given that most start-ups raise capital on the basis of their cash needs and an investor's perception of their growth potential, their valuations are likely to exceed the one arrived at through the net asset value or the discounted cash flow methods.

Subsequently, the government also notified certain classes of persons who would be excluded from the purview of Section 56(2)(viib) (For example, the Ministry of Commerce and Industry notified companies that would qualify the definition of "start-up" as being exempt).

Be that as it may, other start-ups and smaller private companies do not raise capital exclusively from VCFs and AIFs. Therefore, the issue of differences of opinion with respect to valuation between investee companies and the tax authorities remains controversial.

To add to this difference of opinion and potential litigation, it is proposed to include the consideration received from a non- resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 require that foreign investments must be made at or above FMV (as determined by a merchant banker, usually following the DCF method). The provisions under FEMA requires to issue the shares at or above FMV. The Income Tax Law requires issue of shares upto FMV. To make a balance in the two, may be difficult.

Shri Sanjay Malhotra, the Revenue Secretary has said that over 80,000 DPIIT registered startup will not come within the tax purview. There is no change for startup recognized by DPIIT and they will not attract this tax if the investment is made in them.

Effective Date:
These amendments will be effective from the 1st April, 2024 and shall accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

30. Facilitating certain strategic disinvestment [Section 72A and 72AA]:
Section 72A of the Act relates to provisions on carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. Sub-section (1) of section 72A provides that in specified cases, accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the accumulated loss and unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was affected. Conditions

have also been laid down in the said section to facilitate carry forward and set off of loss and unabsorbed depreciation in the case of strategic disinvestment. Strategic disinvestment has been defined as sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding below fifty-one per cent along with transfer of control to the buyer.

Section 72AA of the Act relates to carry forward of accumulated losses and unabsorbed depreciation allowance in a scheme of amalgamation in certain cases, which, inter-alia, includes amalgamation of one or more banking company with any other banking institution.

To facilitate further strategic disinvestment, it is proposed to amend the definition of 'strategic disinvestment' in section 72A of the Act so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government, the State Government or Public Sector Company in a public sector company or a company which results in

(i) reduction of its shareholding below fifty-one per cent, and
(ii) transfer of control to the buyer.

The first condition shall apply in case the shareholding was above fifty one percent before such sale of shareholding. The requirement of transfer of control may be carried out by either the Central Government or State Government or Public Sector Company (or any two of them or all of them).

It is also proposed to amend section 72AA of the Act to allow carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution or a company subsequent to a strategic disinvestment, if such amalgamation takes place within 5 years of strategic disinvestment.

Effective Date:
This amendment will take effect from 1st April, 2023 and will accordingly apply to the A.Y. 2023-24 and subsequent assessment years.

31. Relief to start-ups in carrying forward and setting off of losses [Section 79]:

Sub-section (1) of the said section provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one percent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of year or years in which the loss was incurred.

Proviso to sub-section (1) provides that even if the said condition is not satisfied in case of an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be allowed to be carried forward and set off against the income of the previous year if all the shareholders of such company who

held shares carrying voting power on the last day of the year or years in which the loss was incurred, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.

It is proposed to amend the said proviso so as to increase the period from seven years to ten years.

Effective Date:
This amendment will take effect from 1st April, 2023 and will accordingly apply in relation to the A.Y. 2023-2024 and subsequent assessment years.

32. Extension of date of incorporation for eligible start-up for exemption [Section 80-IAC]:

The existing provisions of the section 80-IAC of the Act, inter alia, provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the taxpayers subject to the condition that,

(i) the total turnover of its business does not exceed one hundred crore rupees,

(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and

(iii) it is incorporated on or after 1st April, 2016 but before 1st April 2023.

In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to amend the provisions of section 80-IAC of the Act so as to extend the period of incorporation of eligible start-ups to 1st April 2024.

Effective Date:
This amendment will take effect from the 1st April, 2023 and shall accordingly apply in relation to the A.Y. 2023-24 and subsequent assessment years.

33. Rebate of Income Tax in case of Individuals [Section 87A]:

Section 87A of the Act deals with rebate of income tax in case of individuals.

The said section provides that a taxpayer, being an individual resident in India, whose total income does not exceed Rs. 5 lakh, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred percent of such income-tax or an amount of twelve thousand and five hundred rupees, whichever is less.

It is proposed to insert a proviso to the said section to provide that where the income tax payable on the total income of the assessee is computed under sub-section (1A) of section 115BAC, the said section shall have the effect as if,-

(i) for the words "five hundred thousand rupees", the words "seven hundred thousand rupees";

(ii) for the words "twelve thousand and five hundred rupees", the words "twenty-five thousand rupees", had been substituted.

Thus, in effect it is proposed that an individual opting for new regime of tax will have no tax liability in respect of income upto Rs. 7 lakhs per annum.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

34. Omission of Section 88 and consequential changes [Section 88]:

Section 88 of the Act when enacted provided for rebate on life insurance premia, contribution to provident fund, etc. A sunset clause was inserted by Finance Act, 2005 effective from A.Y. 2006-07 and section 80C of the Act was reintroduced in place of section 88 from 1st April, 2006.

It is now proposed to omit this section.

The reference of this section is there in many other sections. Accordingly, the particular clauses of these sections have also been proposed to be omitted.

a) Sub-section (7) of section 80C;
b) Clause (a) of sub-section (3) of section 80CCC;
c) Clause (a) of sub-section (4) of section 80CCD;
d) Reference in section 87;
e) Sub-section (3) of section 111A;
f) Sub-section (3) of section 112;

Effective Date:
This amendment will take effect from 1st April, 2023.

35. Maintenance, keeping and furnishing of transfer pricing information and documents [Section 92D]:

Section 92D of the Act provides for maintenance, keeping and furnishing of information and document by certain persons.

Clause (i) of sub-section (1) of the said section provides that every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed.

Sub-section (3) of said section provides that the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require

any person referred to in clause (i) of sub-section (1), to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard. Proviso to sub-section (3) provides that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

It is proposed to amend the said sub-section (3) and the proviso to reduce the said period from thirty days to ten days for furnishing any information or document, extendable by a further period of not exceeding thirty days.

Effective Date:
This amendment will take effect from the 1st April, 2023.

36. Excluding non-banking financial companies (NBFC) from restriction on interest deductibility [Section 94B]:

Section 94B of the Act provides restriction on deduction of interest expense in respect of any debt issued by a non-resident, being an associated enterprise of the borrower. It applies to an Indian company, or a permanent establishment of a foreign company in India, who is a borrower. If such person incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession", the interest deductible shall be restricted to the extent of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA). Proviso to this section brings within its scope certain debt issued by a lender who may not be an associated enterprise of the borrower.

This section was inserted in the Act vide Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project under the aegis of G-20 - OECD countries to address the issue of base erosion and profit shifting by way of excess interest deductions.

Sub-section (3) of this section excludes certain companies that are engaged in the business of banking or insurance from its scope.

It is stated in the Memorandum that representations were received stating that certain Non- Banking Financial Companies [NBFCs] which are engaged in the business of financing should also be excluded from the scope of this section as they are undertaking the similar functions and are now being subject to similar regulations and compliances in respect of those functions.

In view of the above, it is proposed to amend sub-section (3) of section 94B of the Act to provide a carve out to certain class of NBFCs and to provide that nothing contained in sub-section (1) of section 94B of the Act shall apply to,-

(i) an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance; or

(ii) such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf;

It is also proposed to provide that for the purposes of this section, "non-banking financial company" shall have the same meaning as assigned to it in clause (vii) of the Explanation to clause (viia) of sub-section (1) of section 36 of the Act.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply to the A.Y. 2024-25 and subsequent assessment years.

37. 15% concessional tax to promote new manufacturing co-operative society [Section 115BAE and 92BA]:

Clause 52 of the Bill seeks to insert a new section 115BAE of the Income-tax Act relating to tax on income of certain new manufacturing co-operative societies

The Taxation Laws (Amendment) Act, 2019, inter-alia, inserted section 115BAB to the Act which provides that new manufacturing domestic companies set up on or after 1st October, 2019, which commence manufacturing or production by 31st March, 2023 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of fifteen per cent. The time for commencing manufacturing or production has been extended to 31st March, 2024 by the Finance Act, 2022. The same provision has not been provided to new manufacturing co-operative societies.

It is proposed to insert a new section 115BAE so as to provide that new manufacturing co-operative society set up on or after 1st April, 2023, which commence manufacturing or production by 31st March, 2025 and do not avail of any specified incentive or deduction, may opt to pay tax at a concessional rate of fifteen percent.

The option so exercised cannot be withdrawn.

It is also proposed to insert a new clause (vb) to the section 92BA of the Act to include the transaction between the cooperative society and the other person with close connection within the meaning of 'specified domestic transaction'. This is consequential to the insertion of new section 115BAE.

It is proposed to provide that the assessee shall not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Further, it is proposed that the business of manufacture or production of any article or thing shall include the business of generation of electricity, but not include certain specified businesses.

Effective Date:
This amendment will take effect from 1st April, 2024 and will accordingly apply in relation to the A.Y. 2024-25 and subsequent assessment years.

38. TDS and taxability on net winnings from online games [Section 115BB, 115BBJ, 194B, 194BA and 194BB]:

Section 194B of the Act provides that the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

Section 194BB of the Act provides for similar provisions for deduction of tax at source for horse racing in any race course or for arranging for wagering or betting in any race course.

Section 115BB of the Act provides for the rate of tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature.

It is seen that deductors are deducting tax under section 194B and 194BB of the Act by applying the threshold of Rs 10,000/- per transaction and avoiding tax deduction by splitting a winning into multiple transactions each below Rs 10,000/-. This is against the intention of legislature.

It is also seen that in recent times, there has been a rise in the users of online games. Thus, there was need felt to bring in specific provisions regarding TDS and taxability of online games due to its different nature, being easily accessible vide the Internet and computer resources with a variety of playing options and payment options.

Accordingly, it is proposed to:-

(i) amend section 194B and 194BB of the Act to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year;

(ii) amend section 194B of the Act to include “gambling or betting of any form or nature whatsoever” within its scope;

(iii) amend section 194B of the Act to exclude online games from the purview of the said section from 1st July, 2023, since a new section 194BA is proposed to be introduced for deduction of tax at source on winnings from online games from that date;

(iv) insert a new section 194BA in the Act, with effect from 1st July 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner.

(v) to provide in the proposed section 194BA that in a case where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;

(vi) to provide that if any difficulty arises in giving effect to the provisions of new section 194BA, the Board may, with the prior approval of the Central Government, issue guidelines for the purpose of removing the difficulty. Every such guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income tax authorities and on the person responsible for deduction of income-tax on any income by way of winnings from online game;

(vii) to provide the definition of "computer resource", "internet", "online game", "online gaming intermediary", "user", "user account" in the proposed section 194BA;

(viii) to amend section 115BB of the Act to exclude income from winnings from online games from the purview of the said section from the assessment year 2024-25, since it is proposed to introduce section 115BBJ to tax winnings from online games from that assessment year;

(ix) to insert a new section 115BBJ in the Act with regard to tax on winnings from online games to provide that where the total income of an assessee includes any income by way of winnings from any online game, the income-tax payable shall be the aggregate of-

- the amount of income-tax calculated on net winnings from such online games during the previous year, computed in the prescribed manner, at the rate of thirty per cent; and

- the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the net winnings referred to above;

(x) to provide the definition of "computer resource", "internet", "online game" in the proposed section 115BBJ.

Effective Date:
The amendments proposed for section 194B and section 194BB of the Act will take effect from 1st April, 2023. The proposed section 194BA of the Act will take effect from 1st July 2023. The amendment proposed for section 115BB of the Act and the proposed section 115BBJ in the Act will take effect from 1st April, 2024 and will accordingly be applicable for the A.Y. 2024-25 and subsequent assessment years.

39. Assistance to Authorized Officer during Search and Seizure [Section 132]:

Sub-section (2) of said section provides that during the course of search, the authorized officer may requisition the services of any police officer or any officer of the Central Government to assist him for any of the action required to be performed during the course of such search and it shall be duty of such officer to comply.

It is proposed to substitute sub-section (2) of the said section so as to provide that the authorized officer, during the course of search, may requisition the services of any police officer or of any officer of the Central Government, or of both, or other person or entity, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure as may be provided by rules by the Board in this regard, to assist him for the purposes of the search and it shall be the duty of such officer or person or entity to comply with such requisition.

In the recent past, due to the increased use of technology and digitization in every aspect including management and maintenance of accounts, digitisation of data, cloud storage etc., the procedure for search & seizure has become complex, requiring the use of data forensics, advanced technologies for decoding data etc., for complete and proper analysis of accounts. Similarly, there is an increasing trend of undisclosed income being held in a vast variety of forms of assets or investments in addition to immovable property. Valuation of such assets and decryption of information often require specific domain experts like digital forensic professionals, valuers, archive experts etc. In addition to this, services of other professionals like locksmiths, carpenters etc. are also required in most of the cases, due to typical nature of the operations.

Sub-section (9D) of said section provides that the authorised officer may take a reference to a valuation officer for estimating the fair market value of the property and such reference can be made during the search or within sixty days from the date of executing the last authorization for search.

It is further proposed to substitute sub-section (9D) of the said section to provide that, the authorized officer, during the course of a search or within sixty days from the date of the last authorisation, may make a reference to a Valuation Officer referred to in section 142A or any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner, the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure laid down by the Board in this regard, who shall estimate the fair market value of the property in the manner as may be provided by rules, and submit a report of the estimate to the authorized officer or the Assessing Officer, as the case may be, within sixty days from the receipt of such reference.

Effective Date:

These amendments will come into effect from 1st April, 2023.

Prior to the enactment of the Finance Act, 2021, the procedure for conducting such assessment in search cases was laid out in section 153A and the time limit for their

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

The timelines for completing assessment or reassessment in search cases is linked to the execution of the last of the authorisations during such procedure, in order to establish the day of conclusion of search proceedings, and what constitutes as last authorization is provided in section 153B. As the provisions of section 153B are no longer applicable, it is proposed to provide the meaning of execution of last authorisation under section 132 itself.

Accordingly, it is proposed to substitute Explanation 1 to the said section, so as to provide that for the purposes of sub-sections (9A), (9B) and (9D), execution of an authorization for search shall be deemed to have been executed, in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued; and in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorized officer.

Effective Date:
This amendment will take effect retrospectively from 1st April, 2022.

40. Modification of directions related to faceless schemes and e-proceedings [Section 135A, 245MA, 245R, 250 and 274]:

The Central Government has undertaken a number of measures to make the processes under the Act, electronic, by eliminating person to person interface between the taxpayer and the Department to the extent technologically feasible, and provide for optimal utilization of resources and a team-based assessment with dynamic jurisdiction.

Consequent to these amendments introduced in the Act, various schemes have been notified and directions issued for implementation of e-proceedings and faceless schemes, as follows:

Sl. No.	Section	Scheme
1.	135A	e-Verification Scheme, 2021
2.	245MA	e-Dispute Resolution Scheme, 2022
3.	245R	e-advance rulings Scheme, 2022
4.	250	Faceless Appeal Scheme, 2021
5.	275	Faceless Penalty Scheme, 2022

While introducing these amendments in the relevant provisions, time limitations were also incorporated into the statute for issuing directions, with an intent to implement these reforms in a timely manner. These time limits in case of each provision are as below:

Sl. No.	Section	Scheme
1.	135A	31.03.2022
2.	245MA	31.03.2023
3.	245R	31.03.2023
4.	250	31.03.2022
5.	274	31.03.2022

Adjustments may be required to be made to the directions issued under these provisions, in order to overcome any issues arising in their implementation of these schemes and also to ensure that the schemes can operate according to the changing times. However, as per the present provisions, an express power to amend or modify the directions, upon expiry of the relevant time period is not available.

Therefore, it is proposed to amend the relevant provisions to provide that where any direction has been issued for the purposes of giving effect to the scheme under that section before the expiry of limitation, i.e., 31st March, 2022 or 31st March, 2023, as the case may be, the Central Government may, amend such direction at any time by notification in the Official Gazette.

Effective Date:
These amendments will take effect from 1st April, 2022 for sections 135A, 250 and 274, and for sections 245MA and 245R, these amendments will take effect from 1st April, 2023.

41. Clarification regarding advance tax while filing updated return [Section 140B]:
The Finance Act, 2022 inserted sub-section (8A) in section 139 of the Act enabling the furnishing of an updated return by taxpayers up to two years from the end of the relevant assessment year subject to fulfilment of certain conditions as well as payment of additional tax. For the determination of the amount of additional tax on such updated return section 140B was inserted in the Act.

The sub-section (4) of the section 140B of the Act provides for the computation of interest under section 234B of the Act on the tax on updated return. The said sub-section (4) provides that interest payable under section 234B of the Act shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. This implied that interest was payable only on the difference of the assessed tax and advance tax. Further, the sub-clause (i) of the clause (a) of the said sub-section also provides advance tax which has been claimed in earlier return of income shall be taken into account for computing the amount on which the interest was to be paid.

Therefore, in order to clarify the provisions of the sub-section (4) of section 140B of the Act, an amendment has been proposed in the said sub-section that interest payable under section 234B shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any.

Effective Date:
This amendment will take effect retrospectively from the 1st April, 2022.

42. Valuation of Inventory by a Cost Accountant [Section 142, 153 and 295]:

Taxpayers are required to maintain books of account for the purposes of the Act. The Central Government has notified the Income Computation and Disclosure Standards (ICDS) for the computation of income. ICDS-II relates to valuation of inventory. Section 148 of the Companies Act 2013 also mandates maintenance of cost records and its audit by cost accountant in some cases.

In order to ensure that the inventory is valued in accordance with various provisions of law, it is proposed to amend section 142 of the Act relating to Inquiry before assessment to ensure the following:-

(i) To enable the Assessing Officer to direct the taxpayer to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Taxpayer is then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

(ii) To provide that the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government.

(iii) To provide that except where the assessment is made under section 144 of the Act, the taxpayer will be given an opportunity of being heard in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.

(iv) To define "cost accountant" to mean a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

Further, the following consequential amendments are proposed:–

(i) To amend section 153 of the Act, so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.

(ii) To amend section 295 of the Act, so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain.

Effective Date:

The amendments in section 142 and 153 of the Act will take effect from 1st April, 2023 and will accordingly apply to the A.Y. 2023-24 and subsequent assessment years. The amendment in section 295 of the Act will take effect from 1st April, 2023.

43. Provision relating to Reassessment Proceedings [Section 148, 149 and 151]:

The Finance Act, 2021 amended the procedure for assessment or reassessment of income in the Act with effect from the 1st April, 2021. The said amendment modified, inter alia, sections 147, section 148, section 149 and also introduced a new section 148A in the Act. In cases where search is initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment or reassessment is now made under section 147 of the Act for all the relevant years prior to the year in which the search was conducted or requisition was made after the Finance Act, 2021. Further, the provisions of re-assessment proceedings were rationalized by amendments made vide Finance Act, 2022.

Amendments have been proposed in the provisions relating to conduct of reassessment proceedings under the Act to further streamline them and facilitate their conduct and completion in a seamless manner. It has been proposed that the section 148 of the Act may be amended to provide that a return in response to a notice under section 148 of the Act shall be furnished within three months from the end of the month in which such notice is issued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the taxpayer. However, any return which is furnished beyond the period allowed in the section 148 to furnish such return of income shall not be deemed to be a return under section 139 of the Act. As a result, the consequential requirements viz. notice under sub-section (2) of section 143 etc. would not be mandatory for such returns.

Further, section 149 of the Act provides the period of limitation for issuance of notice under section 148 of the Act for commencement of proceedings under section 147 of the Act. It is imperative to note here that in case of a search action under section 132 of the Act, requisition under section 132A of the Act and cases for which information emanates from the above proceedings are deemed to be information under section 149 of the Act and there is no requirement for proceedings under section 148A of the Act to be conducted prior to re-opening the cases in these cases.

In cases where survey under section 133A of the Act is conducted, the Assessing Officer is deemed to have information for the purposes of section 148 of the Act but proceedings under section 148A of the Act need to be conducted prior to issuance of notice under section 148 of the Act. It has been seen that in the cases where the aforementioned search, requisition or survey proceedings are conducted after 15th March of a financial year, there is extremely little time to collate this information and issue a notice under section 148 or show cause notice under section 148A(b) of the Act. Moreover, the search is conducted by the Investigation Wing and the notice is required to be issued by the Assessing Officers.

However, evidence of tax evasion may be reflected in the statements recorded or documents seized or impounded etc. during such action before 31st March, but issuance of notice related to such information or search may go beyond the time limitation provided due to the procedure involved. Therefore, important information related to revenue leakage cannot be proceeded on due to the paucity of time for searches conducted and information obtained as a consequence of these searches in the last few days of any financial year. Accordingly, it has been proposed to insert a

proviso in the said section to provide that in cases where a search under section 132 is initiated or a search for which the last of the authorization is executed or requisition is made under section 132A, after the 15th March of any financial year a period of fifteen days shall be excluded for the purpose of computing the period of limitation for issuance of notice under section 148 and the notice so issued shall be deemed to have been issued on 31st March of such financial year.

It is also proposed to insert another proviso in the section 149 of the Act to provide that in cases where the information deemed to be with the Assessing Officer emanates from a statement recorded or documents impounded under summons or survey, as the case may be, on or before 31st March of a financial year, in consequence of, a search initiated or last of the authorization executed under section 132 or a requisition made under section 132A, after 15th March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation for issuance of notice under section 148 and the show cause notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on 31st March of such financial year. It has also been provided that the impounding or the recording of the statement in consequence of the search or the search itself should be before the 31st March only. Only extension has been provided for the time consumed in the procedure for issuance of notice under section 148 or 148A, as the case may be.

Section 151 of the Act contains provisions relating to the specified authority who can grant approval for the purposes of sections 148 and 148A of the Act. The said section provided that the authority would be the Principal Chief Commissioner and where there is no Principal Chief Commissioner, the Chief Commissioner shall give approvals beyond a period of three years.

It was seen that the clause (ii) of the said section was resulting in misinterpretation as well as confusion with regards to the specified authority for the cases where re-opening was being done after three years from the relevant assessment year. Therefore, to clarify the position of law in this regard, an amendment has been proposed to provide that the specified authority under clause (ii) of section 151 of the Act shall be Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

At the same time, to give further clarity with regards to the specified authority a proviso is proposed to be inserted in the section 151 to provide that while computing the period of three years for the purposes of determining the specified authority the period which has been excluded or extended as per the provisos in section 149 of the Act from the time limit for issuance of notice under section 148 of the Act shall be taken into account.

Effective Date:
These amendments will take effect from the 1st April, 2023.

44. Time Limit for completion of Assessment, Reassessment and Re-computation [Section 153]:

Section 153 of the Act, as substituted vide Finance Act, 2016, provides for the time limit for completion of assessment, reassessment or re-computation. The sub-section

(1) of the said section provides the time limit for order of assessment under section 143 or section 144 of the Act as 21 months from the end of the assessment year in which the income was first assessable. Thereafter, vide subsequent Finance Acts, this time period of 21 months was reduced to 9 months from the end of the assessment year in which the income was first assessable for assessment year 2021-22 and later assessment years. Further, vide Finance Act, 2022 sub-section (1A) was inserted in the section 153 of the Act providing that in a case where an updated return under sub-section (8A) of the section 139 of the Act has been furnished by a taxpayer, an order of assessment or reassessment under section 143 or section 144 of the Act may be made at any time before the expiry of 9 months from the end of the financial year in which such return was furnished.

Further, a notice under sub-section (2) of section 143 of the Act can be served on the taxpayer up to 3 months from the end of the relevant assessment year. This gives a time of 6 months to the Assessing Officer for making assessment which, inter alia, includes making investigations, giving taxpayers opportunities of hearing, bringing on record any material relevant to the case, analysing judicial positions of various legal matters etc. Further, with the Faceless Assessment, different aspects of the assessment are carried out by different units viz. Assessment Unit, Verification Unit, Technical Unit and Review Unit, Therefore, a lot of co-ordination is required between the different units in every single scrutiny assessment and adequate time is essential for a rational and speaking order.

The period of six months is, however, short to complete the entire process of assessment. As a result, taxpayers' grievances of not being given enough time to explain themselves or provide evidences in their favour may arise. This may also compromise the dispensation of reasonableness of orders as well as natural justice to the taxpayers. Therefore, it has been proposed that the time available for completion of assessment relating to the assessment year commencing on or after 1st April, 2022 shall be twelve months from the end of the assessment year in which the income was first assessable. Consistent with the above, the time available for completion of assessment proceedings in the case of an updated return is also proposed to be increased to 12 months from the end of the financial year in which such return is furnished.

Further, vide Finance Act, 2021 the section 263 of the Act was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, the time line provided in section 153 of the Act under sub-sections (3), (5) and (6) to pass an order of assessment or reassessment or order under section 92CA by the Transfer Pricing Officer does not refer to the orders so passed by Principal Chief Commissioner or Chief Commissioner. Therefore, it is proposed that section 153 may be amended to provide that the provision of the said sub-section (3), (5) and (6) shall also be applicable to order under section 263 or section 264, passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.

It may also be noted that prior to the Finance Act, 2021 in cases where search is initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment was made in the

case of the taxpayer, or any other person, in accordance with the special provisions of sections 153A, 153B and 153C of the Act that deal specifically with such cases. The section 153A of the Act provided that an assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years, as given in section 153A of the Act, and for the relevant assessment year or years pending on the date of initiation of the search under section 132 of the Act or making of requisition under section 132A of the Act, as the case may be, shall abate. The scrutiny proceedings would later on be re-opened under the provisions of section 153A of the Act, so that correct assessment of income subsequent to a search operation can logically be concluded based on the information available as a result of the search.

Vide Finance Act, 2021 the provisions of sections 147 of the Act and others relating to re-assessment proceedings were amended providing that search assessments were to be carried out under the provisions of section 147 of the Act. However, the current provisions of the Act relating to reassessment do not provide for abatement or revival of any assessment or reassessment proceedings pending on the date of search under section 132 of the Act or requisition under section 132A of the Act. As a result, the information available in a search, which has a bearing on the pending scrutiny proceedings may not be effectively used due to the limitation of such proceedings.

Further, even if the last of the authorizations have been executed in the relevant search case, the seized material etc. are transferred to the Assessing Officer only after some time owing to the pre-assessment processing of such material and data. Further, the Assessing Officer also needs to carry out investigation and gather evidence to compute the income of the taxpayer as a result of the search or requisition proceedings. Therefore, there is a need to amend the provisions of the Act so as to allow the Assessing Officer to conduct proper scrutiny of the case on the basis of seized material and investigation made and align the dates of limitation for completion of the reassessment proceedings for all the assessment years under scrutiny consequent to a search under section 132 or requisition under section 132A of the Act.

In view of the above, it is proposed that a new sub-section (3A) may be inserted in section 153 of the Act to provide that where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (1A), (2) and (3) of the said section shall be extended by twelve months in a case of an assessee where such search is initiated under section 132 or such requisition is made under section 132A or in the case of an assessee to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or in the case of an assessee to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to.

Furthermore, consequent to the introduction of sub-section (1A) of section 153 of the Act vide Finance Act, 2022, it is proposed to insert the reference to sub-section (1A) in sub-sections (3), (4), (6) as well as in the first proviso to Explanation 1 of section 153.

Effective Date:
These amendments will take effect from the 1st April, 2023.

45. Relief to sugar co-operatives from past demand [Section 155(19)]:

Sugar factories operating in the co-operative sectors in certain States of India pay to sugarcane growers a final amount, often referred to as Final Cane Price (FCP) which is over and above the Statutory Minimum Price (SMP) fixed by the Central Government under the Sugarcane Control Order, 1996. FCP is decided on the basis of the particular factory's working results which take into account all the revenues and expenditure incurred by the factory.

The payment of FCP by the co-operative sugar factories over and above the SMP for purchase of sugarcane had resulted into tax litigation. The co-operative sugar factories were claiming this excess payment as business expenditure whereas the same has been disallowed in the assessment on the ground that the excess price paid for purchase of sugar cane over and above SMP is in the nature of appropriation/ distribution of profit and hence not allowable as deduction.

In order to provide certainty in this matter and to encourage co-operative movement in sugar sector, a new clause (xvii) was inserted to amend sub-section (1) of section 36 of the Act to provide that the amount paid for purchase of sugarcane by the co-operative societies engaged in the manufacture of sugar at a price which is equal to or less than the price fixed by or fixed with the approval of the Government shall be allowed as deduction for computing business income of the sugar co-operative factories. The said amendment came into force through the Finance Act 2015 on 01.04.2016 and was applicable from Assessment Year 2016-17 onwards. Pending demands and litigation still persisted in respect of AYs prior to 2016-17.

Therefore, to conclude the matter logically and to extend the benefit of the abovementioned relief to all the applicable years, it is proposed to amend section 155 of the Act to insert a new sub-section (19). It shall provide that in the case of a sugar mill cooperative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly the Assessing Officer shall, on the basis of an application made by such assessee in this regard, re-compute the total income of such assessee for such previous year. The Assessing Officer shall allow such deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed or approved by the Government for that previous year. Also, the provision of section 154 shall, so far as may be, apply thereto, and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of previous year commencing on 1st April, 2022.

Effective Date:
This amendment will take effect from the 1st April, 2023.

46. Facilitating TDS credit for income already disclosed in the return of income of past year [Section 155(20) and 244A]:

The Memorandum states that representations were received that in many instances, tax is deducted by the deductor in the year in which the income is actually paid to the

taxpayer. However, following accrual method, the taxpayer may have already disclosed this income in earlier years in their return of income. This results in TDS mismatch, since the corresponding income has already been offered to tax by the taxpayer in earlier years, however, TDS is only being deducted much later when actual payment is being made. The taxpayer cannot claim the credit of TDS in the year in which tax is deducted since income is not offered to tax in that year. It may also not be possible to revise the return of past year in which the corresponding income was included since time to revise the return of income for that year may have lapsed. This results in difficulty to the taxpayer in claiming credit of TDS.

In order to remove this difficulty, it is proposed to insert a new sub-section (20) in section 155 of the Act. This new sub-section applies where any income has been included in the return of income furnished by an assessee under section 139 of the Act for any assessment year (hereinafter referred to as the "relevant assessment year") and tax has been deducted at source on such income and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year. In such a case the assessee can make application in the prescribed form to the Assessing Officer within two years from the end of the financial year in which such tax was deducted at source. Then Assessing Officer shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year. It has been further provided that the provisions of section 154 of the Act shall, so far as may be, apply thereto, and the period of four years specified in sub-section (7) of that section shall be reckoned from the end of the financial year in which such tax has been deducted. Further, credit of such tax deducted at source shall not be allowed in any other assessment year.

Amendment has also been proposed in section 244A of the Act to provide that the interest on refund arising out of above rectification shall be for the period from the date of the application to the date on which the refund is granted.

Effective Date:
These amendments will take effect from 1st October, 2023.

47. Effect of Order of Tribunal or Court [Section 170A]:
Section 170A of the Act was inserted vide Finance Act, 2022 in order to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

The section provides that in case of business reorganisation, where a return of income has been filed by the successor under section 139 of the Act, such successor shall furnish a modified return within six months from the end of the month in which such order of business reorganization was issued, in accordance with and limited to the said order. Consequently, Rule 12AD has been notified prescribing the form and manner of furnishing such modified return by companies by the Board vide Notification No. 110/2022 dated 19.09.2022.

The provisions pertaining to business reorganisation and corporate restructuring are also available under other statutes like the Companies Act, 2013. Considering the

multiplicity of provisions, certain issues have come to the fore since the insertion of section 170A in the Act last year. These pertain to the entities who have previously furnished the return for the relevant assessment year, obligation on the Assessing Officer (AO) for passing or modifying assessment or reassessment orders, the requirement of furnishing modified return etc. In order to avoid any unintended litigation, it is proposed to amend the law to clarify the same.

Accordingly, it is proposed to substitute section 170A, to provide that notwithstanding anything contained in section 139, in a case of business reorganisation, where prior to the date of order of the tribunal or the High Court or Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, any return of income has been furnished for any assessment year relevant to a previous year, by an entity to which such order applies, the successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in the form and manner, as may be prescribed, in accordance with and limited to the said order. This would also enable modification of the returns filed by the predecessor wherever required

There was no provision of the procedure to be followed by the Assessing Officer after the modified return is furnished by the successor entity. It is therefore being provided that, if proceedings of assessment or reassessment for the relevant assessment year have been completed on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order modifying the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished. Where proceedings of assessment or reassessment for the relevant assessment year are pending on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganization and taking into account the modified return so furnished.

For the purposes of such assessment or reassessment, unless provided otherwise, all other provisions of the Act shall apply and the tax shall be chargeable at the rate applicable to such assessment year.

It is also proposed to define the following terms for the purposes of this section:

> “business reorganization" means the reorganization of business involving the amalgamation or demerger or merger of business of one or more persons;
>
> "successor" means all resulting companies in a business reorganization, whether or not the company was in existence prior to such business reorganisation.

Effective Date:
This amendment will take effect from the 1st April, 2023.

48. TDS on payment of accumulated balance due to an employee [Section 192A]:

Section 192A of the Act provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952. The existing provisions of section 192A of the Act, inter-alia, provide for deduction of tax at the rate of 10% of the taxable component of the lump sum payment due to an employee. Further, no deduction of tax is to be made where the amount of such payment or the aggregate amount of such payment to the payee is less than fifty thousand rupees.

The second proviso to section 192A of the Act provides that any person entitled to receive any amount on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.

It was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases under section 192A. Hence, it is proposed to omit the second proviso to section 192A of the Act, so that in case of failure to furnishing of PAN by the person relating to payment of accumulated balance due to him, tax will be deducted at the rate of 20% as in other non-PAN cases in accordance with section 206AA of the Act, instead of at the maximum marginal rate.

Effective Date:

This amendment will take effect from 1st April, 2023.

49. TDS on interest on securities [Section 193]:

Clause (ix) of the proviso to the said section provides that no tax shall be deducted on interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.

It is proposed to omit the said clause.

Effective Date:

This amendment will take effect from 1st April, 2023.

50. TDS on payment of certain amount in cash [Section 194N]:

The provisions of the said section provide that a banking company or a co-operative society engaged in carrying on the business of banking or a post office, which is responsible for paying any sum, being the amount or the aggregate of amounts, in excess of one crore rupees in cash during the previous year to any person (referred to as the recipient) from one or more accounts maintained by the recipient with it shall, at the time of payment of such sum, deduct an amount equal to two percent of such sum, as income-tax.

It is proposed to insert a third proviso in the said section so as to provide that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for the words “one crore rupees” the words “three crore rupees” had been substituted.

Effective Date:
This amendment will take effect from 1st April, 2023.

51. Tax Treaty relief at the time of TDS [Section 196A]:

Section 196A of the Act provides for TDS on payment of certain income to a non-resident (not being a company) or to a foreign company, at the rate of 20%. The income is required to be in respect of units of a Mutual Fund specified under clause (23D) of section 10 of the Act or from the specified company referred to in the Explanation to clause (35) of section 10 of the Act.

It is stated in the Memorandum that representations were received requesting that the benefit of tax treaty may be considered at the time of TDS so that if the treaty provides a rate lower than 20%, TDS is made at that lower rate.

It is thus proposed to insert a proviso to sub-section (1) of section 196A of the Act. This proviso seeks to provide that the TDS would be at the rate which is lower of the rate of 20% and the rate or rates provided in agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A of the Act, in case of a payee to whom such agreement applies and such payee has furnished the tax residency certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A of the Act.

Effective Date:
This amendment will take effect from 1st April, 2023.

52. Expanding the scope of TDS eligible for lower or Nil rate [Section 197]:

Section 194LBA of the Act, inter-alia, provides that business trust shall deduct and deposit tax at the rate of 5% on interest income of non-resident unit holders. It is stated in the Memorandum that representations were received that in some cases rate of deduction may be required to be reduced due to some exemption, for example exemption under section 10(23FE) of the Act allowed to notified Sovereign Wealth Funds and Pension Funds. However, since certificate for lower deduction under section 194LBA of the Act cannot be obtained under section 197 of the Act, benefit of exemption is not available at the time of tax deduction.

It is thus proposed to amend sub-section (1) of section 197 of the Act to provide that the sums on which tax is required to be deducted under section 194LBA of the Act shall also be eligible for certificate for deduction at lower rate.

Effective Date:
This amendment will take effect from 1st April, 2023.

53. Relaxation from higher rate of TDS or TCS for non-filers of return [Section 206AB and 206CCA]:

Section 206AB of the Act provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, section 206CCA of the Act provides for special provision for higher TCS for non-filers of income-tax returns. These non-filers in these sections are referred to as "specified person".

These sections define "specified person" to mean a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted or collected (as the case may be)-

(i) for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired; and

(ii) the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in the said previous year.

The provisos to these definitions exclude a non-resident from the definition of specified person, if the non-resident does not have a permanent establishment in India.

There may be certain persons who are not required to furnish the return of income. It is not the intention to include such persons in the category of non-filers. Hence, in order to provide relief in such cases, it is proposed to amend the definition of the "specified person" in sections 206AB and 206CCA of the Act so as to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

Effective Date:
This amendment will take effect from 1st April, 2023.

54. Increase in rate of TCS [Section 206C]:
Section 206C of the Act provides for TCS on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1G) of the aforesaid section provides for TCS on foreign remittance through the Liberalized Remittance Scheme and on sale of overseas tour package.

In order to increase TCS on certain foreign remittances and on sale of overseas tour packages, amendment is proposed in sub-section (1G) of section 206C of the Act.

The current and proposed TCS rates are tabulated as under:

S.No.	Type of remittance	Present rate*	Proposed rate*
(i)	For the purpose of any education, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E.	0.5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No change
(ii)	For the purpose of education, other than (i) or for the purpose of medical treatment.	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No change
(iii)	Overseas tour package	5% without any threshold limit.	20% without any threshold limit.

(iv)	Any other case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	20% without any threshold limit.

* In the table above, the present rate and the proposed rate of TCS are on the amount or the aggregate of the amounts being remitted by the buyer in a financial year.

Though the tax payers can get TCS credit in their return of income, the hike in TCS rate will increase their immediate cash requirement. This may dissuade direct investment in foreign equities.

Effective Date:
This amendment will take effect from 1st July, 2023.

55. Set off and withholding of refunds in certain cases [Section 241A, 244A(1A) and 245]:

Section 241A of the Act deals with withholding of refund in certain cases. As per the section, where a refund becomes due to a taxpayer under sub-section (1) of section 143 and notice for assessment is issued to him under sub-section (2) of section 143, the Assessing Officer (AO) may withhold such refund till the date of such assessment being made, if he is of the opinion that the grant of refund is likely to adversely affect the revenue. Such withholding can be done after recording the reasons for doing so and with the prior approval of the Principal Commissioner or Commissioner, and applicable to assessment years on or after 2017-18.

Section 245 of the Act deals with set off of refunds against tax remaining payable. It provides that where refund is found to be due to any person under any provisions of the Act, the AO or other income-tax authorities mentioned in the section, may, in lieu of payment, set off part or whole of the refund against any sum remaining payable by such person, after giving him an intimation in writing regarding the proposed action.

There is an overlap between the two provisions. Therefore, it is proposed to integrate the two sections by substituting section 245, so as to provide that where under any of the provisions of this Act, a refund is due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against any sum remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

It is also proposed to provide that where a part of the refund has been set off under subsection (1) or where no amount is set off, and refund becomes due to a person, then, the Assessing Officer, having regard to the fact that proceedings of assessment or reassessment are pending in such case and grant of refund is likely to adversely affect the revenue, and for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, may withhold the refund till the date on which such assessment or reassessment is made.

It is also proposed to amend section 241A of the Act to make the provisions of that section inapplicable from 1st April, 2023.

Further, as the amendments proposed under section 245 would have an impact on cases referred to in sub-section (1A) of section 244A, i.e., where refund due to the assessee is required to be withheld by the AO under sub-section (2) of the proposed section till the date of the making assessment or reassessment, it is proposed to amend sub-section (1A) of section 244A by inserting a proviso that in case of an assessee where proceedings for assessment or reassessment are pending, the additional interest shall not be payable to the assessee under this sub-section, for the period beginning from the date on which such refund is withheld by the Assessing Officer, in accordance with and subject to provisions of sub-section (2) of section 245, till the date on which the assessment or reassessment pending in such case, is made.

However, the proposed amendment shall not impact the existing position with regard to all other types of interest, except additional interest under sub-section (1A) of section 244A, payable to the assessee as required under the Act.

Effective Date:
These amendments will take effect from 1st April, 2023.

56. Extension of time for disposing pending rectification applications by Interim Board for Settlement [Section 245D]:

Section 245D of the Act lays down the procedure for Settlement Commission upon receiving an application for settlement by a taxpayer. The section also provides the timelines to be followed with respect to settlement or disposal of pending applications and also the procedures to be followed in this regard.

The Act was amended vide Finance Act, 2021 with retrospective effect from 01.02.2021, abolishing the Settlement Commission. Consequently, the Central Government was enabled to constitute one or more Interim Boards for Settlement (IBS), as an interim measure, for settlement of applications pending with Settlement Commission as on 31.01.2021. Sub-sections (9) to (13) were introduced in section 245D vide Finance Act, 2021 to make provisions for dealing with applications pending before the Settlement Commission.

Clause (iv) of sub-section (9) provides that where the time-limit for amending any order or filing of rectification application as per sub-section (6B) expires on or after 01.02.2021, then the period from 01.02.2021 till the constitution of IBS shall be excluded from computing the time-limit, and after such exclusion, if the time-limit available for amending the order or for making application is less than 60 days, such period shall be extended to 60 days. Therefore, as per the provisions of clause (iv) of sub-section (9) of section 245D, the period between 01.02.2021 till 10.08.2021 (when the order constituting IBS was issued) shall be excluded for computing the time-limit.

In this regard, it is stated in the Memorandum that grievances were received from the stakeholders regarding extension of time available to the IBS under the Act, to pass rectification/ amendment orders.

Accordingly, clause (iv) of sub-section (9) of section 245D is proposed to be substituted with a new clause to provide that where the time-limit for amending an

order or for making an application under sub-section (6B) expires on or after 01.02.2021 but before 01.02.2022, such time-limit shall stand extended to 30.09.2023.

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

57. Introduction of the authority of Joint Commissioner (Appeals) [Sections 246, 2(19B), 116, 119, 131, 133, 134, 154, 158A, 158AB, 177, 189, 249, 250, 251, 253, 264, 267, 270A, 270AA, 271, 271A, 271AAC, 271AAD, 271J, 275, 279, 287 and 295]:

The main proposed amendment is in section 246 and in rest of the section there is a consequential amendment proposed. The expression "Commissioner (Appeals)" is proposed to be substituted with "Joint Commissioner (Appeals) or Commissioner (Appeals)".

As per the current scheme for appeals under the Act, the first appellate authority for a taxpayer aggrieved by any order issued under the Act is the Commissioner (Appeals). Such Commissioner (Appeals) has the powers to confirm, reduce, enhance or annul/ cancel an order of assessment or an order of penalty, after providing an opportunity of being heard to the taxpayer and the AO. The order passed by the Commissioner (Appeals) are appealable before the Appellate Tribunal.

It has been noted that as the first authority for appeal, Commissioner (Appeals) are currently overburdened due to the huge number of appeals and the pendency being carried forward every year. In order to clear this bottleneck, a new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand. Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.

The earlier section 246 was providing for the appeal functions of Deputy Commissioner (Appeals). That institution was discontinued in the year 2000. Accordingly, it is proposed to substitute section 246 of the Act to provide for appeals to be filed before Joint Commissioner (Appeals). Sub-section (1) of the proposed section seeks to provide that any taxpayer aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against-

(i) an order being an intimation under sub-section (1) of section 143, where the taxpayer objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the taxpayer objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
(ii) an order of assessment, reassessment or re-computation under section 147;
(iii) an order being an intimation under sub-section (1) of section 200A;
(iv) an order under section 201;
(v) an order being an intimation under sub-section (6A) of section 206C;
(vi) an order under sub-section (1) of section of section 206CB;

(vii) an order imposing a penalty under Chapter XXI; and

(viii) an order under section 154 or section 155 amending any of the orders mentioned in (i) to (vii) above:

It is proposed to insert a proviso under sub-section (1) that an appeal cannot be filed before the Joint Commissioner (Appeals) where an order referred to under this sub-section is passed by or with the approval of an income-tax authority above the rank of Deputy Commissioner.

Sub-section (2) of the proposed section seeks to provide that where any appeal filed against an order referred to in sub-section (1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorized by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred. This will enable transfer of certain existing appeals filed before the Commissioner (Appeals) to the Joint Commissioner (Appeals).

Sub-section (3) of the proposed section seeks to provide that notwithstanding anything contained in sub-section (1) or sub-section (2), the Board or an income-tax authority so authorized by the Board in this regard, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred.

Sub-section (4) of the proposed section seeks to provide that where an appeal is transferred under the provisions of sub-section (2) or sub-section (3), the appellant shall be provided an opportunity of being reheard.

Sub-section (5) of the proposed section seeks to provide that for the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a Scheme, by notification in the Official Gazette, so as to dispose appeals in an expedient manner with transparency and accountability by eliminating the interface between the Joint Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible and direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Joint Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

Sub-section (6) of the proposed section seeks to provide that for the purposes of sub-section (1), the Board may specify that the provisions of that sub-section shall not apply to any case or any class of cases.

It is also proposed to insert an Explanation in this section to define “status” to mean the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

It is also proposed to amend section 2 of the Act by inserting a definition for Joint Commissioner (Appeals) and to amend section 116 of the Act to make Joint Commissioner (Appeals) an income-tax authority under the Act.

Further, consequential amendments are proposed in relevant provisions of the Act in order to ensure that functioning of the Joint Commissioner (Appeals) is aligned with that of the Commissioner (Appeals).

Effective Date:
These amendments will take effect from the 1st April, 2023.

58. Appeal to the Appellate Tribunal [Section 253]:
Section 253 of the Act contains provisions relating to filing of appeals to the Appellate Tribunal. Sub-section (1) of the said section details the types of orders passed under various sections of the Act, against which an aggrieved taxpayer may appeal to the Appellate Tribunal. The said sub-section provides that any taxpayer aggrieved by any order passed by a Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271J or section 272A may appeal to the Appellate Tribunal. Therefore, the Appellate Tribunal is the first level of appeal for such orders of the Commissioner (Appeals).

Sections 271AAB, 271AAC and 271AAD are penalty provisions under Chapter XXI of the Act for imposition of penalty. Section 271AAB of the Act provides for imposition of penalty by the Assessing Officer in a case where search has been initiated under section 132 of the Act. Section 271AAC of the Act provides for imposition of penalty by the Assessing Officer in a case where income determined includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D of the Act for any previous year. Section 271AAD of the Act contains provisions for imposition of penalty by the Assessing Officer if during any proceedings under the Act it is found that in the books of account maintained by any person there is a false entry or an omission of any entry which is relevant for computation of total income of such person to evade tax liability.

Vide Finance Act, 2022, sections 271AAB, 271AAC and 271AAD were amended to enable Commissioner (Appeals) also to pass an order imposing penalty under the said sections. However, as the reference to the same has not been inserted in sub-section (1) of section 253 of the Act, an aggrieved taxpayer cannot appeal against such penalty orders passed by Commissioner (Appeals) which may lead to taxpayer grievance. Therefore, it has been proposed to amend the provisions of section 253 of the Act to provide that appeal against penalty orders passed by Commissioner (Appeals) under the sections 271AAB, 271AAC and 271AAD shall be made to the Appellate Tribunal.

Further, vide Finance Act, 2021, section 263 of the Act was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, in the absence of any reference to such orders passed under section 263 of the Act in sub-section (1) of the section 253 of the Act, a taxpayer aggrieved by any order under section 263 of the Act passed by a Principal Chief Commissioner and Chief Commissioner or an order under section 154

of the Act rectifying such order under section 263 of the Act cannot appeal against such orders to the Appellate Tribunal. Therefore, it has been proposed that section 253 of the Act may be amended so that appeal against an order passed under section 263 of the Act by Principal Chief Commissioner or Chief Commissioner or an order passed under section 154 of the Act in respect of any such order shall be made to the Appellate Tribunal.

Sub-section (4) of the section 253 of the Act allows the respondent in an appeal, against an order of Commissioner (Appeals), to file a memorandum of cross-objections before the Appellate Tribunal. However, it is pertinent to note here that appeal can be made to the Appellate Tribunal against orders of authorities other than Commissioner (Appeals) also, like Principal Commissioner or Commissioner or Principal Director or Director etc. As a result, the respondent, whether it is Revenue or the taxpayer, cannot file memorandum of cross-objections against an appeal before the Appellate Tribunal by virtue of the provisions of sub-section (4) of section 253 of the Act. This creates grievances as well as reduces the fair and equitable dispensation of judgement in such cases. Therefore, it is proposed that an amendment may be made in sub-section (4) of section 253 to enable filing of memorandum of cross-objections in all classes of cases against which appeal can be made to the Appellate Tribunal. For example, where the taxpayer files an appeal to the appellate tribunal against an order passed by the Assessing Officer in consequence of an order of the Dispute Resolution Panel the Assessing Officer would be able to file a cross objection to such appeal which cannot be filed presently.

Effective Date:
These amendments will take effect from 1st April, 2023.

59. Penalty for cash loan/ transactions against primary co-operatives [Section 269SS and 269T]:

Section 269SS of the Act provides that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is Rs. 20,000 or more. Similarly, section 269T provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is Rs. 20,000 or more. Certain exceptions have, however, been specified in the provisions.

It is stated in the Memorandum that request was received to bring parity to Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") for limits on cash transactions with banking companies with regards to sections 269SS and 269T of the Act as they are involved in granting loans and accepting deposits from the rural segment. Present provisions state that every person including PACS and PCARD are liable for penalty on accepting loan or deposit in cash exceeding Rs.20,000 as per Section 269SS as well as repayment of loan and deposit in cash exceeding Rs.20,000 under section 269T. Since PACS and PCARD are providing credit facilities at the grass-root level, relaxation may be made for them under the aforesaid provisions.

To provide relief to the low-income groups and facilitate easier conduct of business operations in such areas it has been proposed that an amendment may be made in the section 269SS of the Act by raising the limit of Rs. 20,000 to Rs. 2 lakh for PACS and PCARD. This will imply where such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member or such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member, the penalty would be leviable only if the amount of a loan or deposit is Rs. 2 lakh or more.

In continuation of the above, it is also proposed to amend the provisions to section 269T of the Act and increase the limit of Rs. 20,000 to Rs. 2 lakh in the case of PACS and PCARD. As a result, in a case where a deposit is paid by a PACS or a PCARD to its member or a loan is repaid to a PACS or a PCARD by its member, payment shall be made by an account payee cheque or account payee bank draft or online transfer through a bank account if the amount of such or deposit is more than Rs. 2 lakh. Penalty shall be imposable if the amount of such loan or deposit exceeds Rs. 2 lakh.

Effective Date:
These amendments will take effect from 1st April, 2023.

60. Amendment in consequence to new provisions of TDS [Section 271C and 276B]:
Section 271C of the Act has provisions for penalty for failure to deduct tax at source. Under this section, a person who has failed to deduct whole or part of tax as required under provisions of Chapter XVII-B (Tax Deduction at Source - TDS) or pay the whole or part of tax as required under section 115-O (Tax on distributed profits) or under proviso to section 194B (tax on winnings from crossword, lottery, puzzles etc.) is liable to pay penalty of sum equal to the amount of tax he failed to deduct or pay. Section 276B of the Act makes provisions for prosecution for failure to pay tax to the credit of Central Government under Chapter XII-D (as required under section 115-O) or under XVII-B (deduction at source).

Two new provisions – section 194R and section 194S were introduced in the Act vide Finance Act, 2022. Section 194R makes provisions for deduction of tax on benefit or perquisite in respect of business or profession. Section 194S makes provisions for deduction of tax on payment on transfer of virtual digital asset (VDA). In addition, section 194BA is proposed to be inserted in the Act vide the Bill to provide for TDS on net winnings from online games.

The first proviso to section 194R provides that in case the benefit or perquisite has an "in kind" component, then the person responsible shall ensure that required amount of tax has been paid, before releasing the benefit or perquisite.

In the case of VDA, since the consideration for transfer could be in exchange of another VDA (fully "in kind") or partly in kind, the first proviso to section 194S provides that the person responsible for paying the consideration shall ensure that the required amount of tax has been paid, before releasing the consideration.

Similarly, in the case of winnings from online games, sub-section (2) of the proposed section provides that where the net winnings are wholly in kind or partly in cash and partly in kind, the person responsible for paying the net winnings shall ensure that tax has been paid in respect of the net winnings, before releasing the winnings.

Presently, the provisions for penalty and prosecution do not clearly mandate a penalty or prosecution for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind. Therefore, to enable such penalty and prosecution, it is proposed to amend section 271C inserting two new sub-clauses under clause (b) in sub-section (1) providing reference to the first proviso to section 194R and the first proviso to section 194S. Similar amendments are also proposed in section 276B. Drafting changes are also proposed in the section to align the language with the parent provisions.

Effective Date:
These amendments will take effect from 1st April, 2023.

Further, in consequence to the proposal to insert section 194BA in the Act, it is proposed to insert a new sub-clause under section 271C and section 276B providing reference to sub-section (2) of section 194BA.

Effective Date:
This amendment will take effect from the 1st July, 2023.

61. Penalty for furnishing inaccurate statement of financial transaction or reportable account [Section 271FAA]:

Section 285BA of the Act makes it mandatory for a person responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed, under any law for the time being in force, to furnish a statement in respect of such specified financial transaction or such reportable account to the prescribed income-tax authority. Further, vide Finance (No. 2) Act, 2014, section 271FAA was inserted in the Act in Chapter XXI to provide for penalty for furnishing inaccurate statement of financial transaction or reportable account.

Self-certifications by reportable persons and the account holders are mandated under the Rule 114H of the Income-tax Rules, 1962 for different purposes. This includes, inter alia, cases where new accounts are opened (to certify the country of tax residence), cases involving curing of indicia for pre-existing accounts (to certify the country of tax residence) and cases of entities to certify whether they are Passive Non-Reporting Financial Entities. While the requirement of having a valid self-certification has been specified in Rule 114H of the Income–tax Rules, 1962, however, there is no penal provision for the submission of a false self-certification which in turn leads to furnishing of an incorrect statement under section 285BA. Therefore, there is a need to introduce a provision for penalizing false self-certification in the Act.

It is therefore, also proposed to insert a new sub-section (2) in the said section which shall provide that if there is any inaccuracy in the statement of financial transactions

submitted by a prescribed reporting financial institution and such inaccuracy is due to false or inaccurate information submitted by the account holder, a penalty of five thousand rupees shall be imposable on such institution, in addition to the penalty leviable on such financial institution in the said section, if any. This penalty shall be levied by the income tax authority prescribed under sub-section (1) of section 285BA of the Act. Further, the reporting financial institution may recover the amount so paid on behalf of the account holder or retain out of any moneys that may be in its possession or may come to it from every such reportable account holder.

It is also proposed to clarify that the reference to the income-tax authority prescribed which shall levy the said penalty in the section 271FAA is the prescribed authority under sub-section (1) of section 285BA.

Effective Date:
These amendments will take effect from 1st April, 2023.

62. Decriminalization of Prosecution [Section 276A]:
Section 276A of the Act makes provision for prosecution with rigorous imprisonment up to two years in the case of a person, being a liquidator who fails to give notice in accordance with sub-section (1) of section 178, or fails to set aside the amount as required by sub-section (3) of the said section or parts with any of the assets of the company or the properties in contravention of the provisions of the said section.

It has been the stated policy of the Government to decriminalise minor offences as a step towards improving ease of business. In this regard, the provisions of the Act have been examined. Section 276A provides for prosecution of liquidator for non-compliance with section 178. Section also imposes personal liability on such liquidator for the same noncompliance. Further, with the operationalization of the Insolvency and Bankruptcy Code, 2016 (IBC), waterfall mechanism for payment of dues is now in place for companies under liquidation and sub-section (6) of section 178 (the parent section) provides that this section shall not have effect when provisions of the IBC are in contrary. Moreover, the liquidator is now working under the oversight of this specific law.

In view of this, it is proposed to amend section 276A by providing a sunset clause on the section with effect from 31.03.2023. Hence, it is proposed that no fresh prosecution shall be launched under this section on or after 1st April, 2023. The earlier prosecutions will however continue.

Effective Date:
This amendment will take effect from 1st April, 2023.

AGNIVEER

INFRASTRUCTURE

Vande Bharat Express

The Vande Bharat Express, also known as Train 18,[1] is **a semi-high-speed, electric multiple-unit train** operated by Indian Railways. It was designed and manufactured by **the government-owned Integral Coach Factory (ICF), Chennai.**

GupShup

Lalaji:
Hey guys! Summer vacation is approaching, what's the plan.

Champ:
Lets go out of India for a holiday.

Rasgulla:
Singapore, Australia, New Zealand, Europe, America, etc., etc.

Khush:
Why not any place in India? Our Hon'ble PM and FM are promoting Domestic Tourism.

Prince:
What are they doing?

Anay:
In the budget proposals, a special focus is given on development of tourism. It is proposed to select at least 50 destination for development of tourism, which will include physical connectivity, virtual connectivity, tourist guides, high standard food streets and tourist security, development of App, etc. It is a proposal of development of complete package.

Taniji:
Swadesh Darshan Scheme has also been launched.

Nishka:
Under the Direct Tax proposals, the higher rate of TCS has been prescribed for foreign tour.

Lalaji:
When all these development is going around in Indian Tourism why not we as citizens also believe in
Dekho Apna Desh.

All:
Everyone please study the Notes and give your feedback.

Jai Ho – सब का मंगल हो|