B. K. Khare & Co.
Chartered Accountants

BUDGET ANALYSIS 2022

BRIDGING THE GAP

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Contents

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Dear Esteemed Reader,

The Economic survey, which precedes the Budget announcement, set the tone for the Budget with its prediction that the economy is well poised to achieve a GDP growth of 9.2% in FY 2021-22 and 8.5% in FY 2022-23 heralding the return of economic activity to pre-pandemic levels. The estimate for FY 2021-22 of 9.2% GDP growth, which incidentally would be one of the highest growth rates clocked globally, rides on the back of agricultural growth of 3.9%, industrial growth of 11.8% and the service sector, some parts of which bore the brunt of the pandemic, at 8.2%. The caveat of course being that the monsoons are normal, the crude oil prices do not shoot up over USD 75 a barrel, that the economic easing will be gradual and that there will be no health related or geo-political surprises. Strong growth in exports of both goods and services, a balance of payments surplus and a forex reserve of USD 634 billion (as on December 31 2021), improvement in gross fixed capital formation, CPI inflation at 5.6% (within the targeted tolerance band, although WPI is running in double digits, partly due to base effect) and other economic factors will result in the fiscal deficit being reined in and targeted at 6.9% of GDP. In sum, the macro-economic indicators suggest a healthy recovery in the Indian economy in the midst of the Covid-19 pandemic and the economy is therefore well placed to face the challenges of fiscal 2022-23.

In this backdrop, the stock markets, recovering quickly from a small correction in the preceding weeks, set the expectations from this Budget of promoting infrastructure and capital expenditure and provide the required stimulus for growth and employment, rising in anticipation and above the debate of K shaped or V shaped economic recovery. The FM met and exceeded this expectation by announcing a whopping 35.4% Increase in capital and infrastructure budgeted expenditure at 7.5 lac crore, constituting 2.9% of GDP. The budget for capital expenditure is double what it was in FY 2019-20 taking into account the much-needed revamp of infrastructure. This lays down the path to achieving the vision of India at 100 of her Government which the FM unfurled, in this year, being the Amrit Mahotsav of Azadi – the 75th year of independence.

The Budget rather than boosting purchasing power by putting cash in the hands of the people either through direct transfers or tax cuts, has righty seized the opportunity for some long due structural reforms which will have far reaching impact on growth rather than short term expediency. Staying away from populist measures, has indeed been laudable especially given the temptation to play to the masses, on the eve of elections in several states of the country. In fact, the outlay for MGNREGA, a demand led programme, has also been reduced by 25.5% indicating that the pandemic related unemployment distress will also be lower in FY 2022-23. It seems that the FM did not lose sight of the fact that even before the start of the pandemic, there was a slowdown in the economy, and therefore chose to push for supply side and infrastructural interventions to facilitate the return of economic growth on a high trajectory. The balance of growth and inflation will require active intervention by the Reserve Bank of India given that the fiscal deficit has been partially funded by increased borrowings, despite buoyancy in tax collections.

The "Vision at 100" envisages inclusive growth, promoting the digital economy and technology enabled development including fintech technology, energy transition and climate action and crowding in private investment with public capital investment. This is sought to be achieved on the basis of the following key initiatives:

Improving Infrastructure

- The government's impetus for infrastructure-backed growth is not limited to capital markets but also social infrastructure. They have allocated over INR 60,000 crores to deliver piped water to 3.8 crore households. Further, the government plans to improve rural childhood healthcare delivery by upgrading 2 lakh Anganwadis, which have also been crucial as last-mile healthcare delivery nodes during the pandemic, in addition to being at the forefront of the fight against childhood malnutrition.
- The BharatNet project aims to bring high-speed internet connectivity to Indian villages by 2025 through fibre optic cables using a Public-Private Partnership model.
- The provision of affordable housing under the PM Awas Yojana has been ramped up.
- The railways are set to add 400 new Vande Bharat trains which improve consumers' experience while providing better energy efficiency, in line with India's sustainability targets.

PM Gati Shakti

- The Gati Shakti plan attempts to create world-class modern infrastructure and logistics for passengers as well as commercial movement.
- It aims to improve connectivity and transport through all means: air travel, railways, roadways, ports, and logistics.
- The national highway network is set to expand by 25,000 km in 2022-23 under this scheme.
- The scheme is set to be backed by improvements in the energy grid, structural transformation to increase adoption of clean energy, digitisation of legacy systems and increased use of IT communication, and improvements in sewerage systems.
- There is a clear and strong push for clean energy through production linked incentives.
- The government will introduce a Unified Logistics Interface Platform for improving efficiency and reducing frictions in transportation.

Push for Digital India

- Understanding the growing demand for online education infrastructure during the pandemic, the government is planning to launch a platform for livelihood creation through training and upskilling called e-Vidya.
- In addition, it will launch DESH-stack which aims to create a digital ecosystem for this livelihood creation portal.
- The digitisation of agriculture is being promoted through the use of Kisan drones for crop assessment, digitising land records, and spraying insecticides. Drones are also being tested for use in fertilizer and irrigation delivery and could be introduced in these areas in the future. This will significantly reduce costs and wastage, improving agricultural efficiency.
- The government is planning to create inter-linkages between various digital portals such as Udyam, e-Shram, NCS, and ASEEM.

Generating Demand

- While the primary focus has been infrastructural investment to boost demand and production, in the long run, some short-run measures continue to exist.
- The government has allocated INR 2.37 lakh crores for Minimum Support Price payments through the farm procurement system, which will help improve rural cash flow and demand.
- It has launched Production Linked Incentive Schemes in 14 sectors to create 60 lakh jobs and add production worth INR 30 lakh crores.

- The national capital goods policy of 2016 continues getting allocation and aimed to double the production of capital goods by 2025. Given the recent focus on capital investment, this scheme can gain increased prominence.
- Sustainability and Climate Targets
- The government is creating incentives for clean energy through PLI schemes. Within this, 19500 crores have been allocated to facilitate domestic manufacturing of solar photovoltaic modules.
- Further, 1400 crores have been allocated for generating 27 megawatts of solar power and 123 megawatts of hydropower in the upcoming year. While this is still short of India's climate targets, it is a significant improvement compared to previous years.
- The government is setting up four pilot programs to test the gasification of coal and conversion to industrial chemicals which can improve the circular economy and reduce waste. It is also planning to set up sovereign green bonds for green infrastructure.
- Electric vehicles are getting subsidies and the electrification of public transport will be a key driver of demand for electric vehicles. This has the potential to improve the EV ecosystem which further creates space for private ownership of electric vehicles.

Other Highlights

- The government plans to set up an animation, visual effects, gaming, and a comics task force to build domestic capacity and meet global demand.
- The government plans to focus on sunrise opportunities such as artificial intelligence, geospatial systems, drones, and green energy to exploit the demographic dividend and lead the country into sustainable development at scale.
- The government addressed cryptocurrency markets head-on in a two-pronged manner. It introduced a 30% tax income on the transfer of any digital virtual assets. At the same time, the FM announced that the government plans to release a Central Bank-backed Digital Currency to boost the digital economy by leveraging blockchain technologies.
- Amendments have been made to the Insolvency and Bankruptcy Code to improve the efficiency of resolutions, especially cross-border insolvencies.
- The government plans to conduct auctions for the 5G spectrum in 2022-23.

On the direct tax front, although there has been no tinkering with the tax rates or slabs and largely no retrospective amendments, there have been a few avoidable exceptions. There is an amendment with retrospective effect to disallow deduction for education cess paid from taxable income, which was being claimed by tax payers on the basis of favourable court decisions. Similarly, for 14A which disallows expenditure incurred in relation to exempt income court decisions favouring the assessee have been undone by amending the law to enable disallowance of such expenditure even in a case where no exempt income is earned in a particular year. The dividend received from certain foreign companies which were being taxed at 15% are now sought to be brought on par with the taxability of dividends of domestic companies which was needed on making dividends taxable from April 01, 2020. Surcharge on all categories of capital gains has been capped at 15% which is a huge relief as the rate could be as high as 27% in case of individual and HUF where taxable income exceeds INR 5 Crores. Digital assets, for example, cryptocurrencies will be taxed at 30% with only the cost of acquisition being allowed as a deduction and with no benefit of carry forward of loss or even setting it off against other taxable income. The updated return provisions which basically allow a period of 2 years from end of the relevant assessment year to file a revised return (in certain permissible situations) will hardly incentivise tax payers due to the additional tax burden of 25% and 50% being imposed depending on whether filed within one or two years respectively. The deadline for commencing operation by domestic manufacturing companies for availing concessional rate of tax of 15% has been extended to March 31, 2024 which was to expire on March 31, 2023. Similarly profit linked tax exemption for eligible start-ups is proposed to be extended by one more year, i.e. start-ups incorporated up to March 31, 2023 will now be eligible for tax exemption. With a view to reduce multiplicity of appeals before the HC and the Tribunals, the Finance Bill proposes that the revenue authorities can now defer filing an appeal before the HC and Tribunal if an identical question of law is pending before the jurisdictional HC or the SC. In order to make units in GIFT City attractive and at par with other international financial centres, the Finance Bill proposes to give additional tax incentives to units operating in GIFT City like deduction in respect of income from transfer of ship and exemption of royalty or interest income arising to non-resident from leasing of ship to units in GIFT City.

On Indirect tax front, in respect of GST, many MSME taxpayers who expected some relief by way of reduction of GST rates were disappointed. A nominal reduction in the rate of GST for both goods and services was expected, considering the impact of the ongoing Pandemic. While the record collection of GST was welcomed, no rate reduction has been made. Further, some of the provisions relating to availment and utilization of Input Tax Credits [ITC] have been amended to restrict the eligible amount of credit. In other words, on the one hand, no rate reductions were announced and on the other, further restrictions have been placed on availment and utilization of ITC. This may lead to increased working capital requirements. Also, in Customs, the retrospective changes proposed in the law appear to be mainly to nullify the effect of certain assessee favoured Apex Court Judgments, apart from simplifying procedures applicable to import of goods eligible for end- use based concessions and enabling automation of such compliances. The proposal to levy additional duty of excise of INR 2 on petrol and diesel which is not blended with Ethanol or Methanol may have the desired effect of encouraging sale and consumption of blended fuels, perhaps in the long run and also increase the demand for Ethanol production by farmers.

The FM has been able to do a good balancing act and except for the Airlines, there has been something in it for everybody. The impossible seems to have been achieved in that it has received an all-round endorsement for outlining measures that will set the economy in the right direction. The stock markets seem to have sustained their enthusiastic response, industry captains have also endorsed that the animal spirits will be once again stoked and the economic pundits have not been able to pick large concerns in the approach of the FM.

Will it prove to be the Booster shot required for the Economy remains to be seen, as the crux, as always, is in the implementation of the plans announced in the Budget.

With this setting of context, I would invite our readers to go through the detailed analysis of the economic survey, vital economic indicator, various direct and indirect tax proposals. As always, I look forward to hearing your valuable feedback and comments on the contents of this publication, which it must be said is not a substitute for any professional advice, but an expression of our views interlaced with our practical experience.

Sincerely,

Padmini Khare Kaicker
Managing Partner

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Mumbai, February 2, 2022

Details of Planned Expenditure

Sector-Wise Expenditure

Expenditure Item	FY 2020-21	FY 2021-2022	FY 2021-2022	FY 2022-2023
All values in INR *Crores*	*Actuals*	*Budget Estimates*	*Revised Estimates*	*Budget Estimates*
Defence	340,094	347,088	368,418	385,370
Subsidy				
Fertiliser	127,922	79,530	140,122	105,222
Food	541,330	242,836	286,469	206,831
Petroleum	38,455	14,073	6,517	5,813
Agriculture and Allied Activities	134,420	148,301	147,764	151,521
Commerce and Industry	21,554	34,623	45,833	53,116
Development of North East	1,854	2,658	2,658	2,800
Education	84,219	93,224	88,002	104,278
Energy	32,728	41,747	48,684	49,220
External Affairs	14,329	18,155	16,000	17,250
Finance	37,038	91,916	51,904	21,354
Health	80,026	74,602	85,915	86,606
Home Affairs	96,652	113,521	115,550	127,020
Interest	679,869	809,701	813,791	940,651
IT and Telecom	32,778	53,108	28,757	79,887
Others	91,998	87,528	101,864	113,301
Planning and Statistics	3,172	2,472	4,808	5,720
Rural Development	214,246	194,633	206,948	206,293
Scientific Departments	22,100	30,640	28,510	30,571
Social Welfare	37,563	48,460	44,952	51,780
Tax Administration	146,439	131,100	195,351	171,677
Transfer to States	211,475	293,302	285,394	334,339
Transport	216,795	233,083	325,443	351,851
Union Territories	47,605	53,026	57,533	58,757
Urban Development	46,701	54,581	73,850	76,549
Grand Total	**3,509,836**	**3,483,236**	**3,770,000**	**3,944,909**

Expenditure on Major Schemes

Government Scheme	FY 2020-21	FY 2021-2022	FY 2021-2022	FY 2022-2023	Change
All values in INR Crores	*Actuals*	*Budget Estimates*	*Revised Estimates*	*Budget Estimates*	*RE 21-22 to BE 22-23*
Food Subsidy to FCI (under NFSA)	4,62,789	2,02,616	2,10,929	1,45,920	-30.82%
NHAI	46,062	57,350	65,060	1,34,015	105.99%
MGNREGS	1,11,170	73,000	98,000	73,000	-25.51%
PM-KISAN	60,990	65,000	67,500	68,000	0.74%
Road Works	53,093	60,241	65,687	64,568	-1.7%
Urea Subsidy	90,549	58,768	75,930	63,222	-16.74%
Food Subsidy for Decentralized Procurement under NFSA	78,338	40,000	75,290	60,561	-19.56%
Jal Jeevan Mission	10,998	50,011	45,011	60,000	33.3%
Pradhan Mantri Awas Yojana	40,260	27,500	47,390	48,000	1.29%
Nutrient Based Subsidy	37,372	20,762	64,192	42,000	-34.57%
National Education Mission	28,088	34,300	30,796	39,553	28.44%
National Health Mission	37,478	37,130	34,947	37,800	8.16%
Integrated Child Development Services		20,105	20,000	20,263	1.32%
Pradhan Mantri Gram Sadak Yojana	13,688	15,000	14,000	19,000	35.71%
Crop Insurance Scheme	14,161	16,000	15,989	15,500	-3.06%
National Livelihood Mission	10,025	14,473	12,505	14,236	13.84%
AMRUT and Smart Cities Mission	9,754	13,750	13,900	14,100	1.44%
Pradhan Mantri Krishi Sinchai Yojana	7,877	11,588	12,706	12,954	1.95%
Mid-Day Meal Programme (PM POSHAN from 2022)	12,878	11,500	10,234	10,234	0%
Swachh Bharat Mission (Total)	5,940	12,294	8,000	9,492	18.65%
Production Linked Incentive Schemes			182	1,629	795.05%
Grand Total	35,09,836	34,83,236	37,70,000	39,44,909	

ECONOMIC SURVEY 2021-22

The Economic Survey 2021-22 set the stage for the Union Budget with bold predictions of 9.2% growth in gross domestic product for the upcoming financial year, with 8-8.5% growth in FY 2022-23. These figures are consistent with predictions by the World Bank and the Asian Development Bank about India's economic growth. The survey refrained from making recommendations or detailed analysis about the future, mostly acting as a statistical report on the performance of the Indian economy in 2020-21, with some mild optimism about continued economic growth. This could be partly attributed to the absence of a full-time Chief Economic Advisor during key months of the preparation of the Survey with economist V. Anantha Nageswaram having been appointed to the post less than a week before the budget, with the previous CEA leaving office in December 2021. The Principal Economic Advisor took up the mantle of preparing and presenting the economic survey and chose to not make any bold predictions or recommendations in the survey, which lacked any overarching narrative about the status of the economy. This was a stark contrast to last year's survey which focused on setting up the context for the Budget's push for capital expenditure. In continuation with last year's theme of 'Saving Lives and Livelihoods', the theme of this Economic Survey is 'Agile Approach', focusing on India's response to the pandemic through short-term policy responses.

The survey highlights what has been evident since the last budget: the government's response to economic slowdowns caused by the pandemic has focused largely on supply-side interventions and capacity building, rather than demand interventions. Beyond necessary social security nets, the government has stayed away from policies like boosting purchasing power through cash transfers for which many economists have vigorously argued over the past year. The idea was simple: to treat the pandemic as a challenge but also an opportunity for long-run structural reforms that would continue having growth impacts for many years, rather than focusing on short-run impacts. While this is an appreciable attempt, the flipside is that it carries the threat of ignoring the short-term frictions and difficulties being faced by the people. The survey tries to alleviate such concerns by including a section on social welfare to argue that across health and welfare parameters, the country has been doing well by using data from the National Sample Survey and National Family and Health Survey. However, much of the data predates the pandemic, and so we still do not have a clear understanding of the welfare and health losses accruing to COVID-related lockdowns, supply-chain disruptions, and employment shocks. Welfare impacts of the pandemic is an area about which much remains to be studied and revealed, and this economic survey does not engage with it extensively.

What the survey does focus on is supply-side interventions made by the government over the past couple of years, which have long-run impacts in terms of incentivising entrepreneurial activity and reducing bureaucratic barriers. This includes divestments in public sector units that have been struggling, a broader strategy of privatisation to promote market competitiveness, deregulation of many sectors, simplifying bureaucratic processes for approvals, and removal of policies like retrospective taxation. Retrospective taxation was a legacy issue that has been impacting domestic as well as foreign investors, and its abrogation will inspire confidence for increased investment. The National Monetisation Program, or the moniker given to the government's policy of privatisation, is signalling a clear shift away from the socialist policies that defined the first few decades of independent India while replenishing the exchequer to give the government room for fiscal spending. Another very important supply-side intervention that has the potential to boost key priority sectors, as well as underlie India's movements towards sustainable energy, is Production-Linked Incentives or PLIs. Their current focus is to ameliorate supply chain disruptions by boosting manufacturing across the country and can be extended to focus on priority sectors like clean energy. The importance of PLIs is also exacerbated by the falling share of manufacturing in India's Gross Value Added (GVA) since 2011-12, and the survey expects it to increase from 14.4% in 2020-21 to 15.3% in 2021-22 on the back of PLIs and other manufacturing incentives. Currently, the domestic economy continues to rely on imports to meet demand,

and the imports from China have touched $100 billion in 2021 which is concerningly high. Boosting domestic production and rekindling the manufacturing sector, which has been particularly affected by the enforcement of social distancing norms, is crucial to also decrease Indian markets' reliance on imports.

The Economic Survey of 2021-22 is, at its heart, an optimistic document that correctly highlights the government's successes during the pandemic years yet remains largely mute on its shortcomings as well as the challenges that face the economy as it attempts to get back towards a high growth level. These challenges have certainly been exacerbated by the pandemic but predate it as growth was already falling when COVID-19 arrived. Consequently, the Budget will have to do the heavy lifting when it comes to explaining the pathway planned to address structural issues that were plaguing the economy before the pandemic, and how the government plans to attain double-digit levels of economic growth over the next few years. The optimism in the budget is also reflected by a discussion of how the economy has fared much better than previous macroeconomic shocks such as the 2008-09 Financial Crisis or the Taper Tantrum in 2012-13 (Table A1). The Budget will serve as a crucial first step in that regard.

Table A1: Comparison of Indian Macroeconomic Indicators during the Global Financial Crisis, Taper Tantrum, and the COVID-19 Pandemic

Macroeconomic Indicators	Global Financial Crisis (2008-09)	Taper Tantrum (2012-13)	COVID-19 (2021-22)
CPI Inflation	9.1	9.4	5.2
Fiscal Deficit as % of GDP	8.3	6.9	10.2
Current Account Balance as % of GDP	-2.3	-4.8	-0.2
External Debt as % of GDP	20.7	22.4	20.2
Forex Reserves	252	292	634
FDI Inflows (US$ Billion)	8.3	34.0	48.4

KEY INDICATORS

When we look at the performance of economic indicators over the past few years, we can see the effects of the pandemic, but what is also crucial to observe is the slowdown in economic growth pre-pandemic. A lot of the survey focuses on benchmarks like pre-pandemic economic levels but given the slowdown that was setting in before COVID-19, the target of a developing economy like India must be to achieve accelerated growth rather than restoring the sluggish growth rates of a few years ago. Another important factor to keep in mind when looking at factors like real GDP growth is that a 7.3% contraction of the economy followed by 9.2% growth only represents a net growth of 1.2% over the two years. These figures indicate that the progress made over the past couple of years has undone some of the damage done to the economy by the pandemic, but a lot remains to be desired when it comes to creating a sustainable path for future economic growth at desired levels. In that context, we can understand why the government chose to push for supply-side and infrastructural interventions rather than boosting demand through short-run policies, as they are not simply responding to the pandemic but the many years of slowing economic growth that preceded it. While CPI inflation was restricted within tolerance limits at 5.2, there are concerns that the release of pent-up demand in 2022-23 could push the inflation out of tolerance limits, and active intervention by the RBI is necessary to balance growth and inflation. The two pandemic years and a focus on capital expenditure have also significantly increased the government's fiscal deficit which limits future spending, something that will influence the budget. Forex reserves, current account balance, and FDI inflows remain at healthy levels.

Table A2: Five-Year Trends of Key Economic Indicators (2017-2022)

Parameter	Unit	FY 2017-18	FY 2018-19	FY 2019-20 (RE)	FY 2020-21 (PE)	FY 2021-22 (AE)
GDP Growth	%	7.0	6.1	4.0	-7.3	9.2
Per Capita Income	INR	1,15,224	1,25,883	1,34,186	1,28,829	1,50,326
Wholesale Inflation	%	3.0	4.3	1.7	1.3	12.5 (H1)
CPI Inflation	%	3.6	3.4	4.8	6.2	5.2 (H1)
Forex Reserves	USD Billion	424.5	412.9	477.8	586.1	634
Average Exchange rate	INR/USD	64.5	69.9	70.9	74.8	75
Fiscal Deficit	% of GDP	3.5	3.4	4.6	9.2	6.8
Revenue Deficit	% of GDP	2.6	2.4	3.3	7.4	5.1

Table A3: Current Account Balance

Item	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2020-21 H1	FY 2021-22 H1
Current Account Balance (USD Billion)	-48.7	-57.3	-24.7	23.9	34.3	-3.1
Current Account Balance as % of GDP	-1.8	-2.1	-0.9	0.9	3.0	-0.2

SECTORAL PERFORMANCE

Two things significantly stand out when looking at the performances of various sectors: agriculture has remained largely unaffected by the pandemic (and the contentious farm laws), and tourism continues to suffer. An important caveat for agriculture is that the growth rate was already slow and income levels were low, so while it is promising that the effects of the pandemic were not felt severely by farmers, improving their income levels is a key policy pillar that has dominated the discussion over the last year through the farm laws, and is likely to continue being crucial for the 2022-23 budget. The other sector that did not face many disruptions was utilities, which is primarily down to their demand being inflexible. Mining, manufacturing, and construction have all posted significant recovery in the last financial year, doing enough to at least recover their pre-pandemic levels. However, tourism continues to flounder below pre-pandemic levels and hotels and transportation providers are struggling to cope with mounting losses. If the government had more capacity for fiscal spending, we would likely have seen specific policies aiming to ameliorate the challenges faced by the tourism industry, but given the fiscal constraints, it is unlikely that this sector gets any priority in the budget. Other services have posted strong recoveries, with IT services continuing to flourish. Computer software, services, and automobiles were also the sectors to witness the highest FDI inflows, and their outlook remains strong. Meanwhile, the central repo rate remained at 4% throughout most of 2021, but the RBI may be forced to reconsider this position if inflation continues rising. Banks have performed better this year with the gross NPA ratio coming down for scheduled commercial banks, private banks, as well as public banks. The 'bad loan bank' envisaged by the 2021-22 Budget has only recently begun functioning, and its operations will further galvanise and strengthen the banking sector.

Table A4: Annual Growth Rates of Real Gross Value Added at Basic Prices by Industry

(2016-2021, %) RE: Revised Estimates, PE: Provisional Estimates, AE: Advance Estimates

Sector (Values in %)	2019-20 (RE)	2020-21 (PE)	2021-22 (AE)
Agriculture and Allied Sectors	4.3	3.6	3.9
Industry	-1.2	-7.0	11.8
Mining and Quarrying	-2.5	-8.5	14.3
Manufacturing	-2.4	-7.2	12.5
Electricity, Gas, Water Supply, and other utilities	2.1	1.9	8.5
Construction	1.0	-8.6	10.7
Services	7.2	-8.4	8.2
Trade, hotels, transport, communication, and services related to broadcasting	6.4	-18.2	11.9
Financial, real estate & professional services	7.3	-1.5	4.0
Public administration, Defence, and Other Services	8.3	-4.6	10.7
Gross Value Added at basic prices	4.1	-6.2	8.6

HIGHLIGHTS OF THE SURVEY

State of the Economy

- The survey estimates a growth of 9.2% in the Indian economy for 2021-22, which would work to offset a contraction of 7.3% observed in 2020-21. The GDP will grow 8-8.5% in real terms in 2022-23, continuing this economic recovery.

- These growth projections are consistent with those made by the World Bank and Asian Development Bank which pegged real GDP growth at 8.7% and 7.5% respectively. The IMF also predicts growth of around 9% in 2021-22 and 2022-23, with a slight reduction to 7.1% growth in 2023-24.

- Private sector investment is bound to increase, and the financial markets are in healthy condition to boost economic revival.

- Agriculture is expected to grow by 3.9% while the industry grows by 11.8% and the services sector by 8.2%.

- Consumer demand will increase significantly with domestic consumption increasing by 7%, gross fixed capital formation increasing by 15%, while exports and imports are predicted to increase by 16.5% and 29.4% respectively.

- India's macroeconomic indicators are strong as high forex reserves, growth in foreign direct investment and rising export earnings will boost the economy's stability.

- The last budget laid out the path India is taking to recover from the pandemic by using a combination of social security nets to protect the welfare of vulnerable populations while boosting long-term economic recovery using supply-side interventions through capital expenditure and infrastructural development.

Fiscal Developments

- The revenue receipts for the first half of 2021-22 from the Central Government have increased by 67.2% (YoY) as against the expected growth of 9.6%.

- Gross Tax Revenue had a year-on-year increase of 50% during the first half of 2021-22, while Capex also grew 13.5% (YoY) due to the focus on infrastructure-intensive sectors.

- The fiscal deficit was limited to 46.2% of the Budget estimate in April-November 2021 while central government debt has increased to 59.3 of the GDP in 2020-21 due to increased borrowings to fund pandemic-related expenses.

External Sector

- There have been significant improvements in exports and imports to the extent that they surpassed pre-COVID levels during 2021-22. Similar trends are seen in net services and net capital flows, with the latter increasing to USD 65.6 billion due to sustained influx of foreign investment, higher banking capital, and rallying of net external commercial borrowings.

- Foreign Exchange Reserves surpassed USD 600 billion in the first half of 2021-22 and reached USD 633.6 billion as of December 31, 2021. This puts India as the fourth largest forex reserve holder in the world.

Monetary Management and Financial Intermediation

- Financial liquidity remained in surplus in the country, as the RBI maintained a repo rate of 4% in 2021-22 and introduced many programs to provide further liquidity in the economy.

- Gross Non-Performing Advances declined for all kinds of banks, indicating improvements in the health of the banking system. Return on assets and equity for public sector banks also continued being positive.

- Capital markets witnessed a lot of scaling up this year with INR 89,066 crore raised through 75 Initial Public Offerings (IPOs) between April and November 2021, higher than the highest recorded number in the last decade. The Sensex and Nifty also peaked at 61,766 and 18,477 respectively.

Prices and Inflation

- Consumer price inflation slowed to 5.2% in the first half of 2021-22 from 6.6% in the same period during 2020-21, and this was primarily led by food inflation which averaged at 2.9% compared to 9.1% in 2020.

- Better supply management ensured that the prices of essential commodities remained stable throughout the year, and avoided price rises in pulses and edible oils.

- Wholesale inflation shot up to double figures (12.5%) during 2021-22 due to sharp increase in international prices of crude oils, high freight costs, and fast pick-up in economic activity.

Sustainable Development and Climate Change

- India has made significant improvements in achieving SDG goals as measured by the NITI Aayog's SDG index which increased to 66 from 60 in 2019-20 and 57 in 2018-19.

- India has the tenth largest forest area in the world, accounting for 24% of the geographical area and ranks third globally in increasing forest area in the last decade.

- India is drafting regulations to reduce plastic packaging and eliminate single-use plastics by 2022.

- India announced ambitious emission targets during the COP-26 in November 2021 and has started planning to achieve those targets through environmentally friendly lifestyle adoption.

Agriculture and Food Management

- The agriculture sector was largely unaffected by the pandemic, witnessing a growth of 3.6% in 2020-21 and 3.9% in 2021-22, while net receipts from crop production also increased by 22.6% in the latest Situation Assessment Survey.

- Within agriculture, livestock has been increasing at a compound annual growth rate of 8.15% over the last five years and has accounted for 15% of the average monthly income of agricultural households. Meanwhile, other allied sectors like dairying and fisheries have performed as high-growth sectors in the past few years.

- Minimum Support Price (MSP) policies are being used to incentivise crop diversification which helps in sustainable agricultural practices as well.
- The pandemic also brought India's food management programme to the fore, which is among the largest in the world. The government also widened the coverage of the food security network through schemes like PM Gareeb Kalyan Yojana.

Industry and Infrastructure

- Industrial Production bounced back from a decrease of 15.3% in April-November 2020 to register a 17.4% increase during April-November 2021.
- Capital expenditure for the Indian railways has increased to INR 155,181 crores in 2020-21 from an average annual of INR 45,980 crores during 2009-14 and it has been budgeted to further increase by five times to INR 215,058 crores in 2021-22.
- Road construction per day increased by 30.4% to 36.5 Kms per day from 28 Kms per day in 2019-20.
- The government introduced Production Linked Incentives (PLIs), significantly boosting infrastructural investment, physical infrastructure as well as digital. In addition, policies to reduce transaction costs, frictions, and improve the ease of doing business will all contribute to the economic recovery.
- Housing sales are expected to increase significantly as the pandemic recedes, as middle-class borrowing for house ownership has remained well below the trend of 20% year-on-year growth, as well as below the pre-pandemic levels, suggesting that improvement in consumer outlook will beget significant boost to the housing industry.

Services

- The services sector has progressed rapidly during the pandemic years, as the gross value-added crossed pre-pandemic levels during the first quarter of 2021-22. However, the services industry is quite heterogenous as sectors like trade and transport have continued to suffer losses.
- Tourism has been bouncing back, as evident from rail traffic reaching pre-pandemic levels while air traffic slowly inches back to normalcy. While the various waves of COVID-19 have dampened tourism demand, the signs of recovery are strong.
- The services sector witnessed 54% of the total FDI influx into India, accounting for USD 16.7 billion in foreign direct investment. Services exports also surpassed pre-pandemic levels and grew by 21.6% in the first half of 2021-22.
- Indians have displayed a very strong entrepreneurial spirit, becoming the world's 3rd largest start-up ecosystem with the number of new recognized start-ups increasing to over 14,000 in 2021–22 from just 733 in 2016-17.
- Further, 44 Indian start-ups managed to achieve unicorn status in 2021, with most of them being from the services sector.

Social Infrastructure and Employment

- The health infrastructure of the country has worked incessantly to deal with the pandemic and inoculate the adult population, with more than 150 crore total doses of vaccines having been delivered so far.

- The rapid vaccination program has limited the effects of the third wave and allowed the economy to continue its strong revival.

- Urban employment has bounced back to nearly pre-pandemic levels, although rural employment recovery has been slower, according to PLFS data up to March 2021.

- Central and state expenditure on social security including health and education increased to 8.6% of the GDP in 2021-22 from 6.2% in 2014-15.

- Total fertility rates, infant mortality rates, and under-five mortality rates have also improved from 2015-16 to 2019-20 according to the NFHS-5 data.

- A combination of increased rural unemployment and reverse migration led to increased demand for Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS) work, and the government increased the funds allocated to the program to ensure a provide buffer for rural unorganized labour.

DIRECT TAXES

INCOME TAX

The clauses in the 'Bill' so far as they relate to direct taxes, when enacted, will operate with effect from AY 2023-24. Where the intention is otherwise, there will be a specific mention of the fact. The readers will notice that when we make our comments on the diverse clauses of the Bill, we have indicated the material clauses in bracket.

Amendments to Tax Rates

The Bill has not proposed any substantial changes in the basic tax rates. The rates applicable for AY 2022-23 shall apply to AY 2023-24. However, for the sake of completeness, the rates applicable for AY 2023-24 are stated below:

For Individuals, HUF, Association of Persons and Body of Individuals.

Income-tax slab and the applicable rates

Income (INR)	Rate (%)(1)(3)(4)(5)(13)
0 – 2,50,000(2)	Nil
2,50,001 – 5,00,000	5
5,00,001 – 10,00,000	20
10,00,001 and above	30

A resident individual whose taxable income does not exceed INR 5,00,000 can claim tax rebate under Section 87A. Tax rebate is lower of the amount of income-tax amount and INR 12,500.

I) Optional Concessional income-tax slab rates for Individuals and HUF (subject to certain conditions) – Section 115BAC

Income (INR)	Rate (%)(6)
0 – 2,50,000	Nil
2,50,001 – 5,00,000	5
5,00,001 – 7,50,000	10
7,50,001 – 10,00,000	15
10,00,001 – 12,50,000	20
12,50,001 – 15,00,000	25
15,00,001 and above	30

II) Tax Rates applicable to companies (domestic and foreign) for Total Income / Book Profits exceeding INR 10 crores

Description	Rate (%)(7)
A) Domestic company	
Regular Tax (i.e. for companies having turnover in excess of INR 400 crore)	34.944
Where the total turnover or gross receipts in the FY 2019-20 does not exceed INR 400 crores	29.120
MAT (on Book Profits)	17.472
B) Foreign Company	
Regular Tax	43.680
MAT (on Book Profit)	16.380

III) Tax Rates applicable to companies (domestic and foreign) for Total Income / Book Profit less than INR 10 crores

Description	Rate (%)	
	Range of Income	
	INR 1 crore to INR 10 crores[8]	Less than INR 1 crore[9]
A) Domestic company		
Regular Tax (i.e. for companies having turnover in excess of INR 400 crore)	33.384	31.200
Where the total turnover or gross receipts in the FY 2019-20 does not exceed INR 400 crores	27.820	26.000
MAT (on Book Profits)	16.692	15.600
B) Foreign Company		
Regular Tax	42.432	41.600
MAT (on Book Profit)	15.912	15.600

IV) Optional Concessional tax rates for Domestic companies – Sections 115BAA and 115BAB

Description	Rate (%)[10]
Companies (not availing deductions/ exemptions as prescribed therein) (Section 115BAA)	25.168
Manufacturing companies set up and registered on or after October 1, 2019 but before March 31, 2023 (without claiming any deductions/exemptions) (Section 115BAB)	17.160
Companies in the business of generation of electricity set up and registered on or after October 1, 2019 but before March 31, 2023 (without claiming any deductions / exemptions) (Section 115BAB)	17.160

V) Tax Rates applicable to Firm /LLP/Local Authority for Total Income exceeding INR 1 Crore

Description	Rate (%)[11]
Regular Tax	34.944
AMT	21.549

If the person, other than a company, being a unit located in IFSC and derives income solely in convertible foreign exchange, the income tax would be payable @10.483%, instead @21.549% under AMT

VI) Tax Rates applicable to Firm /LLP/Local Authority for Total Income Less than INR 1 crore

Description	Existing Rate (%)[9]
Regular Tax	31.200
AMT	19.240

If the person, other than a company, being a unit located in IFSC and derives income solely in convertible foreign exchange, the income tax would be payable @ 9.36% instead @19.24% under AMT.

VII) Optional and Concessional tax rate for Resident co-operative societies (subject to certain conditions)

Income (INR)	Regular Tax Rate (%)[12]
Upto 10,000	10
10,001 – 20,000	20
Above 20,000	30

Description	Existing Rate (%)[12]
AMT	15

Concessional tax rate

A co-operative society resident in India has the option to pay tax @22% form AY 2021-22 as per the provisions of section 115BAD, subject to fulfilment of certain conditions

Reference notes:

(1) Health and Secondary Education Cess shall be levied @ 4% on income-tax, including surcharge wherever applicable.

(2) The basic exemption limit is INR 2,50,000 in the case of every individual below the age of 60 years, INR 3,00,000 in the case of resident Senior Citizens being individuals of the age of 60 years or more and INR 5,00,000 for 'Very Senior Citizen' in the case of resident individuals of the age of 80 years and above.

(3) Surcharge @10% of income-tax is applicable in the case of a person having a total income (including dividend and income under the provisions of sections 111A, 112 and 112A of the Act) exceeding INR 50 lakhs, but not exceeding INR 1 crore and 15% in the case of a person having a total income (including dividend and income under the provisions of sections 111A, 112 and 112A of the Act) exceeding INR 1 crore. Surcharge rate shall not exceed 15% for AOP, where the members are only companies.

(4) Surcharge @25% of such income-tax is applicable in the case of a person having a total income (excluding dividend and income under the provisions of sections 111A, 112 and 112A of the Act) exceeding INR 2 crores, but not exceeding INR 5 crores and 37% in the case of a person having a total income (excluding dividend and income under the provisions of sections 111A, 112 and 112A of the Act) exceeding INR 5 crores. Surcharge rate shall not exceed 15% for AOP, where the members are only companies.

(5) Surcharge @15% of income-tax for person having a total income (including dividend and income under the provisions of sections 111A, 112 and 112A of the Act) exceeding INR 2 crores but is not covered under point (3) and (4) above.

(6) Surcharge will be same as applicable to the normal slab rates for Individuals and HUF.

(7) Inclusive of surcharge of 12% (5% for foreign company) and health & secondary education cess of 4%.

(8) Inclusive of surcharge of 7% (2% for foreign company) and health and secondary education cess of 4%.

(9) Inclusive of health and secondary education cess of 4%.

(10) Inclusive of surcharge of 10% and health & secondary education cess of 4%.

(11) Inclusive of surcharge of 12% and health & secondary education cess of 4%.

(12) Exclusive of surcharge of 7% in case of income exceeding INR 1 Crore but not exceeding INR 10 Crore and 12% in case of income exceeding INR 10 Crore and health & secondary education cess of 4% (except in the case of resident co-operative society opting for Section 115BAD, surcharge would be @10% of such income tax).

(13) Where the total income includes any income by way of dividend or income under sections 111A, 112 and 112A of the Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed 15%.

Taxation of Virtual Digital Assets – Sections 2(47A), 56(2)(x), 115BBH and 194S

Given the popularity of Virtual Digital Assets (VDA)- a means of exchange as well as investments, the Bill proposes to introduce various provisions in the Act to set the stage for taxing VDAs.

The Bill proposes to introduce clause 47A in section 2 of the Act to define 'Virtual Digital Assets' as any information or code or number or token generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. The definition also includes non-fungible token or any other digital assets that the Central Government may specify. Although the definition of VDA does not make a specific mention of Bitcoin or other cryptocurrencies, the definition is exhaustive enough to encompass all types of cryptocurrencies as VDA.

This amendment is proposed to take effect from April 1, 2022.

[Clause 3]

In respect of taxability of income arising from VDA, the Bill proposes to introduce a new section 115BBH of the Act, which provides that income arising from transfer of VDA will be charged to tax at the rate of 30%. The proposed section also provides that no deduction for expense or set-off for any loss (except the cost of acquisition of the VDA) will be allowed while computing the income from transfer of VDA. Any loss on transfer of VDA will neither be eligible for set off against any other income nor will it be carried forward to subsequent AYs.

Section 56(2)(x) of the Act, *inter-alia*, provides for taxability of receipt of immovable and moveable property at less than fair market value in the hands of recipient of such property. With a view to treat VDA at less than fair market value as taxable in the hands of recipient of such VDA, the Bill proposes to expand the definition of 'property' as appearing in Explanation to clause (x) of section 56(2) to include VDA as a 'property'.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 16 and 28]

With a view to widen the tax net and detect the transactions in the VDA sphere, the Bill further proposes to introduce provisions of section 194S in the Act. The proposed section provides for deduction of tax at the time of payment or credit, whichever is earlier, to any resident in respect of purchase of VDA @1% of such payment or credit. In case the payment is to be made in kind or in exchange of another VDA or partly in cash and partly in kind and cash component is less than tax to be withheld, then the purchaser of the VDA will ensure that tax is duly paid in respect of such consideration before releasing the payment to the seller of the VDA. The proposed section provides for a carve out for specified persons (i.e. individual or HUF, having gross receipts, total sales or turnover from business less than INR 1 crore or less than INR 50 lacs from profession or not having any income chargeable under the head profits and gains of business or profession), if the aggregate value of payment in a FY does not exceed INR 50,000. For persons other than individual and HUF, the proposed section does not apply, if the aggregate value of payment in a FY does not exceed INR 10,000. The proposed section also provides that if tax is withheld under section 194S, then the other TDS or TCS provisions shall not apply on the same payment.

This amendment is proposed to take effect from July 1, 2022.

[Clause 59]

Exemption of amount received for medical treatment or on account of death due to COVID-19 – Sections 56 and 17

The COVID-19 pandemic has now been raging for more than two years. Many people have lost their lives or have had to incur medical expenditure in fighting the pandemic. Various corporates and other persons have come in support of employees and other tax payers who and their families had suffered from COVID-19. It was felt that such financial support would be taxable as income under section 17 or under section 56, as the case may be.

Having regard to the pandemic, the Government, vide Press Release dated June 25, 2021, had announced to provide exemption from income tax to the tax payer / family members receiving financial support for medical treatment or as ex-gratia. However to amply clarify that COVID-19 support will be tax exempt, the following amendments are proposed.

Section 17(2) provides for taxability of various kinds of perquisites. Proviso to section 17(2) provides for certain exceptions to section 17(2). It is proposed to further provide an exception for any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family members in respect of any illness relating to COVID-19 (subject to such conditions, as may be notified by the Central Government).

The existing provisions of section 56(2)(x) provide that where any person receives any sum of money without consideration, the aggregate value of which exceeds INR 50,000, the whole of the aggregate value of such sum shall be the income of the person receiving such sum. However, certain exceptions have been provided in the clause for transactions specified therein. It is proposed to provide for following further exceptions to section 56(2)(x):

- Any sum received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 (subject to such conditions, as may be notified by the Central Government).

- Any sum received by a member of the family of a deceased person (on death due to COVID-19) from the employer of the deceased person (without any threshold limit) or from other persons (upto aggregate of INR 10 lacs). It is clarified that the exemption is available only for such sum which is received within 12 months from the date of death and subject to other conditions as may be prescribed. It is important to note that the above Press Release did not provide for the condition of payment within 12 months from the date of death. This will affect proposals to provide long term support to the person or his family members.

Amounts received otherwise than for reimbursement of medical treatment and on death would not be covered by this amendment.

These amendments are proposed to take effect from April 1, 2020, i.e. AY 2021-22.

[Clauses 10 and 16]

Tax Incentives for units in GIFT City – Sections 10(4E), 10(4F), 10(4G), 56(2)(viib) and 80LA

The GoI has been incentivising units located in GIFT City to develop a world class IFSC. To make the IFSC more attractive, additional tax incentives to units located in IFSC are proposed in the Bill.

The existing clause (4E) of section 10 of the Act provides for exemption in respect of income accruing, arising or received by a non-resident as a result of transfer of non-deliverable forward contract entered into with an offshore banking unit located in GIFT City. The Bill proposes to amend this clause to extend the exemption to income accruing, arising or received by a non-resident as a result of transfer of offshore derivative instruments or over-the-counter derivatives with an offshore banking unit located in GIFT City.

The existing clause (4F) of section 10 of the Act provides for exemption for royalty or interest arising in the hands of a non-resident from leasing of aircraft or aircraft parts to a unit located in GIFT City and which commences operation on or before March 31, 2024. The Bill proposes to amend this clause to extend the exemption of royalty or interest arising in the hands of a non-resident from leasing of ship or engine of a ship and parts thereof to a unit located in GIFT City and which commences operation on or before March 31, 2024.

With the extension of exemption of royalty or interest income from leasing of ship and parts thereof in the hands of non-resident, it is also proposed to amend section 80LA(2) to extend the scope of deduction under section 80LA for income arising to the units in the GIFT City, as a result of transfer of the ship or parts thereof which was leased earlier.

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

The existing provisions of Section 56(2)(viib) provide for an exemption from angel taxation to a venture capital undertaking, if the consideration for issue of shares is received from a 'specified fund'. The meaning of 'specified fund' was restricted to Category I or a Category II AIF, which is regulated under the Securities and Exchange Board of India (AIF) Regulations, 2012. The Bill proposes to amend the definition of 'specified fund' to also include Category I or a Category II AIF, which is regulated under the International Financial Services Centres Authority Act, 2019.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 4, 16 and 23]

Extension of last date for commencement of manufacturing or production – Section 115BAB

The existing provisions of section 115BAB of the Act provide for an option of concessional rate of taxation @15% for new domestic manufacturing companies, provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions. One of the said conditions is that, the new domestic manufacturing company is required to be set up and registered on or after October 1, 2019, and is required to commence the manufacturing or production of an article or thing on or before March 31, 2023.

Considering the delay in setting up / registrations of new domestic companies and commencement thereafter of manufacturing or production by such companies, due to COVID-19, it is proposed to extend the date of commencement of manufacturing or production of an article or thing, from March 31, 2023 to March 31, 2024.

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 26]

Extension of date of incorporation for eligible start up for exemption – Section 80IAC

The existing provisions of section 80IAC of the Act provide for a deduction of an amount equal to 100% 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 assessee, subject to the condition that, the assessee should be incorporated on or after April 1, 2016, but before April 1, 2022.

Considering the delay in setting up of such units due to COVID-19 and to promote such eligible start-ups, it is proposed to amend the provisions of this section by extending the period of incorporation of eligible start-ups to March 31, 2023.

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 22]

Disallowance for expenses incurred in earning exempt income – Section 14A

The existing provisions of section 14A of the Act, *inter alia*, provide that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to exempt income.

The provisions of section 14A were inserted as a response to the judgments of the SC in the case of CIT v. Maharashtra Sugar Mills Limited [(1971) 82 ITR 452 (SC)] and Rajasthan State Ware Housing Corporation v. CIT [(2000) 242 ITR 450 (SC)] in terms of which, expenditure incurred by an assessee carrying on a composite business, giving rise to both taxable as well as non-taxable income, was allowable in its entirety without any apportionment.

The CBDT vide Circular No. 5/2014, dated November 11, 2014, clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where the taxpayer in a particular year has not earned any exempt income.

However, the Delhi HC in the case of Cheminvest Ltd v. CIT [(2015) 378 ITR 33], ruled that, in the absence of any exempt income, disallowance under section 14A of any amount was not permissible.

The SC in the decision of PCIT v. Oil Industry Development Board [(2019) 103 taxmann.com 326] and PCIT v. GVK Project and Technical Services Ltd [(2019) 106 taxmann.com 181] dismissed the SLP, wherein the HC upheld ITAT's decision that, in absence of any exempt income, disallowance under section 14A was not permissible.

The Madras High Court in the case of CIT v. Chettinad Logistics (P.) Ltd. ((2017) 80 taxmann.com 221), followed another Division Bench judgment in the case of Redington (India) Ltd. v. Addl. CIT ([2017] 77 taxmann.com 257 (Mad.)) and held that the view of the CBDT in above referred Circular, which has been relied by the ITAT in the impugned order could not be upheld and the disallowance under section 14A could not go beyond the extent of exempted income itself. Thereafter, the SC dismissed the SLP filed by the Revenue.

Similarly, many Courts / ITATs ruled in favour of the assessee and deleted the disallowances made by the lower tax authorities.

It is proposed to insert an Explanation to section 14A(1), to clarify that the provisions of this section shall apply and shall be deemed to have always applied, even in a case where exempt income has not accrued or arisen or has not been received during the previous year, but expenditure has been incurred during the said previous year in relation to earning of such exempt income.

It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Act.

Disallowance under section 14A ought to be triggered only when the expenditure has been actually incurred in relation to exempt income. As has always been the case, it is possible that no direct expenditure has been actually incurred and only common expenditure has been incurred which can be attributed to exempt income. But the amendment is all about exempt income being earned or accrued or received, the contention being that, in the absence of any of these, there can be no disallowance under section 14A as has been held by Courts. This amendment sets to undo what the Courts had held viz. that even if expenditure has been actually incurred (directly or indirectly) so long as no exempt income was received, there can be no disallowance under section 14A. So, with the income side being rendered irrelevant, there will always be a disallowance under section 14A so long as there is a source of earning such exempt income, even if no exempt income has been accrued or received. If there is no such source at all, the amendment will have no role to play.

This amendment is proposed to take effect from April 1, 2022.

[Clause 9]

Cess and Surcharge in the nature of tax and not an allowable deduction – Section 40(a)

The existing sub-clause (ii) of clause (a) of section 40 of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession'.

The Bombay HC in the case of Sesa Goa Ltd. Limited v. JCIT [(2020) 117 taxmann.com] and Rajasthan HC in the case of Chambal Fertilizers & Chemicals Ltd. v. JCIT (ITA No. 52/2018), relied upon the CBDT Circular dated May 18, 1967 and held that education cess is an allowable deduction. Basis these decisions which have been followed in various ITAT decisions, the assessees have claimed deduction for education cess.

It is highlighted that the above referred CBDT Circular was issued in reference to the 'cess' imposed by the State Governments and not 'cess' imposed by the Central Government, by the Finance Act 2004 and subsequent Finance Acts. It is designated as 'cess' only for a particular purpose of fulfilling the commitment of the Government, but it is actually a tax in the form of an additional surcharge.

Recently, the Kolkata ITAT in the case of Kanoria Chemicals & Industries Ltd [TS-1129-ITAT 2021-Kol], gave a contrary view, after considering the above referred two HC decisions. The ITAT relied upon the decision of the SC in the case of CIT v. K. Srinivasan [(1972) 83 ITR 346] and held that cess is not an allowable deduction.

Thus, the decisions of the HC and the ITAT are *per incuriam* and against the intention of the legislature. Accordingly, the said controversy is now clarified and settled through a proposed amendment to section 40(a)(ii) of the Act.

It is proposed to add an Explanation, retrospectively, to section 40(a)(ii) of the Act, clarifying that 'tax' shall include and shall be deemed to have always included any surcharge and cess, by whatever name called, on such tax.

This amendment is proposed to take effect from April 1, 2005, i.e. AY 2005-06.

[Clause 13]

Disallowance of certain business promotion expenses – Section 37(1)

The existing provisions of Explanation 1 to section 37(1) of the Act provide that no deduction shall be allowed for expenditure incurred by the assessee for any purpose, which is an offence or which is prohibited by law.

It was noticed that certain tax payers were claiming deduction for expenditure incurred in offering certain benefits or perquisite to a person, which are not intended to be allowed (like freebies given by pharma companies to the medical practitioners), which is in violation of the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Even, some Courts have ruled in favour of the assessee, allowing claim for such expenses, which is not in line with the intention of legislation. The Courts have also ruled that expenditure incurred in violation of foreign law, is allowable as deduction under section 37(1) of the Act.

It is proposed to insert an Explanation 3 to section 37(1) to clarify that the expression 'expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law', shall include and shall be deemed to have always included the expenditure incurred by an assessee —

- for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
- to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and

acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or

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

This amendment is proposed to take effect from April 1, 2022.

[Clause 12]

Interest deduction allowed on actual payment and not on conversion – Section 43B

The existing provisions of section 43B provide that deduction for interest payable on loan or borrowings from specified parties, shall be allowed only if such interest has been actually paid and any interest converted into loan or borrowing or an advance, shall not be deemed to have been actually paid.

The Hon'ble Supreme Court in the case of M.M. Aqua Technologies Ltd. v. CIT (CA No. 4742-4743 of 2021) took a view that conversion of interest payable on an existing loan into a debenture is allowable as deduction under section 43B, on the ground that such conversion is a constructive discharge of interest liability and therefore tantamount to actual payment.

The GoI is of the view that such interpretation is against the intent of the legislation, as section 43B was introduced to curb the mischief of claiming deduction by the assessee, without paying interest to financial institutions / NBFC / scheduled bank or a co-operative bank. Further, the mercantile system of accounting cannot be invoked when a deduction is claimed under section 43B, as actual payment would have to be made.

Accordingly, it is proposed to amend the Explanations 3C, 3CA and 3D of section 43B to provide that conversion of interest (as referred in section 43B) into debenture or any other instrument, by which the liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 14]

Cash credits – Section 68

The existing section 68 of the Act provides that where any sum is credited in the books of an assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory (in the opinion of the AO), the sum so credited shall be taxable.

Section 68 casts an onus on the assessee to prove and demonstrate the identity and credit worthiness of the party and genuineness of the credit transaction.

Furthermore, where the credit is in the form of share application money, section 68 deems it to have been as explained, only if the source of funds is also explained in the hands of the shareholder (source of source). However, no such condition was prescribed for credits in the form of loans and borrowings.

It is proposed to amend section 68 and introduce a proviso which states that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained, only if the nature and source of funds is also explained by the creditor or entry provider. This amendment undoes the settled legal position in this regard.

The Memorandum forming part of the Finance Bill 2022, provides that the above amendment shall not be applicable, if the creditor is a well-regulated entity. Please note that this exception has not yet been provided in the Bill. It is expected that the Government may notify the exceptions or legislate the same before enactment.

This amendment is going to cast onerous obligations upon the borrower to obtain the source of loan or borrowing from the lender. Additionally, the explanation should be found satisfactory by the AO, otherwise the addition could be confirmed by the AO. The situation could be tricky when there is a web of underlying entities masking the real source of the funds. The question could be whether the credit worthiness of each of these sources would have to be explained.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 17]

Withdrawal of concessional rate of tax on foreign dividend income – Section 115BBD

The existing provisions of Section 115BBD of the Act provide for a concessional rate of tax of 15% on dividend income received by an Indian company from a foreign company in which the said Indian company holds 26% or more in nominal value of equity shares (specified foreign company). This rate was aligned to the rate of tax provided under section 115-O of the Act.

After abolition of DDT provided in section 115-O by the Finance Act, 2020, in order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies, vis-a-vis dividend received from domestic companies, it is proposed to amend this section to provide that the provisions of this section shall not apply to any assessment year beginning on or after the April 1, 2023.

Henceforth, the dividend income, whether from foreign or domestic sources shall be taxable as per normal provisions of the Act.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 27]

Tax Avoidance by certain transactions in securities – Section 94

Section 94 contains anti-avoidance provisions to deal with transactions in 'securities' and 'unit' of mutual fund, which *inter-alia* include, dividend and bonus stripping. However, these provisions did not apply to bonus stripping, undertaken in case of 'securities'. Further, these provisions did not apply to units of InvIT or REIT or AIF.

In order to streamline and include the securities mentioned above, it is proposed to amend section 94(8) (pertaining to tax avoidance through bonus stripping), so as to make the provisions also applicable to 'securities'.

It is further proposed to amend the existing Explanation to modify the definition of 'unit', so as to include units of InvIT, REIT and AIF within the definition of 'units'.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 25]

Updated Return of Income – Section 139(8A)

Section 139 casts a responsibility on the taxpayer to furnish a return of income within the prescribed time. Section 139 also facilitates revision of return of income and filing of belated return of income. The timeline for revision of return of income has been squeezed between five to one month for different assessees. Having regard to the object of section 139 to provide reasonable time to file correct statement of income, it is proposed to introduce section 139(8A), wherein an opportunity is provided to an assessee to provide ease of compliance in a litigation free environment. However, such opportunity comes with a cost of additional tax and interest burden.

Section 139(8A) provides for an opportunity to file an updated return, within twenty-four months from the end of the AY, i.e. after the expiry of limitation period to file revised or belated return. An updated return can be filed, whether or not a return has been filed under sub-sections (1) or (4) or (5) of section 139.

The updated return of income is not permissible in following cases:

- Revision of updated return;
- Loss return or has the effect of decreasing the total tax liability or result in refund or increase the refund due, qua the return filed;
- *Search cases under section 132 or documents requisitioned under section 132A;
- *Survey cases under section 133A;
- *Where notice has been issued for seizure or requisition under section 132 / 132A in case of any other person, but belonging to such person;
- Where assessment / reassessment / re-computation / revision proceeding is pending or completed;
- AO has information in relation to money laundering, black money smuggling, etc and has communicated the same to the assessee;
- AO has received information under agreements referred to in section 90 / 90A and has communicated the same to the assessee;
- Where prosecution proceedings are pending;
- As may be notified by the Board in case of person / class of person.

* In such cases, the assessee is debarred for updating the return for the previous year in which search etc. were initiated and also two preceding years.

An updated return shall be treated as defective, unless the return is accompanied by a proof of payment of taxes under section 140B of the Act.

Section 140B provides for payment of additional tax and interest (over and above the tax and interest payable on total income normally) as follows:

Where updated return is filed within 12 months from the end of the relevant AY.	25% of the aggregate tax and interest payable after considering the taxes paid (advance tax, self-assessment tax, TDS, relief under section 90/90A, MAT credit, and refund issued, if any)
Where updated return is filed after 12 months but before 24 months from the end of the relevant AY.	50% of the aggregate tax and interest payable after considering the taxes paid (advance tax, self-assessment tax, TDS, relief under section 90/90A, and MAT credit and refund issued, if any)

Interest under sections 234A and 234C shall be computed on the tax on total income declared in updated return of income.

In case of updated return, the time limit for completion of the assessment under section 143 or section 144 may be any time before the expiry of nine months from the end of the FY in which such return is furnished.

Consequential amendments are made under section 143(3) and 144 of the Act.

Since an assessee in whose case an assessment is pending or is completed is not eligible to file an updated return it would appear that the utility of this provision is limited. Of course, it is true that these days only a limited number of returns are selected for scrutiny and so in the case of a large number of tax payers no assessment may be taken up at all. In all such cases, it appears that a benefit is conferred to file belated updated return of income. The requirement to pay 25% or 50% additional tax plus interest is certainly a deterrent. Since filing of updated return would tantamount to voluntary compliance (disclosure), penalty and prosecution can be avoided.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 38, 39, 41, 48, 64, 65 and 81]

Faceless Assessment – Section 144B

The faceless assessment procedures were introduced with a view to eliminate person to person interface between the taxpayer and the Department, to the extent technologically feasible, and to provide for a team-based assessment of income, with dynamic jurisdiction.

As part of the said policy, the TOLA brought in section 144B to provide a new procedure for faceless assessment with effect from April 1, 2021. The previous Faceless Assessment Scheme, 2019 ceased to operate from the said date.

However, a number of difficulties were faced by the taxpayers and the Tax administration, which led to litigation involving issues of violation of principles of natural justice and technical issues due to the use of information technology.

The existing provisions of section 144B are proposed to be amended by substitution of sub-sections 1 to 8 thereof and omission of sub-section 9, to address the various legal and procedural problems faced in the implementation of the said section.

Vital features of the proposed amendment are as follows:

- NaFAC to facilitate the conduct of faceless assessment in a centralised manner;
- Opportunity of being heard to be granted to the assessee and make submissions orally, through video conferencing / video telephony;
- Omission, with retrospective effect from April 1, 2021, of sub-section 9 which treated the assessment as *invalid / non est*, if not made in accordance with the procedures laid down in the section; and
- The time and place of receipt, service and dispatch of notice to be as per the provisions of Section 13 of the Information Technology Act 2000.

The procedures proposed to be substituted under the amendment are as follows:

1. Provisions shall apply for faceless assessment, re-assessment or re-computation;
2. NaFAC shall assign the case selected for the purposes of faceless assessment to a specific Assessment Unit (AU) and intimate the assessee;
3. The assessee shall be served a notice under section 143(2) or under section 142(1) of the Act, through the NaFAC. The assessee can file his response to the aforementioned notice, within the date specified in such notice in this regard, to the NaFAC, which shall forward the reply to the AU
4. Coordination through NaFAC in a centralised manner

   The AU may make a request, through the NaFAC, for further information, documents or evidence from the assessee or any other person, as it may specify and the NaFAC shall serve an appropriate notice or requisition on the assessee or any other person for obtaining such information, documents or evidence.

   The AU may make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit ('VU') and the request shall be assigned by the NaFAC to a VU through an automated allocation system.

   The AU may also similarly make a request in respect of determination of ALP, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring it to the Technical Unit ('TU') and the request shall be assigned by the NaFAC to a TU, through an automated allocation system.
5. The assessee or any other person, as the case may be, shall file his response in compliance to the said notice served by NaFAC, at the request of AU, to the NaFAC which shall forward the reply to the AU.

If the assessee fails to comply with the said notice seeking information served by NaFAC, or the earlier notice under section 143(2) or under section 142(1), the NaFAC shall intimate the same to the AU. The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144. The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice.

6. Income determination with/ without variation by AU

If the assessee fails to respond, the NaFAC shall intimate the same to the AU. The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no variation prejudicial to assessee is proposed and send the same to the NaFAC. If a variation is proposed then a show cause notice would be served through the NaFAC on the assessee, stating the variations proposed to be made to the income of the assessee and asking for reasons as to why the proposed variation should not be made.

The assessee shall file his reply to the show cause notice to the NaFAC. After considering the response of the assessee or the intimation of failure of the assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, in writing, and send the same to the NaFAC.

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

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

7. In case of an eligible assessee, an assessee in whose case transfer pricing adjustment has arisen due to order passed by the TPO under section 92CA and any non-resident or foreign company, as referred to in section 144C shall, upon receiving the draft order, file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations, with the DRP, under section 144C and the NaFAC, within the period specified in section 144C(2).

In case of assessee, other than eligible assessee, NaFAC shall convey to the AU to pass final order in accordance with the draft order.

Upon receipt of the directions issued by the DRP in the case of an eligible assessee under section 144C, the NaFAC shall forward such directions to the AU. The AU shall complete the assessment within the time allowed in section 144C(13) and initiate penalty proceedings, if any, in conformity with the directions issued by the DRP under section 144C(5), and send a copy of such order to the NaFAC.

8. The NaFAC shall, upon receipt of the final assessment order, in the case of an eligible assessee or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee. The NaFAC shall, after completion of the assessment, transfer all the electronic records of the case to the AO having jurisdiction over the said case for such action as may be required under the Act.

9. Communication exclusively in electronic mode

Electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal.

It is also proposed that every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the registered account of the assessee or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative or by uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert.

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

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

10. Opportunity of being heard 'Audi Alteram Partem' through video conferencing or video telephony

In a case where variation in the income is proposed and opportunity is given to the assessee to show cause as to why an addition to the income be not sustained, the assessee may request for personal hearing to present his case and make oral submissions.

It is proposed that the income-tax authority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software, which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

It bears vital notice that the proposed amendment employs the term 'shall' in place of 'may' for granting opportunity of being heard in accordance with the principles of natural justice enshrined in the Constitution. The amendment is proposed to obviate the litigation on the ground that reasonable opportunity of being heard was denied to the assessee and which resulted in vitiating the assessment proceedings.

11. Transfer of case to jurisdictional officer in certain circumstances

The proposed section also seeks to provide that if at any stage of the assessment, the AU having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee, and the interests of the Revenue, may, upon recording its reasons in writing, refer the case to the NaFAC, stating that the provisions of section 142(2A) may be invoked in the case. The NaFAC may forward the reference received from the AU to the PCCIT or CCIT or PCIT or CIT, having jurisdiction over such case, and inform the AU accordingly. Such case shall also be taken up for transfer to the jurisdictional AO with the approval of the Board.

12. Omission of 144B(9)

    Section 144B(9) of the Act provides that the assessment proceedings shall be void, if the procedures mentioned in the section are not followed. This sub-section is proposed to be omitted to avoid the assessment being treated as non est, due to non-observance of procedures laid down in the section and obviate litigation.

13. The provisions of 144B(10) are proposed to be omitted.

14. It is also proposed to include the definition of the expression 'Electronic Verification Code' and to omit the definition of the term 'Originator' in the Explanation.

    These amendments are proposed to take effect from April 1, 2022, except the omission of sub-section 9 of section 144B of the Act, which is proposed to take effect from April 1, 2021.

[Clause 42]

Order of Assessment / Re-assessment/ Re-computation, consequent to search, survey and requisition – New Section 148B

In order to align the scheme of search assessments with the intent of the Act, it is proposed to insert a new section 148B, to provide that no order of assessment or re-assessment or re-computation under the Act shall be passed by an AO, below the rank of Joint Commissioner in respect of an AY to which the clause (i), clause (ii), clause (iii) or clause (iv) of the Explanation 2 to section 148 apply, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, consequent to search, survey and requisition to reduce avoidable inaccuracies.

This amendment is proposed to take effect from April 1, 2022.

(Clause 46)

Extension of the date of limitation of certain Faceless Schemes – Sections 92CA, 144C, 253 and 255

The existing provisions of sections 92CA, 144C, 253 and 255 of the Act provide that the Central Government may issue directions by notification for the purpose of giving effect to the Faceless Schemes as introduced through the TOLA and the Finance Act, 2021. However, no direction shall be issued after March 31, 2022.

It is proposed to extend the date for issuing directions for the purposes of these sections till March 31, 2024.

These amendment are proposed to take effect from April 1, 2022.

[Clauses 24, 43, 70 and 71]

Rationalisation of assessment and re-assessment proceedings – Section 148, 148A and 149

The Finance Act, 2021 amended the procedure of assessment and re-assessment of income, with effect from April 1, 2021. The said amendment modified various provisions, *inter alia* including sections 147, 148, 149 and introduced the new section 148A in the Act.

It is now proposed to make following amendments in the existing provisions:

❖ Section 148 provides for the issuance of notice to the assessee. This notice shall not be issued, unless there is 'information' with the Assessing Officer, which suggests escapement of income. The scope of 'information' is now proposed to be widened and would include –

  - any audit objection; or
  - any information received from a foreign jurisdiction under an agreement referred to in section 90 or section 90A of the Act; or
  - information received under a scheme notified under section 135A; or

- any information which requires action in consequence of the order of the Tribunal or a Court.

❖ Section 149(1)(b) provided that the notice under section 148 shall be issued only for the relevant year, after three years, but prior to ten years from the end of the relevant AY, where the AO has in his possession books of accounts or other documents or evidence, which reveals that the income chargeable to tax, represented in the form of an asset, which has escaped assessment amounts to or is likely to amount to INR 50 lakhs or more for that year.

It is proposed to extend the re-opening, where the escaped income (amounting to more than INR 50 lakhs for that year) is represented in the form of-

- expenditure in respect of a transaction or in relation to an event or occasion; or

- an entry or entries in the books of account

❖ Section 149(1A) is proposed to be inserted to provide that where the income chargeable to tax, has escaped assessment and where the investment in asset or expenditure in relation to such event or occasion has been made or incurred in more than one FY, the notice under section 148 shall be issued for every such AY for assessment, re-assessment or re-computation, as the case may be.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 35,36,44,45,46,47,48,49 and 73]

Assessments in the hands of successors in business reorganisation – Sections 156, 170 and 170A

The existing provisions of section 170 of the Act provide for the assessment procedure in case, where any business or profession of any person is succeeded by any other person. The said provision includes cases of succession of business in the event of business reorganization or restructuring of business.

The business reorganizations are largely effected through an application with the adjudicating authority or any HC or NCLT and the matters are generally concluded after a long-drawn process. Thus, there is a time gap between the reorganisation date and approval date ('pendency'). It is seen that the reorganization takes place with effect from a date prior to the approval date. Courts have held that the proceedings / consequent assessments pending / made during the aforesaid gap are illegal, as the predecessor assessee ceases to exist from the reorganisation date.

In light of such practical difficulties, it is proposed to insert sub-section (2A) to provide that in case of business reorganization, the assessment or re-assessment or other proceedings made on the predecessor, during the course of pendency of such reorganization, shall be deemed to have been made on the successor. The expressions 'business reorganization' and 'pendency' are defined as follows:

❖ 'Business reorganisation' means the reorganisation of business, involving the amalgamation or de-merger or merger of business of one or more persons.

❖ 'Pendency' means the period commencing from the date of filing of application for such reorganisation of business before the HC or NCLT or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in clause (1) of section 5 of the IBC and ending with the date on which the order of such HC or NCLT or such Adjudicating Authority, as the case may be, is received by the PCIT or the CIT.

It is pertinent to note that the said provisions are applicable only in cases where the assessment proceedings are completed before the receipt of the order from the HC or NCLT or any adjudicating authority by the PCIT or CIT. Thus, any assessment proceedings completed post the receipt of the order by such appropriate authorities should be made on the successor company only. Further, the definition of business reorganisation does not categorically include the transfer of a business on a slump sale basis under the NCLT route.

Further, there are difficulties faced by the successor companies to modify their already filed returns in accordance with the reorganization, due to the long time elapsed between filing the application and receiving the order for giving effect to the reorganization.

In order to overcome the difficulty to give such effect to the orders of the various authorities, it is proposed to introduce section 170A of the Act to enable the successor companies to file the modified return of income for the period between the date of effectivity of the order and the date of issuance of final order by the competent authority. The time limit prescribed to file the revised return of income is six months from the end of the month in which the said order is passed.

It would be important to note that there are no corresponding rationalizing amendments under sections 40(a), 43B, etc., providing clarity on the allowances and disallowances in the hands of the successor.

It is also proposed to introduce a new section 156A to provide for modification and revision of demand notice to give effect to the order of the Adjudicating Authority as defined in clause (1) of section 5 of the IBC and any subsequent orders of the Courts. The revised notice issued would be deemed to be a demand notice issued under section 156 of the Act.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 50, 53 and 54]

New TDS provision on benefit or perquisite, taxable as business income – Section 194R

The existing provision of section 28(iv) of the Act provide that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of profession is chargeable under the head 'Income from Business or Profession'. Many taxpayers do not disclose such income leading to furnishing of inaccurate particulars of income.

It is proposed to introduce new section 194R, under which the payer is responsible to deduct tax @10% on the value of such benefit or perquisites.

It has been provided that if such benefit is provided wholly in kind or partly in cash and partly in kind, but such part of cash is insufficient to meet the TDS liability, then the person responsible for providing such benefit shall ensure that the tax has been paid before release of payment.

The provision of this section shall not apply :

- in case the aggregate value of benefits or perquisites do not exceed INR 20,000 during the FY;
- to an individual or HUF for providing such benefit, whose total sales or gross receipts or turnover does not exceed INR 1 crore in case of business or INR 50 lakhs in case of profession, during the FY immediately preceding the FY in which such benefit or perquisite is provided.

This amendment is proposed to take effect from July 1, 2022.

[Clause 58]

Rationalization of provisions where TDS is applicable at higher rates in case of a person not filing income tax return – Sections 194IB, 206AB and 206CCA

The existing provisions of sections 206AB and 206CCA of the Act provide for applicability of TDS at higher rates, in case the payee has not filed the return of income for two AYs, relevant to the PYs immediately prior to the PY in which TDS is required to be deducted. Further, the provisions of the section 206AB are not applicable in a case where TDS is deductible under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

It is proposed to amend sections 206AB(3) and 206CCA, wherein 'specified person' has been defined, to reduce the period of non-filing of return of income from two years to one year.

Further, it is proposed to amend sub-section (1) of section 206AB of the Act, to state that the provisions of section 206AB will not be applicable to sections 192, 192A, 194B, 194BB, 194LBC, 194N 194IA, 194IB and 194M of the Act.

Further, as a consequential amendment in section 194IB, it is also proposed to omit the reference of section 206AB from sub-section (4) of the said section.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 57, 61 and 63]

Rationalization of TDS provisions on immovable property – Section 194IA

The existing provisions of sections 194IA provide for deduction of tax @1% on the consideration paid for purchase of immovable property. No TDS is required to be deducted, if the consideration does not exceed INR 50 lakhs. This section does not take into account the stamp duty value, whereas the provisions of sections 43CA, 50CA or 56(2)(x) of the Act, consider the same while computing the taxable income.

It is proposed to amend section 194IA to provide that TDS @1% shall be deducted on sale consideration or stamp duty value, whichever is higher.

Further, it is proposed to amend section 194IA(2) to provide that if the consideration paid and the stamp duty value does not exceed INR 50 lakhs, the provision of section 194IA would not apply.

This amendment is proposed to take effect from April 1, 2022.

[Clause 56]

Procedure for refund of TDS under section 195 – Sections 248, 246 and 239A

Section 248 provides for mechanism to prefer an appeal before the CIT(A) to claim refund of the TDS under section 195, (on gross basis), on any income payable to a non-resident and the tax deductor (who bears the liability of TDS) claims that no tax was deductible on such income. In this mechanism, for claiming the refund, the tax deductor had no recourse to the AO nor the transaction was examined by the AO.

It is proposed to insert a new section 239A to allow the aforesaid tax deductor to file an application before the AO to claim that no tax was deductible and thus, refund of such tax deducted under section 195 be allowed. The AO, after allowing the opportunity of being heard, shall pass an order, accepting or rejecting such application, within a period of six months from the end of the month in which the application is received. The order passed by the AO under section 239A shall be appealable before the CIT(A) under section 246A of the Act.

Consequentially, the existing provisions of section 248 will not apply in cases where the date of tax payment, to the credit of Central Government is on or after April 1, 2022.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 66, 68 and 69]

Taxation of trusts and other similar institutions – Sections 10(23C), 12AA and 12AB

The Bill proposes introduction of a slew of amendments under the heading 'Rationalization of provisions of Charitable Trusts and institutions'.

Exemption of income from taxation is available under section 10(23C) to various class of institutions, trusts, university, hospitals, etc., subject to fulfilment of prescribed conditions. Similar is the case with a trust or institution registered under section 12AA or 12AB of the Act, for which an exemption is available under section 11 of the Act.

Amendments proposed are for ensuring effective monitoring and implementation of exemptions under these regimes, for bringing consistency between the two regimes and for providing clarity on taxation in certain circumstances.

It is proposed to provide that, entities under both the regimes shall keep and maintain books of account and other documents in such form and manner and place as may be prescribed. This will be supplementary to the provision requiring conduct of audit of accounts.

These amendments are is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 4 and 6]

Certain amendments are proposed in the matter of approval or registration or cancellation or withdrawal thereof.

Under the existing provisions, registrations or provisional approval or re-registration or approvals, in certain cases are granted in an automated manner. Amendments are proposed to ensure that non-genuine trusts or institutions do not get exemption.

An amendment is also proposed to undo the dissimilarity between the two regimes in the matter of denial of benefit of exemption. In respect of section 10(23C) entities, section 143(3) of the Act provides a mechanism for passing the assessment order, under that sub-section, without giving the benefit of section 10(23C). However, there is no such provision as regards the entities covered by section 12AA and 12AB.

It is proposed to substitute section 12AB(4) of the Act, to provide that where registration or provisional registration has been granted and subsequently, the PCIT or the CIT noticed occurrence of one or more 'specified violations' during any previous year or case has been selected in accordance with the Board's risk management strategy or a reference has been received from the AO under section 143(3), the PCIT or the CIT may satisfy himself about such violation or otherwise and pass an order cancelling the registration if he is so satisfied, or refuse to cancel the same if he is not so satisfied. These orders are to be passed, after giving the assessee an opportunity of a hearing (in the event of cancelation), within the time prescribed under section 12AB(5) of the Act.

The expression 'specified violations' has been elaborately defined in the Explanation to the proposed section.

Similar provisions are proposed in the context of section 10(23C) as well. Further, some consequential amendments are proposed in other relevant sections.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 4, 7, 40 and 48]

Further, in order to align the schemes of exemption under the two regimes, it is proposed to make suitable amendments.

While accumulation of income under section 11(2) is subject to fulfilment of certain conditions, there are no such conditions in section 10(23C) of the Act.

Further, section 11 of the Act provides for the specific previous year, in which the accumulated income will be subject to tax in different types of violations. However, there is no such provision in 10(23C) regime.

In order to bring consistency, it is proposed to amend section 10(23C) to bring to tax the unutilized accumulated income in the last previous year of the chosen accumulation period. Further, section 11 is also proposed to be amended on these lines. The procedural aspects under both the regimes are being brought on par.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 4 and 5]

It is proposed to amend section 10(23C) to provide for accumulation or setting apart of income, where the condition of 85% application is not met. These are on similar lines, as those of section 11 of the Act.

It is also proposed that where income or property of a section 10(23C) entity is applied, directly or indirectly, for the benefit of a specified person, such income or property would be deemed to be the income of such specified person.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 4]

It is also proposed to extend the application of provisions of sections 115TD, 115TE and 115TF to section 10(23C) entities as well, in the event of winding up or dissolution of the entity or merging with a non-charitable entity or charitable entity with dissimilar objects, etc. (exit tax).

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 31, 32 and 33]

Another proposed amendment to bring parity between the two regimes is the requirement of a 10(23C) entity to furnish its return of income as required by section 139(4C) of the Act.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 4]

Certain amendments are proposed to provide clarity on how income is to be computed in the event of certain non-compliances.

Presently exemption is denied in case of violation of provisions of the Act. It is proposed to allow deduction for expenditure incurred in India (other than capital expenditure), subject to fulfillment of specified conditions. It is also proposed that for this purpose, provisions of section 40a(ia) and section 40A(3) & 3A would apply. It is also proposed that no deduction for the expenditure or allowance or set off for loss shall be allowed under any other provision of the Act. These provisions would govern both regimes of taxation.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 4 and 8]

To further rationalize the provisions of both the regimes, following amendments are proposed:

Only that part of the income as is applied in violation of section 13(1)(c) of the Act, shall be liable to be included in total income. Similar amendment is also proposed in section 10(23C) regime.

Similarly, only that part of the income as has been invested in violation of the statutory provisions will be liable to be included in total income.

A new section 115BBI is proposed to be introduced to provide taxation of such types of income @30% of the specified income. For this purpose, no deduction shall be allowed for any expenditure or allowance or set off of any loss under any provision of the Act. Specified income has been defined in the proposed Explanation.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 4, 8 and 28]

It is also proposed to insert an Explanation 3A in section 11(1) of the Act, to provide that where the property held under trust or institution, includes any temple, mosque, gurudwara, church or other notified place, any voluntary contributions received for the purpose of renovation or repair thereof may, at the option of the trust, etc. be treated as corpus donations, subject to fulfilment of specified conditions.

It is also proposed that in the event of subsequent violation of such conditions, such sum shall be treated as an income in the year of violation.

Similar regime is also proposed in respect of section 10(23C) regime.

These amendments are proposed to take effect from April 1, 2021, i.e. AY 2021-22.

[Clauses 4 and 5]

It is also proposed to suitably amend both regimes to provide that application of income for charitable purposes would mean actual payment and not when the liability is incurred for the same even under the mercantile system of accounting.

These amendments are proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clauses 4 and 5]

Further, references to 'prescribed authority' at various places in section 10(23C) are proposed to be substituted by the references to PCIT or CIT.

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 4]

Under section 13 of the Act, trusts or institutions are required not to pass on any unreasonable benefit to the trustees or other specified persons.

In order to deter such practices, a new section 271AAE is proposed to be introduced, to impose penalty where income is applied, directly or indirectly, for the benefit of specified persons under both the regimes. The penalty proposed is 100% of the income so applied when violation is noticed for the first time in any previous year and 200% for violation noticed in any subsequent year. This penalty would be over and above the penalty, that may be levied under any other provision of Chapter XXI of the year.

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 76]

Revision of the TPO order and time limits – Sections 153 and 263

Under the existing scheme of assessment, on reference of the matter by the AO, the TPO passes an order determining the ALP in an international transaction or specified domestic transaction under the provisions of section 92CA and sends it to the AO for final income determination. However, there is no clarity in the existing provisions of section 263 as to which PCIT has power to revise the order passed by the TPO under section 92CA of the Act.

It is therefore proposed to amend section 263 to empower the PCIT having jurisdiction over such TPO, to revise the order passed under section 92CA of the Act.

Further, following corresponding amendments are proposed under section 153 dealing with time limit for completion of assessments etc.:

- Amend sub-sections (3) and (5) of section 153 of the Act to include orders passed by the TPO under section 92CA of the Act;
- Insert new sub-section (5A) to provide that where the TPO gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the AO, the AO shall proceed to modify the order of assessment or re-assessment or re-computation, in conformity with such order of the TPO, within two months from the end of the month in which such order of the TPO is received by him;
- Sub-section (6), containing time lines overriding provisions of sub-sections (1) and (2), shall also be applicable to the proposed sub-section (5A).

These amendments are proposed to take effect from April 1, 2022.

[Clauses 48 and 72]

Rationalization of penalty provisions – Section 271AAB, 271AAC and 271AAD

The existing penalty provisions of sections 271AAB, 271AAC and 271AAD of the Act under Chapter XXI empower the AO, for levy of penalty in cases, involving undisclosed income in cases where search has been initiated under section 132 or otherwise, or for false entry in the books of account.

Other penal sections under Chapter XXI provide concomitant powers to the CIT(A) to levy such penalty. Therefore, in order to improve deterrence against non-compliance among the taxpayers, it is proposed to amend the sections 271AAB, 271AAC and 271AAD by enabling the CIT(A) to also levy penalty under these sections.

These amendments are is proposed to take effect from April 1, 2022.

[Clauses 73, 74 and 75]

Set-off of loss in search cases – Section 79A

A new section 79A is proposed to be introduced to provide that, no set off of any loss, whether brought forward or otherwise, or unabsorbed depreciation under section 32(2) shall be allowed to the assessee under any provisions of the Act in computing his total income for such previous year against the undisclosed income, determined in a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under sub-section (2A) of section 133A.

Further, the term 'undisclosed income' is proposed to be defined for the above purpose as -

❖ any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than that conducted under sub-section (2A) of section 133A, which has –

    - not been recorded on or before the date of search or requisition or survey, in the books of account or other documents maintained in the normal course relating to such previous year; or
    - not been disclosed to the PCIT or CCIT or PCIT or CIT before the date of search or requisition or survey, or

❖ any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year, which is found to be false and would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 19]

Reduction of goodwill from block of assets is deemed to be transfer – Section 50

Goodwill of a business or profession is not considered as a depreciable asset, with effect from AY 2021-22. Consequentially, amendments were made, *inter alia*, under sections 43, 48 and 50 of the Act. As per sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, the value of the goodwill (net of depreciation actually allowed under the Act until March 31, 2021) is to be reduced from the relevant block of assets to derive the written down value of the said block of assets. Further, a proviso was also introduced to sub-section (2) of section 50 of the Act to prescribe the manner in which, the short term capital gain needs to be computed. Subsequently, CBDT had issued a Notification inserting new Rule 8AC providing for the computation methodology for WDV of block of assets and STCG.

As a consequential amendment, it is further proposed to clarify, by introducing an Explanation after proviso to section 50 referred above, stating that the amount of goodwill of a business and profession reduced from the block of asset as per section 43(6), shall be deemed to be a transfer.

By this amendment, the said proviso is aligned with the scheme of section 50, which provides for the computation of capital gains on depreciable assets.

This amendment is proposed to take effect from April 1, 2021, i.e. AY 2021-22.

[Clause 15]

Rationalization of AMT provisions to promote growth of co-operative societies – Section 115JC and 115JF

The existing provisions of section 115JC of the Act provide for levy of AMT, payable by co-operative societies @ 18.5% of deemed total income.

In the case of companies, the TOLA reduced the MAT rates to 15%. In order to provide parity between the co-operative societies and companies, it is proposed to amend section 115JC(4) to reduce the AMT rate for co-operative societies to 15%. Consequential amendment is also proposed in clause (b) of section 115JF in relation to the definition of AMT.

These amendments are proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clauses 29 and 30]

Liability of directors of private company – Section 179

The existing section 179 is titled as 'Liability of directors of private company in liquidation'. However, section 179 empowers the income tax authorities to recover the tax dues from the directors of a private company under certain circumstances, where such tax cannot be recovered from the company itself. Furthermore, the existing provisions of section 179 make each director of the private company jointly and severally liable for the payment of such tax, with certain conditions.

It is proposed to amend the title of the section 179 as 'Liability of directors of private company', so that the title is in tandem with the intent and wordings of the section.

Further, the existing explanation to section 179(2) includes penalty, interest, or any other sum payable under the Act. It is proposed to insert the word 'fees' in the scope of the expression 'tax due'.

This amendment is proposed to take effect from April 1, 2022.

[Clause 55]

Continuity of carry forward of loss from strategic disinvestment of public sector companies – Section 79

The Finance Act, 2021 had amended section 72A, to *inter alia* provide that in case of an amalgamation of a public sector company (PSU), which ceases to be a PSU (erstwhile public sector company), as part of strategic disinvestment, with one or more company or companies, then, subject to the conditions laid therein, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss, or as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected.

The existing provisions of section 79 provide that in case of closely held companies, the losses shall not be allowed to be carried forward, if on the last day of the accounting year, shares carrying at least 51% of the voting rights / power are not beneficially held by persons, who beneficially held shares carrying at least 51% of the voting rights / power on the last day of the year in which the losses were incurred.

In order to facilitate strategic disinvestment (especially, the recent Air India disinvestment), the CBDT had clarified on September 10, 2021 that the provisions of section 79 shall not apply to an erstwhile PSU, which has become so, as a result of strategic disinvestment.

It is now proposed to provide that the section 79 shall not apply to an erstwhile PSU, subject to the condition that the ultimate holding company of such erstwhile PSU, immediately after the completion of the strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% of the voting power of the erstwhile PSU in aggregate.

It is further proposed to provide that if the condition is not complied after the completion of strategic disinvestment, provisions of section 79 would be triggered in the previous year and subsequent years.

Furthermore, an Explanation has been proposed to be introduced to define the meaning of 'erstwhile public sector company' and 'strategic disinvestment', as given in the Explanation to clause (d) of section 72A(1).

This amendment is proposed to take effect from April 1, 2022, i.e. AY 2022-23.

[Clause 18]

Withdrawal of exemption granted for remuneration and certain other incomes – Section 10

The existing provision of sub-sections (8), (8A) and (8B) of section 10, provide for exemption of certain incomes earned by certain persons, towards duties provided in India in connection with any technical assistance programme and project, any other income that accrued outside India and is not deemed to accrue or arise in India and such other incomes as prescribed in the section. Further, sub-section (9) of section 10 provided for exemption to the income of the family members of such individuals who accompanied such individual in India.

It was observed that the exemptions, as provided under the above-mentioned clauses, are being phased out as a matter of stated policy of the Government. As also, it is observed that India gets a right to tax a particular income and the other country is expected to then relieve double taxation by exemption or credit method. Thus, providing exemption by India amounts to surrender of right of taxation by India in favour of the other country.

It is therefore proposed to withdraw such exemptions granted under the above clauses.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 4]

Increase in penalty – Section 272A

The existing provisions of section 272A provide for levy of penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspection, etc. Currently, the amount of penalty for failures listed under section 272A(2) is INR 100 for every day during which the failure continues.

With a view to have an adequate deterrent value, it is proposed to revise the amount of penalty for such failures from INR 100 to INR 500 per day.

This amendment is proposed to take effect from April 1, 2022.

[Clause 78]

Board authorised to provide relaxation qua section 234F – Section 119

Under the existing provisions of section 119, the Board is empowered to issue orders, instructions and directions to income-tax authorities for proper administration of the provisions of the Act.

Section 119 empowers the Board to provide relaxation in certain sections, such as 115P, 115S, 115WD, 139, 1211, 234A, 234B, 234C, 234E, etc., in the public interest.

It is proposed to amend section 119 to empower the Board to issue orders, instructions and directions in respect of section 234F (fee for delay in filing of return of income) with a view to avoid genuine hardship in any case or class of cases.

This amendment is proposed to take effect from April 1, 2022.

[Clause 34]

Definition of 'Income-tax authorities' – Section 133A

Section 133A of the Act enables an income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under this Act. Explanation to section 133A provides the definition of an income-tax authority for the purposes of this section.

Through the TOLA, the Explanation was amended to provide that the income-tax authority, who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the PCIT (TDS) or the CCIT (TDS), as the case may be, shall be considered as income-tax authorities for the purpose of section 133A of the Act.

It is proposed to amend the Explanation to section 133A(6), to provide that sub-ordinate income-tax Authority shall be sub-ordinate to the Principal Director General or Director General or PCIT or CCIT, as the case may be, as specified by the Board. This amendment has widened the definition of income-tax authority for the purpose of Section 133A.

This amendment is proposed to take effect from April 1, 2022.

[Clause 37]

Litigation management – Revenue appeal pending before jurisdictional HC or SC– Section 158AA and 158AB

Section 158AA provided for a means to reduce litigation in cases of assessees, where the revenue's appeal on a question of law (against the favourable order of the High Court) was pending before the SC. In such cases, the CIT or PCIT may direct the AO to file an application to the ITAT, stating that an appeal may be filed when the decision on the question of law became final.

With a view to further reduce the litigation, it is proposed to introduce a new section 158AB to lay down the procedure, when an appeal of revenue is pending, on an identical question of law, before the HC or SC in the case of any assessee / AY.

Section 158AB provides that a collegium (comprising of two or more CCIT or PCIT or CIT, as specified by the Board) may decide and inform the PCIT or CIT not to file any appeal before the HC or SC against the order of ITAT or HC respectively, if an identical question of law (as accepted by the assessee) was pending in any case (irrespective of the year or assessee).

Based on the direction of the collegium, the CIT or PCIT shall direct the AO to make an application to the ITAT or HC, within the prescribed time (sixty / one hundred and twenty days of receipt of the respective order). Such an application is to be made only when the assessee accepts that the issues involved in its case are identical to the question of law involved.

If the final decision of HC / SC on the question of law is not in conformity with the final decision of CIT(A) / ITAT, the CIT or PCIT may direct the AO to file an appeal to the ITAT / HC against such order.

In view of the introduction of section 158BA, a sunset clause is proposed in section 158AA to provide that no direction shall be given under section 158AA on or after March 31, 2022.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 51 and 52]

Widening the scope of reporting by producers of cinematograph films or persons engaged in specified activities – Section 285B

The existing section 285B provides that the producers of cinematographic films, shall furnish within 30 days from the end of the FY or from the date of completion of the film, whichever is earlier, a statement (in form no. 52A) containing the particulars of all payments over INR 50,000 in the aggregate made by him or due from him to each person engaged by him.

It is proposed to widen the scope of this section to also include persons engaged in specified activity. For this purpose, the 'specified activity' means event management, documentary production, production of programmes for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity, as the Central Government may, by notification in the Official Gazette, may specify in this behalf.

This amendment is proposed to take effect from April 1, 2022.

[Clause 84]

Alignment of the provisions relating to Offences and Prosecutions – Section 276AB

The existing provisions of section 276AB are related to prosecution, where the taxpayer fails to comply with the provisions of sections 269UC, 269UE and 269UL, which are made inapplicable w.e.f. July 1, 2002.

Consequently, prosecution provisions under section 276AB are not relevant, as launching prosecution against offences committed more than twenty years ago, that is prior to 2002, would be beyond a reasonable time.

It is proposed to insert second proviso stating that no fresh prosecution proceeding shall be initiated under section 276AB on or after April 1, 2022.

[Clause 79]

Alignment of the provisions relating to Offences and Prosecutions – Sections 278A and 278AA

The existing provisions of section 278A and 278AA are related to prosecution for second or subsequent offence. This section includes offence prosecuted under section 276B, i.e. where the taxpayer *fails to pay the tax deducted at source* to the credit of Central Government. However, it does not include offences prosecuted under section 276BB, i.e. where the taxpayer *fails to pay the tax collected at source*.

It is proposed to amend sections 278A and 278AA to include section 276BB, owing to similar nature of offences that are punishable under section 276B.

The above amendments in relation to offences and prosecutions are proposed to take effect from April 1, 2022.

[Clauses 82 and 83]

Levy of interest for failure to deduct/collect or make payment of tax – Section 201(1A) and 206C(7)

The existing provisions of section 201(1A) provide that if any person who is liable to deduct tax at source, does not deduct or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein. Similarly, the existing provisions of section 206C(7) provide that if any person who is liable to collect tax at source, does not collect or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein. However, there has been frequent litigation in computing the interest amount as with regard to the period of default, etc.

In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to amend section 201(1A) and section 206C(7) of the Act to provide that where any order is made by the AO under sub-section 201(1) and 206C(6A) in respect of a default made by the assessee, the interest shall be paid by the person in accordance with the order made by the AO in this regard.

These amendments are proposed to take effect from April 1, 2022.

[Clauses 60 and 62]

Amendment related to Dispute Resolution Committee – Section 245MA

The existing provisions of section 245MA provide that after the resolution of the dispute by the DRC, the assessed income of the person who had applied to DRC has to be determined, which will be followed by, *inter alia*, initiation of penalty proceedings, if any, and issuance of demand notice under section 156 of the Act. But the said section did not contain any provision which will enable the AO to pass an order giving effect to the order or directions of the DRC under the said section.

Therefore, a new sub-section (2A) is proposed to be inserted in Section 245MA to enable the AO to pass an order giving effect to the resolution of dispute by the DRC.

This amendment is proposed to take effect from April 1, 2022.

[Clause 67]

Incentives to National Pension System (NPS) subscribers for state government employees – Section 80CCD

The existing provisions of sub-section (2)(b) of Section 80CCD of the Act provide that, in the case of on assessee, being an individual employed by the Central Government, where such employer makes any contribution to his account under NPS, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the employer which does not exceed 14% of his salary in the previous year.

The State Governments were given an option to raise the said contribution to 14% w.e.f. April 1, 2019 on their own volition, based on their own internal approvals and notifications, without seeking the approval of the Pension Fund Regulatory and Development Authority. Accordingly, to ensure that the State Government employees also get full deduction of the enhanced contribution by the State Government, it is proposed to increase the limit of deduction under section 80CCD of the Act from the existing 10% to 14% in respect of contributions made by the State Government to the account of its employees under NPS.

This amendment is proposed to take effect from April 1, 2020, i.e. AY 2020-21.

[Clause 20]

Definition of the term 'slump sale' – Section 2

The definition of slump sale under section 2(42C) of the Act was amended vide Finance Act 2021 to expand the scope to cover all forms of transfer under slump sale. However, inadvertently, there was a reference to the word 'sales' instead of 'transfer' in the last sentence of the definition.

It is proposed to carry out consequential amendment by substituting the word 'sales' with 'transfer'.

This amendment is proposed to take effect from April 1, 2021, i.e. AY 2021-22.

[Clause 3]

Allowing deduction and taxability of receipt of annuity to a disabled person – Section 80DD

The existing provision of section 80DD, *inter alia*, provides for deduction to an individual or HUF where the amount is paid to the LIC or any other insurer or administrator or specified company in respect of a scheme for payment of annuity or lump sum amount for the benefit of a disabled dependent.

Sub-section (2) provides for deduction, only if the annuity or lump sum amount is made for the benefit of the defendant in the event of death of the individual or member of the HUF, who has subscribed to the scheme. Sub-section (3) provides that if the disabled dependent predeceases the individual or HUF, the amount deposited in such scheme shall be deemed to be the income of the subscriber of the scheme.

It was observed by the SC in the case of Ravi Agrawal v. UOI (WP No. 1107 of 2017) that there could be a situation, where the disabled dependent may need payment of an annuity or lump sum, even during the life time of the said subscriber.

It is therefore proposed to substitute sub-section (2) to also allow deduction, when the scheme provides for payment of annuity or lumpsum upon the subscriber attaining the age of 60 years or more and payment to such scheme has been discontinued. In other words, deduction is allowed even if the payment of annuity or lumpsum is made during the life time of the subscriber and not only on the death of the subscriber

Further, it is also proposed to insert sub-section (3A) stating that the provisions of sub-section (3) shall not apply in case where the amount for annuity or lump sum is received by the disabled dependant, before his death and the conditions under the new proposed amendment specified above are fulfilled.

This amendment is proposed to take effect from April 1, 2023, i.e. AY 2023-24.

[Clause 21]

INDIRECT TAX

CGST ACT 2017

The proposed amendments have been made on the basis of recommendations made by the GST Council.

New condition for claiming ITC introduced in Section 16

The existing provision of section 16(2) of the CGST Act stipulates 5 conditions to be satisfied for availing ITC.

It is proposed to insert a new clause (ba) in section 16(2) to introduce one more condition to be satisfied, viz; the details of the ITC in respect of a supply, communicated in GSTR-2B report has not been restricted.

Insertion of the new clause (ba) would take prospective effect from a date to be notified.

[Clause 99]

Time limit to avail ITC to be extended to November 30th of the following year

The existing provision of section 16(4) of the CGST Act prescribes that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 [GSTR-3B] by September 30th following the end of the FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

It is proposed to amend the provision to extend the time limit to take ITC against any invoice or debit note by November 30th of the following year, or furnishing of the relevant annual return, whichever is earlier.

The proposed amendment is to take prospective effect from a date to be notified.

[Clause 99]

Time limit to issue Credit Note to be 30th November

Section 34 provides for time limit to issue Credit Notes.

The existing section 34(2) of the CGST Act enables a registered person to declare the details of credit note in the return for the month during which such credit note has been issued but not later than September following the end of the FY in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and to adjust the tax liability in such manner as may be prescribed.

It is proposed to amend section 34(2) of the CGST Act so as to provide for time for issuance of credit notes in respect of any supply made in a FY upto November 30th of the following FY or the date of furnishing of the relevant annual return, whichever is earlier.

The proposed amendment is to take prospective effect from a date to be notified.

[Clause 101]

GST Outward & Inward return processes proposed to be revamped:

❖ Outward Return:

The existing section 37 of the CGST Act deals with the manner of filing the details of Outward supplies [GSTR-1].

It is proposed to amend section 37, *inter-alia*, by dispensing with the existing **two-way communication** process in return filing, which was not implemented.

[Clause 102]

❖ Inward Return:

The existing section 38 deals with the manner of filing details of Inward Supplies [GSTR-3B].

It is proposed to amend section 38 of the CGST Act to prescribe the manner as well as the conditions and restrictions for communicating details of inward supplies and ITC to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

[Clause 103]

ITC availed on self-assessment basis will not be provisional:

The existing provision of section 41 of the CGST Act enables the self-assessed ITC of a registered person to be credited to his Electronic Credit Ledger on a provisional basis and to utilize such ITC to discharge self-assessed Output Tax as per the GST returns filed by him.

It is proposed to substitute a new section 41 and replace the existing section, to:-

- Dispense with the provisional nature of the ITC credited to the Electronic Credit Ledger;
- Require the registered person to reverse the ITC availed, along with applicable interest, if the GST payable on the inward supplies has not been paid by the supplier; and
- Enable the registered person to re-avail the ITC reversed by him, when the supplier concerned pays the GST applicable on such inward supplies.

The proposed amendment is to take prospective effect from a date to be notified.

[Clause 105]

Section 49 of the CGST Act is proposed to be amended to:-

The existing section 49 of the CGST Act *inter alia* prescribes the manner of payment of tax, interest, penalty and other amounts by utilizing the ITC balance available in the Electronic Credit Ledger and the Electronic Cash Ledger of a registered person.

It is proposed to amend section 49 to:-

- Provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger;
- Provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger; and
- Allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person and to deem such transfer as refund.

The proposed amendment is to take prospective effect from a date to be notified.

[Clause 109]

Substitution of new Section 50(3) of the CGST Act:

The existing section 50(3) of the CGST Act requires a taxable person who makes an undue or excess claim of ITC under section 42(10) or undue or excess reduction in output tax liability under section 43(10), to pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 24%., as may be notified by the Government on the recommendations of the Council. The rate of tax currently prescribed in such cases by Notification No.13/2017 – C.T dated June 28, 2017 is 24% per annum.

It is proposed to retrospectively amend section 50(3) by substituting a new sub- section to enable levy of interest on ITC wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government, on the recommendations of the Council. Also, notification No.13/2017- C.T dated June 28, 2017 is being amended retrospectively to levy interest at the rate of 18% per annum under section 50(3). Similar amendments are proposed in the IGST Act and the UTGST Act & SGST Act to levy interest of 18% under section 50(3).

The proposed amendment is to take retrospective effect from July 01, 2017 the date of introduction of GST Laws.

[Clause 110]

Section 54 of the CGST Act is being amended to:

The existing section 54 of the CGST Act provides for grant of refund of GST in the circumstances mentioned therein.

It is proposed to amend section 54 to:-

- Explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed;
- Provide the time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55, which enables refund to UNO & other entities stipulated therein, as two years from the last day of the quarter in which the said supply was received;
- Extend the scope of withholding of or recovery from refunds in respect of all types of refund;
- Clarify that the relevant date for filing refund claim in respect of supplies made to a SEZ developer or a SEZ unit by way of insertion of a new sub-clause (ba) in clause (2) of Explanation thereto.

The proposed amendment is to take prospective effect from a date to be notified.

[Clause 112]

THE CUSTOMS ACT, 1962

Power conferred on CBIC / Principal Commissioner/ Commissioner of Customs to appoint 'Proper Officer' of Customs:

Recently, in the case of Cannon India Ltd Vs Commissioner of Customs – 2021(376) E. L. T.3 (SC), Honourable Supreme Court had held that an officer of the DRI is not a 'proper officer' to issue show cause notices under section 28 of the Customs Act. Consequently, several cases booked by the DRI were likely to be decided in favour of the assessees.

Apparently, to overcome the effect of the landmark judgment of Honourable Supreme Court in the above case, the Bill proposes to amend the definition of 'proper officer' in section 2(34), substitute section 3, amend section 5 of the Customs Act and validate certain actions of Customs officers retrospectively.

The Bill seeks to retrospectively validate actions taken or functions performed by Customs officer before the enactment of the Bill where the action was in pursuance of their appointment and assigning of functions by the Central Government or the CBIC. The clause also validates any Customs notification issued with the purpose of appointing or assigning functions to any Customs officer, including for the purposes of section 6.

Also, by way of an Explanation to the above clause, it is proposed to clarify that any proceeding arising out of action taken under the clause and pending on the date of commencement of the Finance Act 2022 will be disposed of in accordance with the amended provisions of the Customs Act.

It remains to be seen whether litigation on the issue whether officers of DRI are 'proper officers' empowered to issue notices under section 28 of the Customs Act would be stopped after the Finance Act 2022 is passed.

[Clause 96]

New section to empower the jurisdictional officer of customs to review earlier assessments:

The Bill proposes to insert section 110AA in the Customs Act to provide that in cases where original functions of (a) assessment of customs duty/interest short-levied, not levied, short-paid or not paid and (b) grant of erroneous refund or duty drawback have been exercised by a jurisdictional Customs officer, then any other Customs officer causing further inquiry, investigation etc., shall submit a report to the jurisdictional Customs officer if any of the earlier assessments are to be reviewed.

In case of multiple jurisdictions, the officer to whom such matter is assigned by the CBIC would be required to submit a report to the jurisdictional Customs officer if any of the earlier assessments are to be reviewed.

Insertion of the new section 110AA also appears to be aimed at overcoming some of the observations of Honourable Apex Court, in the case of India Ltd Vs Commissioner of Customs – 2021(376) E. L. T.3 (SC).

The new section would take prospective effect from the date of enactment of the Finance Act 2022.

Amendment proposed to section 14, to impose additional obligations on Importers:

Section 14 of the Customs Act deals with valuation of goods for the purpose of levy of customs duty.

It is proposed to insert a new clause (iv) in section 14(1) to empower the Government to prescribe rules to impose additional obligations on the importer and checks to be exercised with respect to valuation of the imported goods, where the CBIC has a reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

The proposed amendment may have far-reaching implications and appears to have been introduced in the light of the decision of the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. v. Union of India, 2019 (367) E.L.T. 3 (S.C.). In the said case, it was held that formation of opinion regarding reasonable doubt on correctness of value is mandatory before rejecting transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

The above amendment would take prospective effect from the date of enactment of the Finance Act 2022.

[Clause 88]

Amendment proposed in respect of Customs Advance Ruling:

Section 28H of the Customs Act deals with Customs Advance Rulings.

Amendments are proposed in the above section to enable CBIC to make provisions for prescribing appropriate fees relating to application for advance Ruling and also give flexibility to the applicant to withdraw his application at any time before a ruling is pronounced, instead of within 30 days of filing the application, as currently in force. Consequently, section 28H(3) is proposed to be omitted.

The existing section 28J(2) of the Customs Act states that the advance ruling shall be binding unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

It is proposed to substitute a new section 28J(2), to render the advance ruling to be valid for a period of three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

A proviso is also proposed to be inserted to provide that for the advance rulings in force on the date on which the Finance Bill, 2022 receives the assent of Honourable President, the period of three years shall be reckoned from the date on which the Finance Bill receives the assent of Honourable President.

The above amendments would take prospective effect from the date of enactment of the Finance Act 2022.

[Clauses 90 and 92]

New Penal Provision to safeguard against unlawful publishing of Import Export Data:

A new section 135AA is proposed to be inserted in the Customs Act, to protect the import and export data (submitted to Customs authorities by importers or exporters) and to provide that no person shall publish such information unless required under the law. Such publication is proposed to be considered as an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to INR 50,000/- or with both.

Further, section 137(1) of the Customs Act is proposed to be amended to provide that no court shall take cognizance of any offence under section 135AA except with the previous sanction of the Principal Commissioner of Commissioner of Customs.

The above amendments would take prospective effect from the date of enactment of the Finance Act 2022.

[Clause 94]

Amendment of Customs IGCR Rules, 2017, to remove existing procedural ambiguities and to enable automation of the entire process:

The Customs IGCR Rules have been enacted to monitor the usage of imported goods that are eligible for end-use based concessions. There are several compliances prescribed under the above Rules.

The Finance Bill proposes to lay down simplified procedures to avail the benefit of concessional duty by removing the existing ambiguities, and to largely automate the entire process right from availment till reporting in one consolidated monthly return.

The above rules are proposed to be amended by the Customs IGCR Amendment Rules, 2022 issued under the Notification No. 07/2022 - Customs (N.T.) dated February 01, 2022.

The above amendments would take prospective effect from March 01, 2022.

Legislative Changes to the Customs Tariff:

The First Schedule to the Customs Tariff is proposed to be amended to align with similar amendments to HS 2022. These changes include amendments in the Chapter Notes/ section Notes and substitution/ insertion of Tariff Heading/Tariff item. Some of the changes are proposed as per recommendations from specific Ministries *inter alia* to identify new categories of Fuels being introduced in the country and to clarify the manner of determination of Fe content in iron ore being exported.

The above changes would take prospective effect from May 01, 2022.

[Clause 97]

Clarificatory Circular on Applicability of Social Welfare Cess in Certain Cases:

The issue of applicability of SWS in cases, where the aggregate of customs duties (which form the base for computation of SWS) is NIL, was in doubt.

By Circular 3/2022, dated February 01,2022 it has been made abundantly clear that no SWS shall be payable on the basis of any notional computation of customs duty, in such cases.

CENTRAL EXCISE DUTY:

Tariff changes to encourage use of Ethanol Blended Fuels:

It is proposed to impose an additional BED of INR 2 per litre on Petrol and Diesel, intended to be sold to retail consumers without blending with Ethanol or Methanol, as confirming to BIS classification.

The proposed levy is aimed at encouraging the use of fuels blended with Ethanol or Methanol.

The levy is proposed with effect from October 01, 2022.

Notification No. 01/2022-Central Excise dated February 01, 2022 refers.

Two new Tariff items introduced:

Two new tariff items, that is, 2710 12 43 and 2710 12 44, falling under Chapter 27, have been inserted in the Fourth Schedule to the Central Excise Act, relating to E12 and E15 fuel blends, conforming to the new BIS specification [IS 17586] that has been issued for Ethanol Blended Petrol with percentage of ethanol up to twelve (E12) and fifteen (E15) percent respectively.

The change will align the Fourth Schedule to the Central Excise Act, with the similar amendment proposed in the sub-heading 2710 12 in the First Schedule to the Customs Tariff Act.

[Clause 98]

Amendment of Notification for RSP Based Valuation:

Notification No. 49/2008-Central Excise (N.T.) dated December 24,2008 provides for RSP based valuation for specified goods and prescribes an abatement as a percentage of RSP for such goods. This notification was issued under section 4A of the Central Excise Act.

The above notification has been superseded by notification No. 01/2022- Central Excise (N.T.) dated February 01, 2022, wherein the list of goods in the notification has been modified to cover all such goods that are presently covered under Central Excise i.e. chewing tobacco, preparations containing chewing tobacco, Jarda scented tobacco and Pan masala containing tobacco.

Circular No. 1082/03/2022-CX dated February 01, 2022 has been issued to ensure uniform implementation of RSP based valuation on notified goods, in accordance to section 4A of the Central Excise Act.

GLOSSARY

Abbreviation	Description
%	Percentage
ACIT	Assistant Commissioner of Income Tax
Act	Income Tax Act, 1961
AIF	Alternative Investment Fund
ALP	Arm's length Price
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
BED	Basic Excise Duty
Bill	The Finance Bill, 2022
CBDT/ the Board	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCIT	Chief Commissioner of Income Tax
Central Excise Act	Central Excise Act, 1944
CGST	Central Goods & Services Tax
CGST Act	Central Goods & Services Tax Act, 2017
CIT	Commissioner of Income Tax
COVID-19	Coronavirus Disease
Customs Act	Customs Act, 1962
Customs Tariff Act	Customs Tariff Act, 1975
DDT	Dividend Distribution Tax
DRC	Dispute Resolution Committee
FY	Financial Year
GDP	Gross Domestic Product
GIFT City	Gujarat International Finance Tec-City
GoI	Government of India
GST	Goods & Services Tax
GSTR	Goods & Services Tax Return
HC	High Court
HUF	Hindu Undivided Family
IBC	Insolvency Bankruptcy Code, 2016
IFSC	International Financial Services Centre
IGST Act	Integrated Goods & Services Tax Act, 2017
INR	Indian Rupees
InvIT	Infrastructure Investment Trust
ITAT	Income Tax Appellate Tribunal

Abbreviation	Description
ITC	Input Tax Credit
JCIT	Joint Commissioner of Income Tax
MAT	Minimum Alternate Tax
MNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MSME	Micro, Small, and Medium Enterprises
NaFAC	National Faceless Assessment Centre
NBFC	Non-Banking Financial Company
NCLT	National Company Law Tribunal
NPS	National Pension System
PCCIT	Principal Chief Commissioner of Income-tax
PCIT	Principal Commissioner of Income-tax
PSU	Public Sector Undertakings
RBI	Reserve Bank of India
REIT	Real Estate Investment Trust
RSP	Retail Sale Price
SC	Supreme Court
SEZ	Special Economic Zone
SGST	State Goods & Services Tax
SGST Act	State Goods and Services Tax Act
STCG	Short Term Capital Gain
TCS	Tax Collected at Source
TDS	Tax Deducted at Source
TOLA	Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020
TPO	Transfer Pricing Officer
UNO	United Nations Organisation
USD	US Dollar
UTGST	Union Territory Goods and Services Tax
UTGST Act	Union Territory Goods and Service Tax Act
VDA	Virtual Digital Assets
WDV	Written Down Value
w.e.f	with effect from

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