VISHNU DAYA & CO LLP

CHARTERED ACCOUNTANTS

FOREWORD:

The Finance Bill, 2021 (FB 2021) was presented by the Hon'ble Finance Minister (FM) on 1st February 2021. After considering different representations from various stakeholders, an amendment to the Finance Bill 2021 was placed before and passed by the Lok Sabha on 23rd March 2021. The same has been cleared by Rajya Sabha on 24th March 2021. The Finance Bill 2021 further received the Assent of President on 28th March 2021 and became Finance Act, 2021.

We have made our best effort to summarise the key points of the Finance Act, 2021 in simpler manner. Trust the same would be found useful in better understanding of the taxation aspects.

Regards,
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Contents

1. RATES OF TAXES FOR FINANCIAL YEAR 2021-22

A. For Individuals [other than mentioned below], Hindu Undivided Family, Association of Persons, Body of Individuals, Artificial Judicial Person

Total income	Tax rate
Less than or equal to Rs. 2,50,000	Nil
From Rs. 2,50,001 to Rs. 5,00,000	5%
From Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

B. For Resident Individuals who is of the age of 60 years or more but less than 80 years at any time during the previous year

Total income	Tax rate
Less than or equal to Rs. 3,00,000	Nil
From Rs. 3,00,001 to Rs. 5,00,000	5%
From Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

C. For Resident Individuals who is of the age of 80 years or more at any time during the previous year

Total income	Tax rate
Less than or equal to Rs. 5,00,000	Nil
From Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

D. On satisfaction of certain conditions (without claiming certain exemption/ deduction, without claiming set-off of loss) as per the provisions of section 115BAC, an individual or HUF shall, have the option to pay tax in respect of the total income at following rates:

Total income	Tax rate
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%

From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

Additional Points for A, B and C above:

The amount of income-tax computed as per the above-mentioned provisions shall be increased by surcharge. The rates of surcharge are as under:

Sr. No.	Particulars	Rate of surcharge
1.	If the total income of the person exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10% of income tax
2.	If the total income of the person exceeds Rs. 1 crore but does not exceed 2 crores	15% of income tax
3.	If the total income of the person exceeds Rs. 2 crores but does not exceed 5 crores (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act)	25% of income tax
4.	If the total income of the person exceeds Rs. 5 crores (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act)	37% of income tax

Note:

a. For the income by way of dividend or income under the provisions of section 111A and 112A of the Act, the maximum surcharge would be restricted to 15%.
b. Health and Education Cess – 4% of income-tax including surcharge.
c. Rebate u/s 87A - Rebate of 12,500 or Income-tax whichever less, is available for a resident, if total income does not exceed Rs. 5,00,000.

E. For Cooperative Societies (rates remain unchanged)

Total income	Tax rate
Less than or equal to Rs. 10,000	10%
From Rs. 10,001 to Rs. 20,000	20%
Above Rs. 20,000	30%

Additional Points:

a. The amount of income-tax computed as per the above-mentioned provisions shall be increased by surcharge. In case the total income of the co-operative society exceeds Rs. 1 crore – 12% of such income-tax.
b. Health and Education Cess – 4% of income-tax including surcharge.

Note: A co-operative society resident in India shall have the option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of section 115BAD, subject to fulfilment of certain conditions. However, surcharge would be charged at 10% in such cases.

F. <u>For Firm or Local Authority (Rates remain unchanged)</u>

Total income	**Tax rate**
On the whole of the total income	30%

Additional Points:

a. The amount of income-tax computed as per the above-mentioned provisions shall be increased by surcharge. In case the total income of the firm or local authority exceeds Rs. 1 crore – 12% of such income-tax.

b. Health and Education Cess – 4% of income-tax including surcharge.

G. <u>For Companies (rates remain unchanged)</u>

Particulars	**Basis**	**Tax Rate**
Domestic Company	Where its total turnover or the gross receipt in the financial year 2019-20 does not exceed Rs. 400 crores.	25%
Domestic Company	Companies other than those referred Above	30%
Domestic Company	Companies opting Section 115BAA subject to fulfillment of certain conditions	22%
Domestic Company	New Manufacturing Companies opting Section 115BAB subject to fulfillment of certain conditions	15%
Foreign Company	Total Income	40%
Minimum Alternate Tax	Book Profits	15%

Additional Points:

a. The rates of surcharge are as under:

Particulars	Domestic Company	Foreign Company
Total Income less than Rs. 1 crore	0%	0%
Total Income more than Rs. 1 crore but less than Rs. 10 crores	7%	2%
Total Income more than Rs. 10 crores	12%	5%
Companies opting taxation u/s 115BAA and 115BAB (irrespective of the total income)	10%	NA

b. Health and Education Cess – 4% of income-tax including surcharge.

2. INCOME UNDER THE HEAD SALARIES

2.1. Taxability of Interest income on funds where income is exempt

Finance Act, 2021 inserts provisos to Secs. 10(11) and 10(12) to grant exemption available on (i) payment from a provident fund to which the ProvidentFunds Act, 1925 applies, and (ii) accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule, shall not apply to the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the aggregate of amounts of contribution made by that person exceeding Rs. 2,50,000 (two lakh and fifty thousand rupees) in any previous year in that fund, on or after April 1, 2021 and computed in such manner as may be provided by rules.

Further, provides that if there is no contribution by the employer, the amount of contributions exceeding Rs. 5 lakhs (rupees five lakh rupees) shall not be exempt u/s 10(11)/10(12).

The amendments will take effect from 1st April, 2022 and will, accordingly, apply inrelation to the assessment year 2022-2023 and subsequent assessment years.

3. PROFITS AND GAINS FROM BUSINESS OR PROFESSION

3.1. Tax audit for SMEs

Clause (a) of Sec. 44AB provides for audit of accounts for every person carrying on business, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year. In order to reduce compliance burden on small and medium enterprises, the threshold limit was increased to five crores rupees, through Finance Act, 2020, where, (i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt and (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

In order to incentivize non-cash transactions, to promote digital economy and to further reduce compliance burden of small and medium enterprises, Finance Act, 2021 amends the section in order to increase the threshold limit from **"five crore rupees" to "ten crore rupees".**

Further, inserts proviso to the section to clarify that payments or receipt by cheque or bank draft which is not account payee, shall be deemed to be in cash.

This amendment will take effect from April 1, 2021 and will, apply in relation to the AY 2021-2022 and subsequent AYs.

3.2. Payment by employer of employee contribution to a fund on or before due date

Sec. 43B (providing for deduction of certain items on payment basis) includes only employers' contribution and does not cover employee's contribution. However, some courts have applied the provision of Sec. 43B on employee contribution as well.

Distinguishing the contribution from employer and employee and stressing that employee's contribution is employee's own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity, Finance Act, 2021 amends Sec. 36(1)(i)(va) and Sec. 43B.

In order to curb this undue enrichment by the employer and to provide certainty amends Sec. 36(1)(va) by inserting another Explanation to the clause clarifying that, provision of Sec. 43B does not apply and deemed to never have been applied for the purposes of determining the "due date" under this clause.

Further, Finance Act, 2021 amends Sec. 43B by inserting Explanation 5 clarifying that provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of Sec. 2(24)(x) applies.

These amendments will take effect from April 1, 2021 and will accordingly apply to theassessment year 2021-22 and subsequent assessment years.

3.3. Presumptive taxation for professionals under section 44ADA

Presently, the provisions of section 44ADA on presumptive taxation are applicable to individuals, HUF, and partnership firms engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year. The section is not applicable to LLPs for the reason that LLPs are anyway required to maintain books of accounts under LLP Act.

Finance Act, 2021 amends the section to clarify that LLPs do not fall within the ambit of the section.

This amendment will come into force from April 1, 2021 and will, accordingly, apply inrelation to the assessment year 2021-2022 and subsequent assessment years.

3.4. Minimum Alternate Tax (MAT)

Computation of book profit u/s. 115JB does not provide for any adjustment for an additional income in cases where past year income is included in books of account of current year on account of an Advance Pricing Agreement entered u/s 92CC or a secondary adjustment u/s 92CE.

Finance Act, 2021 inserts, sub-sec. (2D) to Sec. 115JB to provide that the Assessing Officer shall, on an application made by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner, only in cases where the assessee has not utilized the MAT credit of taxes paid in any subsequent year under section 115JAA.

Further, the amendment clarifies that in case of a refund arising to the assessee as a result of the provisions of sub section (2D), no interest shall be payable on such refund to the assessee.

The amendment also clarifies that the period of four years specified in Sec. 154(7) shall be reckoned from the end of the financial year in which the said application is received by the AO.

The amendment also provides with an overriding effect that Sec. 115JB(2D) applies to an assessment year beginning on or before April 1, 2020.

Considering that dividend income is no longer exempt in the hands of the shareholders, the said income and the related expenditure is no longer to be reduced and added back for arrival of book profits u/s 115JB. It is accordingly clarified that dividend income earned by foreign companies on their investments in India and the expense claimed in respect thereof are reduced and added back(by way of amendment to clause (fb) and clause (iid) to Explanation 1 to Sec. 115JB), while computing book profit in case of foreign companies where such income is taxed at a rate lower than MAT rate due to DTAA.

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

3.5. Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units

Sec. 43CA provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by the stamp valuation authority, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration.

However, a safe harbour of 10% is provided wherein if the stamp duty valuation does not exceed 110% of the consideration declared, the consideration sodeclared shall be deemed to be the full value of consideration.

In order to boost the demand in the real-estate sector and to enable the real- estate developers to liquidate their unsold inventory at a lower rate to home buyers, the safe harbour limit is increased from 10% to 20% if the following conditions are satisfied:

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

- The transfer is by way of first time allotment of the residential unit to anyperson.
- The consideration received or accruing as a result of such transfer doesnot exceed Rs. 2 Cr.

Inserts an Explanation to the Sec. 43CA to define the expression "residential unit" to mean an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.

Consequential amendment is also made in Sec. 56(2)(x) to increase the safe harbour from 10% to 20%. Accordingly, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

These amendments will take effect from April 1, 2021 and will, accordingly, apply inrelation to the assessment year 2021-2022 and subsequent assessment years.

3.6. Depreciation on Goodwill

Memorandum Explaining Finance Bill, 2021, highlighted that while SC held that goodwill of a business or profession is a depreciable asset, the actual calculation of deprecation is to be carried out taking into consideration various provisions of the Act. Upon application of these provisions, in some cases, it results in no depreciation on account of actual cost being zero and in some other cases, avalid depreciation arises in accordance with the aforementioned ruling.

Seeing no justification in treating goodwill as a depreciable asset, it is now provided that goodwill of a business or profession will not be considered as depreciable asset and no depreciation can be claimed on it. In a situation where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains u/s 48 subject to the condition that if depreciation was obtained by assessee prior to AY 2021-22, the depreciation so obtained will be reduced from amount of purchase price of goodwill.

The following sections are amended to give effect to this amendment:

- Amendment to definition of 'block assets'

  Finance Act, 2021 amends clause (11) of section 2 to provide the block of

assets shall not include goodwill of a business or profession.

Likewise, amends Sec. 43(6)(c)(ii) defining written down value in case of block of assets to exclude goodwill of a business or profession from the block of asset. Provides that WDV of a block of assets shall mean WDV in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets and further reduced by:

- Increase or reduction referred to in Sec. 43(6)(c)(i), not being increase on account of goodwill of a business or profession, and
- In respect of AY 2021-22, where goodwill of business or profession was part of block of assets on which depreciation was obtained by assessee, reduction by an amount equal to the actual cost of goodwill as decreased by:
    a. Actual amount of depreciation allowed before April 1, 1988
    b. Amount of depreciation allowable on such goodwill after April 1, 1988 as if the goodwill was the only asset in the relevant block.

However, the amount of such reduction shall not exceed the value of WDV.

- Exclusion of Goodwill from definition of 'Intangible assets'

Clause (ii) of Sec. 32(1) provides for deduction of depreciation in case of intangible assets. Finance Act, 2021 amends clause (ii) of sub-section 1 of section 32 to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the clause and hence, not eligible for depreciation.

Explanation 3 to sub-section 1 of section 32 defines the expression 'assets' for purpose of section 32(1). Finance Act, 2021 amends the aforementioned explanation to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the sub-section.

- Amendments to computation of capital gains in case of depreciable asset

Sec. 50 provides for certain conditions for the applicability of provisions of Secs. 48 and 49 for computation of capital gains in case of depreciable assets, where the capital asset is an asset forming part of block assets in respect of which depreciation has been allowed.

Finance Act, 2021 inserts a new proviso as per which that in case where goodwill forms part of the block of assets for AY beginning on April 1, 2020, and depreciation thereon has been obtained by the assessee, the WDV of that block

and STCG, if any shall be determined in the manner as prescribed.

- Amendments relation to cost of acquisition of goodwill

  Clause (a) of Sec. 55(2) provides that for the purposes of Secs. 48 and 49, 'cost of acquisition' in relation to a capital asset, being goodwill of a business or a trade mark etc., the cost of acquisition by purchase from a previous owner, would be the purchase price, and in other cases will be taken as nil.

  Finance Act, 2021 amends clause (a) to provide that in cases falling under Sec. 49(1), sub-clauses (i) to (iv) if the asset is acquired from previous owner, thecost of acquisition would be the amount of purchase price for the previous owner.

  Also provides that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of Sec. 49(1)) and any deduction on account of depreciation u/s 32 has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after April 1, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to the AY commencing on April 1, 2021.

These amendments will take effect from April 1, 2021 and will accordingly apply to theassessment year 2021-22 and subsequent assessment years

3.7. Equalization Levy

Finance Act, 2021 amends Finance Act, 2016 to exclude the consideration taxable as royalty or FTS under the Act or DTAAs, from the ambit of amount received or receivable for e-commerce supply or services u/s 163.

Explains the definition of 'e-commerce supply or services' u/s 164 to include: (i) acceptance of offer for sale, (ii) placing of purchase order, (iii) acceptance of the purchase order, (iv) payment of consideration, (v) supply of goods or provision of services, partly or wholly.

Amends EL 2.0 u/s.165A to include consideration received or receivable from ecommerce supply or services for: (i) sale of goods regardless of their ownership by ecommerce operator, (ii) for provision of services regardless of such provision being made or facilitated by the e-commerce operator.

Amends Sec. 10(50) to exclude FTS and royalty taxed under the provisions of the

Act.

Amends the term “consideration received or receivable from ecommerce supply or services” in relation to sale of goods to exclude consideration for sale of goods which are: (i) owned by a person resident in India or (ii) by a PE in Indiaof a NR, if sale of such goods is effectively connected with such PE.

Likewise in relation with provision of services, amends the term “consideration received or receivable from ecommerce supply or services” to exclude consideration for provision of services which are: (i) provided by a person resident in India or (ii) by a PE in India of a NR, if provision of such service is effectively connected with such PE.

This Amendment is effective from April 1, 2020.

4. CAPITAL GAIN

4.1. Slump sale

Presently, sub-section (42C) of section 2 of the Act defines ‘slump sale’ to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases leading to interpretations by Courts that other means of transfer in relation to definition of the word ‘transfer’ in relation to capital asset like exchange, relinquishment etc. are excluded.

Finance Act, 2021 highlights it is the substance of transaction that is more important than the name given to it by the parties to the transaction.

Amends Sec. 2(42C) w.e.f. April 1, 2021 to the effect that the transfer of one or more undertakings "*by any means*" would constitute 'slump sale' and made at part with "*transfer"* defined u/s 2(47).

The amendment is justified by relying on SC rulings in *Dhampur Sugar Mills* and *Artex Manufacturing* to cover non-monetary consideration under 'transfer' which "*in effect and substance*" is in the nature of sale. The proposal effective overrules the Bombay HC ruling in *Bharat Bijlee* where distinction was drawn between slump sale and slump exchange.

Amends Section 50B(2) to provide that no benefit of indexation would be available and cost of acquisition and cost of improvement shall be deemed to be the net worth of the undertaking/division transferred in a slump sale. The net worth shall not include goodwill which has not been purchased by the assessee. FMV of the capital asset on the date of transfer shall be deemed to be full value consideration received or accruing from transfer.

This amendment will take effect from the April 1, 2021 and shall accordingly apply to theassessment year 2021-22 and subsequent assessment years.

4.2. Transfer of capital asset to partner

Finance Act, 2021 clarifies that Limited Liability Partnerships are not eligible for presumptive taxation of professional income u/s. 44ADA;

Also, rationalizes the provisions relating to taxation of the assets or amount received by partners from the partnership firm in excess of their capital contribution;

Considering that there is uncertainty regarding applicability of Sec. 45(4) to a situation where i) assets are revalued or ii) self-generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution, Finance Act, 2021 substitutes sub-section (4) of Sec. 45 to provide that in a case where a specified person (i.e. partner or member) receives any capital asset at the time of dissolution or reconstitution of the specified entity (partnership firm or AOP/BOI), the capital gains shall be chargeable to tax in the hands of such specified entity in the previous year in which the capital asset was received by the specified person.

- Further, prescribes a formula for determination of profits or gains chargeable as capital gains: A = B + C – D

  Where,

  A = Profits chargeable as capital gains B = Value of money received

  C = FMV of capital asset received

  D = Balance in capital account at the time of reconstitution

However, where the amount A turns out to be a negative figure, the capital gains shall be deemed to be zero

Further, the balance in capital account shall be considered without taking into account the increase in capital due to revaluation or self-generated goodwill/ any other asset.

This provision shall apply in addition to the provisions of Section 9B whichhas been inserted by Finance Act, 2021.

Further clarifies that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase due to revaluation / self-generated goodwill / asset;

Finance Act, 2021 inserts Sec. 9B as a deeming provision to tax the capital asset or stock-in-trade or both received by partner/member (specified person) in connection with the dissolution or reconstitution of specified entity (partnership firm/AOP/BOI) in the year of such receipt, in the hands of the specified entity.

Sec. 9B deems the receipt of the capital asset or stock-in-trade or both in the hands of the specified person as transfer leading to deeming of income in the hands of specified entity as either 'profits and gains of business or profession' or 'capital gains'.

The income so chargeable to tax shall be calculated as per the provisions of the Act by taking into account the fair market value of the capital asset or stock-in-trade or both on the date of receipt as full value consideration.

It is also clarified that difficulty arising in implementation of Secs. 9B and 45(4) shall be addressed by issuing guidelines

These amendments will be effective from the April 1, 2021 and will accordingly apply tothe assessment year 2021-22 and subsequent assessment years.

4.3. Unit linked insurance policy (ULIP)

Under the existing provisions of the Act, there is no cap on the amount of annual premium being paid by any person during the term of a life insurance policy. To curb the instances where high net worth individuals are claiming exemption under clause (10D) of section 10 (which provides for an exemption of the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy) by investing in ULIP with huge premium, amendments aremade as follows:

- ✓ Exclude unit linked insurance policy issued after 01.02.2021 where annual premium payable for any year exceeds Rs. 2.5 Lacs, and in case of multiple ULIPs, limits the exemption to ULIPs where aggregate annual premium payable is upto Rs. 2.5 Lacs.
- ✓ classify ULIPs as capital asset u/s 2(14).
- ✓ An amendment in section 45 to tax the bonus and profits arising from such ULIPs in the year of receipt calculable as per the method to be prescribed;
- ✓ Further, amends Explanation to Sec. 112A to tax such ULIPs at par with

equity oriented fund. Further, inserts second proviso to Sec.112A, to provide that where exemption u/s 10(10D) does not apply, the minimum requirement of 90%/65% (to qualify as equity oriented fund) is required to be satisfied throughout the term of the insurance policy.

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

5. EXEMPTIONS/DEDUCTIONS

5.1. Incentives for affordable rental housing

To help migrant labourers and to promote affordable rental, Finance Act, 2021 inserts sub-section (1A) u/s 80-IBA (providing for 100% deduction of profits derived from the business of developing and building affordable housing project)to extend the deduction u/s 80-IBA to such rental housing project which are notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.

The outer time limit for March 31, 2021 in this section for getting the affordable housing project approved, shall be extended to March 31, 2022 and same outer time limit be also provided for the affordable rental housing project. (Amendment to clause (a) of Sec.80-IBA(2))

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

5.2. Extension of Date of Sanction of Loan for Affordable Residential House Property

Sec. 80EEA provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to Rs.1.5 lakh where loan has been sanctioned during the period 1st April 2019 to 31st March 2021.

In order to help such first time home buyers further, amends the provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.

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

5.3. Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up

Sec.80-IAC provides for a deduction of 100% of profits derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years at the option of the assessee. The eligible start-up is required to be incorporated on or after April 1, 2016 but before April 1, 2021.

Sec.54GB provides for capital gains exemption arising from transfer of residential property owned by the eligible assessee, if the net consideration is utilized in subscription of equity shares of an eligible start-up. It has been provided that benefit is available only when the residential property is transferred on or before March 31, 2021.

In order to help eligible start up and help investment in them, the Finance Act, 2021:

- ✓ Amends the provisions of section 80-IAC to extend the date of incorporation from April 1st, 2021 to April 1st, 2022; and
- ✓ Amends the provisions of section 54GB to extend the date of transfer of residential property from March 31, 2021 to March 31, 2022.

These amendments will take effect from the 1st April, 2021.

5.4. Sovereign Wealth Fund (SWF) and Pension Fund (PF)

Finance Act, 2020 introduced new clause in Sec.10(23FE) to provide exemption to specified persons (SWF or PF) from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India subject to fulfilment of certain conditions. In order to rationalize the provision of this clause and to remove the difficulties in meeting some of the conditions, the followings amendments are made by Finance Act, 2021:

Alternate Investment Fund (AIF) can invest up to 50% in non-eligible investments:

- ✓ Relaxation in the condition of having 100% investment in eligible infrastructure company or domestic company through its holding company or NBFC-IFC/IDF to 50%.
- ✓ Allowing the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust (InvIT).
- ✓ Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or companies or in

InvIT is less than 100%.

Allowing investment through holding company: Presently, SWF/PF are not allowed to invest through holding company. Allows the same provided:

- ✓ Holding company should be a domestic company.
- ✓ It should be set up and registered on or after 1st April, 2021.
- ✓ It should have minimum 75% investments in one or more infrastructure companies or domestic company through its holding company or NBFC – IFC/IDF.

Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%.

Also allows investment in NBFC, Infrastructure Debt Fund (IDF)/ Infrastructure Finance Company (IFC): Presently, SWF/PFs are not allowed to invest in NBFC-IFC/IDF. Allows the same provided NBFC-IDF/IFC should haveminimum 90% lending to one or more infrastructure entities.

Exemption under this clause shall be calculated proportionately, in case if aggregate lending of NBFC-IDF or NBFC-IFC in infrastructure company or companies is less than 100%.

Permitting Loan or borrowings by SWF/Pension Fund: Presently, SWF/PFs are not allowed to have loans or borrowings or deposit or investments as thereis a condition that no benefit should endure to private person. It is provided that there should not be any loan or borrowing for the purpose of making investment in India. Provides that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India.

Allowing SWF/PF to undertake Commercial Activity: The condition prohibiting commercial activity is removed and replaced with a condition that SWF/PFs shall not participate in day to day operation of investee. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operation.

Liable to tax: Amends this sub-clause to provide that if pension fund is liable totax but exemption from taxation for all its income has been provided subsequently the foreign country under whose laws it is created or established, then such pension

fund shall also be eligible.

Rules to prescribe the method of calculation: Provides that the Central Government may prescribe the method of calculation of 50% or 75% or 90%referred above.

This amendment will take effect from April 1, 2021 and will accordingly apply to theassessment year 2021-22 and subsequent assessment years.

5.5. Exemption on income of institution established for financing infrastructure and development and income of developmental financial institutions licensed by RBI

Inserts Sec. 10(48D) exempting the income of institutions established for financing infrastructure and development set up by an act of Parliament for the period of 10 consecutive years beginning from the year in which the institution is set up.

Likewise, **i**nserts Sec. 10(48E) to exempt the income of developmental financial institutions licensed by RBI for the period of 5 consecutive years beginning from the year in which the institution is set up, extendable by another 5 years.

6. RETURN OF INCOME

6.1. Relaxation for few senior citizens from filing ITR

In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance burden on them, inserts a new section to provide a relaxation from filing the return of income, if the following conditionsare satisfied:

- ✓ The senior citizen is resident in India and of the age of 75 or more during the previous year.
- ✓ He has only pension income and interest from same bank in which he is receiving his pension income.
- ✓ This bank is a specified bank (Govt. shall notify a few banks to be notified banks).
- ✓ He shall be required to furnish a declaration to the specified bank containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under

Chapter VI-A and rebate allowable under section 87A of the Act,for the relevant assessment year and deduct income tax under Sec.194P on the basis of rates in force.

Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

This amendment will take effect from April 1, 2021.

6.2. Changes in due date for filing return of income in some cases

- Due date of filing of return for an assessee who is a partner in a firm which is liable to furnish an accountant report u/s 92E

  As the total income of a partner can be determined only after the books of accounts are finalized, extends the due date of filing of return of such partner in alignment with such firm which is liable to furnish an accountant report u/s 92E i.e. 30th November of the assessment year to align with the due date for filingtransfer pricing returns.

- Due date of filing of return for an assessee covered u/s 5A

  Sec 5A of the Act that provides for taxation of spouses governed by Portuguese Civil Code provides that any income earned by a partner whose accounts are to be audited are apportioned between the spouses and included in their total income. Since the due date for filing returns of the firm is 31st October of the AY, the due dates of filing of return for such partners were aligned to such due date. Extends the due date for the filing of original return of income in cases of spouses of such partners also to 31st October of the assessment year.

- Reduction in the time limit to file revised and belated return by three months

  Currently, belated/revised returns under sub-sections (4) and (5) of Sec. 139 respectively can be filed before the end of the assessment year or before the completion of the assessment whichever is earlier.

  With Department becoming more tech savvy, the time taken to conduct and complete such processes has greatly reduced. In the light of this development, reduces the time limit to file the revised and belated return by three months.

  Accordingly, now the belated return or revised return could now be filed three months before the end of the relevant assessment year (i.e., 31st December of the Assessment year as against 31st March of the assessment year) or before the completion of the assessment, whichever is earlier.

- Insertion of a proviso to Explanation in sec 139(9) (defective return) to eliminate ambiguity

  Sec 139(9) of the act provides the procedure to be followed in order to cure a defective return. The explanation to this section provides list of conditions, owing to which a return will be pronounced as defective.

  In order to address grievances that the aforesaid conditions create difficulties for both the taxpayer and the Department, inserts a proviso to Explanation empowering the board to notify the class of assessee, to whom such conditions shall apply or shall apply with modifications

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

6.3. Reduction of late fee u/s 234F

Reduces late fee on delay in filing returns of income u/s 139(1) from Rs. 5,000 to Rs. 1,000 for persons whose total income does not exceed Rs. 5 lakhs.

6.4. Insertion of section 234H

Introduces section 234H to levy fee for default relating to intimation of Aadhaar number by every person who has been allotted PAN number and who are eligible to obtain Aadhaar number and intimate such number to such authority within the time prescribed by Central Government in official gazette. The fee shall not exceed Rs. 1,000 and the person is required make the payment of fee at the time of intimation after the aforementioned date.

7. ASSESSMENT AND APPEALS

7.1. Reduction of time limit for completing assessment

Sec. 153 contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. In the recent times, various initiatives taken by the Department such as faceless assessment has eliminated the person-to-person interface between the taxpayer and the Department, thereby reducing the time taken for the completion of the assessment. Owing to this, it is now provided that the time limit for completion of assessment proceedings may be

reduced further by three months i.e. the limit for completing the assessment would be nine months from the end of theassessment year in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

Finance Act, 2021 inserts fourth proviso in Explanation 1 to Sec. 153 w.e.f. Feb 1, 2021 to provide that when assessee exercises option to withdraw application u/s 245M (applicable to withdrawal of pending application before ITSC), the period of limitation available for making an assessment order, after exclusion of the period commencing from application being filed before the ITSC upto the date of withdrawal of application, will not be less than one year and where such period is less than one year it shall be deemed to be extended to one year.

A proviso identical to the fourth proviso is inserted in Sec.153B

This amendment will take effect from April 1, 2021.

7.2. Allowing prescribed authority to issue notice under Section 142(1)(i)

Section 142 provides for conduct of inquiry before assessment. Currently the power to invoke notice under this section rests only with the Assessing officer.

In order to further Government's policy of making all the processes under the Act fully faceless and in order to enable centralized issuance of notices etc. in an automated manner, amends Sec. 142(1)(i) to empower the 'prescribed income- tax authority' besides the Assessing Officer to issue notice under the said clause.

This amendment will take effect from April 1, 2021

7.3. Income escaping assessment and search assessments

On account of assessments/reassessments/re-computations of income escaping assessment, to a large extent, being information-driven, a need was felt to completely reform the system of assessment or reassessment or re-computationof income escaping assessment and the assessment of search related cases.

In context of the above, a completely new procedure of assessment of such cases has been introduced. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.

Substitutes existing Sec.147 to allow the AO to assess or reassess or re-compute

any income escaping assessment for any assessment year, subject to the provisions of sections 148 to 153. Further, provides that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.

Substitutes existing Sec.148 with a new Sec.148. New Sec.148 provides that before such assessment or reassessment or re-computation, a notice is requiredto be issued u/s 148 along with a copy of the order passed u/s 148A requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable.

Further, new Sec.148 provides that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.Further provides that final objection raised by the CAG to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be consideredas information which suggests that the income chargeable to tax has escaped assessment.

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

Introduces new Sec.148A dealing with conducting inquiry, providing opportunity before issue of notice u/s 148. Provides that before issuing any notice u/s 148, AO shall:

- ✓ Conduct enquiry with respect to information which suggests that the income chargeable to tax has escaped assessment with the prior approval of specified authority.
- ✓ provide an opportunity of being heard to the assessee by serving a notice to show cause within such time, as may be prescribed, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued.

- ✓ Consider the response furnished by assessee and decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which reply is furnished or before the expiry of specified time or extended time allowed to furnish the reply.

Amends Sec.149 (which deals with time limit for issuance of notice) to provide that in normal cases, no notice shall be issued if 3 years have elapsed from the end of the relevant AY. In specific cases of serious tax evasion, where the Assessing Officer has in his possession, evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely toamount to Rs.50 lakhs or more, notice can be issued beyond the period of 3 years but not beyond the period of 10 years from the end of the relevant AY.

A new Sec.151 is inserted to provide that for the purpose of Sec.148, specified authority shall be Principal Commissioner of Income-tax or Principal Director of Income-tax or Commissioner of Income-tax or Director of Income-tax, if 3 years or less have elapsed from the end of the relevant AY; Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax orwhere there is no Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, Chief Commissioner of Income-tax or Director General of Income-tax, if more than 3 years have elapsed from the end of relevant AY.

Amends Sec.151A (dealing with faceless assessment of income escaping assessment) to provide that Central Govt. shall notify a scheme for conducting enquiries or issuance of show-cause notice or passing of order under section 148A.

Amends Sec.153A to restrict its scope to the cases where search is initiated u/s 132 or assets are requisitioned u/s 132 on or before March 31, 2021

Amends Sec.153C by inserting sub-section (3) to provide that Sec. 153C would not apply to cases where search is initiated u/s 132 or assets are requisitioned u/s 132 on or after April, 2021

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

7.4. Amendment to Sec.144B (Faceless Assessment)

Inserts sub-section (10) in Sec.144B to provide that the function of verification unit

may be carried out by verification units of other faceless centres set upunder provisions of this Act or any other scheme notified under the provisions of the Act. The request for verification to such other verification units may be assigned by the National Faceless Assessment Centre (NFAC).

7.5. Amendment to revisionary powers

Amends section 263 and grant powers to revise orders prejudicial to revenue, to Pr. CCIT or CCIT w.e.f. 1st November 2020, in addition to Pr. CIT.

7.6. Rationalisation of provisions relating to return processing and issuance of notice

Clause (a) to section 143(1) provides that at the time of processing of Return of Income u/s 139 or returns filed in response to notice u/s 142(1), the total income or loss would be computed after making adjustments mentioned in clauses (i) to (vi) of section 143(1)(a).

Finance Act, 2021 amends sub-clause (iv) to allow for adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income, sub-clause (v) is amended to give consequential effect to amendment made to Sec. 80AC by Finance Act, 2018.

It is further reduced the time limit for sending intimation under Sec. 143(1) of the Act from one year to nine months from the end of the financial year in which the return was furnished and time limit for issue of notice under Sec. 143(2) from six months to three months from end of financial return in which return is furnished.

These amendments will take effect from April 1, 2021

7.7. Faceless Proceedings before ITAT in a jurisdiction less manner

In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, it is imperative that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme.

In light of above, Finance Act, 2021 inserts new sub-sections (7), (8) and (9) in Sec.255 to provide that the Central Government may notify a scheme for the purposes of appeal disposal by the ITAT so as to impart greater efficiency,

transparency and accountability by eliminating the interface between ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible, optimizing utilization of the resources through economies of scale and functional specialization.

This amendment will take effect from April 1, 2021.

8. TDS/TCS/ADVANCE TAX

8.1. Sec. 194-IB

Presently, sub-section (4) of section 194-IB provides that in a case where the taxis required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

Finance Act, 2021 amends the said sub-section (4) to include reference of Sec.206AB i.e. where the tax is required to be deducted as per the provisions of section 206AB, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

This amendment will take effect from July 1, 2021.

8.2. TDS on purchase of goods

The Finance Act, 2021 inserts a new section 194Q to levy TDS at 0.1% on the buyers on any sum payable to a resident for purchases of goods, if the value or aggregate of values of purchase exceed fifty lakhs in the previous year. The provision is applicable only on buyers whose total sales, gross receipts orturnover from the business carried on by them exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchaseof goods is carried out.

However, if on a transaction tax is also required to be collected at source u/s 206C(1H) apart from deduction of tax at source under this section, then on that transaction only tax at source need to be deducted.

Presently, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIB shall furnish his PAN to the person

responsible for deducting such tax, failing which tax shall be deducted at the higher of the following rates namely, at the rate specified in the relevant provision of this Act; or at the rate or rates in force; or at the rate of twenty per cent. Inserts the second proviso so as to provide that where the tax is requiredto be deducted under section 194Q, the words "twenty per cent." Will be substituted by the words "five per cent."

This amendment will take effect from July 1, 2021.

8.3. Exemption of TDS on Dividend to business trust in whose hand dividend is exempt

As per the extant provisions, while dividend income and interest on securities paid by SPVs to Business Trusts has been exempted from tax in the hands of Business Trusts (Infrastructure Investment Trusts ("InvIT") and Real Estate Investment Trusts ("REIT")) u/s 10(23FC), the SPV paying such dividend is required to withhold tax on such dividend at the applicable tax rates providedu/s. 194. Sec. 194A which is applicable to payment of interest other than on securities provides a specific exemption on interest paid by SPV to Business trust. However, similar exemption is not provided in Sec. 194 for dividend income paid by SPVs to Business Trusts.

In order to cure this inconsistency between the chargeability of dividend income and withholding of tax with respect to such income in the hands of Business Trusts, Finance Act, 2021 amends second proviso to section 194 to provide that the provisions of this section shall also not apply to such income credited or paidto a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

This amendment will take effect retrospectively from April 1, 2020.

8.4. TDS to Foreign Institutional Investors (FIIs)

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

Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of DTAA rate as per Sec. 90/90A cannot be given at the time of tax deduction. The situation is different in

cases where the provision mandates TDS at rate in force, which position is affirmed by SC in case of PILCOM.

Finance Act, 2021 inserts a proviso to Sec. 196D(1) for case of a payee to whom an agreement referred to Sec. 90(1) / 90A applies and such payee has furnished the tax residency certificate, then the tax shall be deducted at the rate of 20% or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

This amendment will take effect from April 1, 2021.

8.5. Advance tax instalment for dividend income

Sec. 234C provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax instalments u/s 208. However, proviso to this section extends relaxation in some cases where the accurate determination of advance tax liability is not possible due to the intrinsic nature of the income excludes certain incomes.

Finance Act, 2021 includes dividend income (other than deemed dividend as per Sec. 2(22)(e)) in the above exclusion.

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

8.6. TDS/TCS on non-filer at higher rates

Presently, Sec. 206AA provides for higher rate of TDS for non-furnishing of PAN. Similarly, Sec. 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN.

To fulfil the need to have similar provisions to ensure filing of return of income by those people who have suffered a reasonable amount of TDS/TCS, the Finance Act, 2021 inserts Sec. 206AB in the Act as a special provision providing for higher rate for TDS for the non-filers of income-tax return. Similarly, inserts a Sec. 206CCA as a special provision for providing for higher rate of TCS for non- filers of income-tax return. TDS shall be higher of the followings rates:

a. twice the rate specified in the relevant provision of the Act; or
b. twice the rate or rates in force; or

c. the rate of five per cent

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

TCS rate u/s 206CCA would be higher of the following rates - twice the rate specified in the relevant provision of the Act; or the rate of five percent. If the provision of section 206CC is applicable to a specified person, in addition to the provision of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC.

Sec. 206AB applies on any sum or income or amount paid, or payable or credited, by a person (herein referred to as deductee) to a specified person and Sec. 206CCA of the Act would apply on any sum or amount received by a person (herein referred to as collectee) from a specified person. The Act defines a specified person to be a person who has not filed the returns of income forboth of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be.

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

9. SETTLEMENT OF CASES AND ADVANCE RULINGS

9.1. Constitution of Dispute Resolution Committee for small and medium taxpayers

Inserts a new Sec.245MA for preventing new disputes and settling the issue at the initial stage, which has the following features:

- ✓ The Central Government shall constitute one or more Dispute Resolution Committee (DRC), which shall resolve disputes of such persons or class of person which specified, by the Board. Assessee would have an option to opt for or not opt for the dispute resolution through the DRC.

- ✓ The disputes only where the returned income is Rs.50 lakhs or less (if there is a return) and the aggregate amount of variation proposed in specified order is Rs.10 lakhs or less shall be eligible to be considered by the DRC, while specified order based on a search initiated under Sec.132 or requisition made under Sec.132A or a survey initiated under Sec.133A or information received

under an agreement referred to in Sec.90 or Sec.90A, shall not be eligible for being considered by the DRC.

- ✓ Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified. The Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision.

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

- ✓ The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution under this provision.

This amendment will take effect from April 1, 2021.

9.2. Constitution of the Board for Advance Ruling

In order to combat difficulties caused due to positions of Members of the AAR Bench, a need was felt to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner. Hence, a Board of Advance Ruling shall be constituted to replace the existing AAR.

Sec. 245N is amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.

Sec.245O is amended to insert a proviso in sub-section (1) of said section so as to provide that the Authority constituted under the said sub-section shall ceaseto operate on and from such date as may be appointed by the Central Government by notification in the Official Gazette.

Sec. 245-OB is inserted to provide for the constitution of the Board of Advance Rulings.

Sec.245P (relating to vacancies, etc., not to invalidate proceeding) is amended to insert sub-section (2) so as to provide that on or from the notified date, the

provisions of the said section shall have effect as if for the words 'Authority', the words – 'Board for Advance Rulings' had been substituted.

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

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

The Central Government would be empowered to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Board of Advance Ruling under this provision.

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

Sec.245T (which deals with advanced ruling to be void in certain circumstances) is amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words 'Authority', the words 'Board for Advance Rulings' had been substituted. It is also provided that a specific reference to advance ruling pronounced by the Authority shall be amended to make it advance ruling pronounced under sub-section (6) of Sec.245R so that the Board for Advance Ruling can also exercise powers under the said section in respect of rulings pronounced by the present Authority.

Under Sec.245U (which deals with powers of powers of Authority), inserts sub-section (3) to provide that on and from such date as may be appointed by the Central Government by notification in the Official Gazette, the powers of the Authority under this section shall be exercised by the Board for Advance Rulings and the provisions of this section shall apply *mutatis mutandis* to the Board for Advance Rulings as they apply to the Authority.

Amends Sec.245V to provide that nothing contained in the said section shall apply on and after the notified date.

Inserts new Sec.245W to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling, which can be filed by the applicant as well as the Department within 60 days from the date of communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal.

References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in Sec.245N and in Sec. 245Q relating to application for advance ruling are omitted.

These amendments will take effect from April 1, 2021.

10. TRUSTS/CHARITABLE INSTITUTIONS

10.1. Raising of prescribed limit for exemption under sub-clause (iiiad) and (iiiae) of clause (23C) of section 10 of the Act

Sub-clause (iiiad) of clause (23C) of Sec.10 provides for exemption for income received by any person on behalf of university or educational institution as referred to in that sub-clause.

Sub-clauses (iiiae) of clause (23C) Sec.10 provides for exemption for income received by any person on behalf of hospital or institution as referred to in that sub-clause.

The presently prescribed limit for these two sub-clauses is Rs 1 crore as per Rule 2BC of the Income-tax Rule

In order to provide benefit to small trust and institutions, the exemption under the said sub-clauses is increased to Rs.5 crores from Rs.1 crore

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

10.2. Rationalization of the provision of Charitable Trust and Institutions to eliminate possibility of double deduction while calculating application or accumulation

Finance Act, 2021 raises the annual receipts threshold from Rs. 1 cr. to Rs. 5 cr. for claiming exemption u/s. 10(23C) w.e.f. April 1, 2022 by universities, educational institutions and hospitals or other institutions under sub-clauses (iiiad) and (iiiae), respectively.

Provides that in order to qualify for exemption u/s. 10(23C) / 11(1) on corpus fund, a specific investment fund as per modes of investments prescribed u/s 11(5) for investing voluntary contribution meant for the corpus fund shall be maintained

Further bars the set-off of preceding years' excessive application for arriving at the amount of application of income. Memorandum justifies the proposal by mentioning instances where double deduction is claimed by applying the loan forcharitable or religious purposes at the time of receipt and repayment which results in paper loss which is carried forward leading to unintended short- application (less than 85%) in succeeding years.

This Amendment is effective from April 1, 2022.

11. OTHERS

11.1. Definition of the term "Liable to tax"

Finance Act, 2021 inserts clause (29A) to Sec. 2, which defines 'liable to tax' in relation to a person and with reference to a country, to mean that there is an income tax liability on such person under the law of any country and shall includea case where subsequent to imposition of such tax liability, an exemption has been provided.

This amendment will take effect from April 1, 2021 and will, accordingly, apply in relationto the assessment year 2021-22 and subsequent assessment years

11.2. Amendment to sections 97-98, 100-101 of Finance (No. 2) Act 2004

Pursuant to the amendment to taxation of proceeds relating to ULIP, Sec. 97 is amended to include sale or surrender or redemption of a unit of an equity oriented fund to the insurance company, on maturity or partial withdrawal, with respect to unit linked insurance policy issued by such insurance company on or after February 1, 2021, under the definition of "taxable securities transaction". Clause (13A) is inserted to the said section define the expression "unit linked insurance policy".

Inserts serial number 5A and entries relating thereto in the Table u/s 98 of Finance (No. 2) Act, 2004 to provide that the rate of 0.001% for sale or surrender or redemption of a unit of an equity oriented fund to an insurance company, on maturity or partial withdrawal, with respect to unit linked insurance policy issued by such insurance company on or after February 1, 2021.

Consequentially amends sections 100 and 101 of the said Act so as to include insurance company within their purview.

11.3. Addressing mismatch in taxation of income from notified overseas retirement fund

Sec. 89A is introduced in order to delineate the mismatch in year of taxability of withdrawal from retirement funds by residents who had opened such funds when they were non-resident in India and resident in foreign countries where such withdrawals may be taxed on receipt basis in foreign countries and on accrual basis in India.

Sec. 89A provides for the manner in which the income of a "specified person" from "specified account" shall be taxed as prescribed by Central Government.

Definitions : (i) "Specified person" is defined as a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. (ii) "Specified account" is defined as anaccount maintained in a notified country which is maintained for retirementbenefits and the income from such account is not taxable on accrual basis and istaxed by such country at the time of withdrawal or redemption. (iii) "Notified country" is proposed to be defined as a country as may be notified by the Central Government in the Official Gazette for the purposes of this section.

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

11.4. Provisional attachment in Fake Invoice cases

Section 281B provides for the provisional attachment of any property belonging to the assessee by the Assessing Officer, with the prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax, in case of pending assessment or reassessment proceedings so as to protect the interest of revenue.

Amends sub-section (1) of the said section so as to provide that the aforesaid provisional attachment of a property of the assessee may also be made during the pendency of proceedings for imposition of penalty under section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under that section exceeds two crore rupees.

This amendment will take effect from April 1, 2021.

11.5. Income Declaration Scheme (IDS) amendment

The Income Declaration Scheme, 2016 (the Scheme) contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to come clean and make payment of tax, surcharge and penalty as per the provisions of the Scheme. The Scheme commenced on June 1, 2016.

Presently section 191 of the Finance Act, 2016, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable. A proviso was subsequently inserted in section 191 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable.

Amends the aforesaid section so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest.

This amendment will take effect retrospectively from June 1, 2016.

11.6. Scope of Vivad se Vishwas Act, 2020

The VsV Act, 2020 was introduced with a twin objective of reducing the pending litigation and generating timely income for the Government. The scheme extends to appeals, writ petitions, SLP, and arbitration filed by tax payer of department on or before January 31, 2020.

FAQ 63 of CBDT circular was issued on December 04, 2020, restricting the applicability of the VsV Act on settlement commission cases. Pursuant to that, writ petitions were filed by aggrieved assessee's challenging the circular.

The Finance Act, 2021 amends the definitions of 'appellant' in Sec. 2(1)(a), 'disputed tax' in Sec. 2(1)(j) and 'tax arrear' in Sec. 2(1)(o) under the VsV Act to clarify the original legislative intent that ITSC provides for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment, and that the VsV Act was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case by ITSC.

Further, provides that assesses aggrieved by the orders of Settlement Commission challenged in writ petitions or SLP would stand excluded. Likewise, provides that sums payable pursuant to order of Settlement Commission would fall out of the ambit of VsV Act.

The said amendments shall take effect retrospectively from March 17, 2020.

11.7. Tax incentives to International Financial Services Centre (IFSC)

In order to make location in IFSC more attractive, the following additional incentive is provided:

Relaxation of conditions specified in Sec.9A in certain cases: Amends section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of Sec.9A(3) or clauses (a) to (d) of Sec.9A(4) shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before March 31, 2024.

Finance Act, 2021 amends Sec. 10(4D) (exempting capital gains arising ontransfer of GDR/ bonds By Category-III AIF) so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or

received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.

Amends the expression "specified fund" to include under the purview the investment division of offshore banking unit which has been granted a category I AIF registration and fulfils other conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit (new clause (aa) to be inserted in the explanation to Sec.10(4D)) is defined as an investment division of a banking unit of a non-resident located in an International Financial Services Centre and which has commenced operation on or before March 31, 2024.

Inserts new clause (4E) in Sec. 10 so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC which commenced operations on or before March 31, 2024 and fulfils prescribed conditions.

Insert new clause (4F) in of section 10 of the Act so as to exempt any income ofa non-resident by way of royalty or interest on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre as defined in Sec.80LA(1), if the unit has commenced operation on or before March 31, 2024.

Inserts new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident or a 'specified fund', which is on account of transfer of share of a company resident in India by the resultant fund or specified fund to the extent attributable to the units held by non-resident with no PE in India and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place. Also defines the terms 'Original fund', 'Relocation' and 'Resultant Fund' in this regard.

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

Consequential amendments made in section 49 (Cost of acquisition), 56 (Income

from other sources) and 79 (Set-off & carry forward of losses in companies) on account of such relocation.

Amends the Sec. 80LA of the Act to:

- ✓ provide that deduction under said section is also available to a unit of IFSC if it is registered under the International Financial Services Centre Authority Act, 2019 and thereby removing the earlier requirement ofobtaining permission under any other relevant law.
- ✓ provide that the income arising from transfer of an asset, being anaircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.
- ✓ provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.
- ✓ Amendment to definition of 'Global Depository Receipt' u/s 115ACA - Expands the definition of 'Global Depository Receipt' u/s 115ACA by including instruments created by International Financial Services Centre within its ambit, in addition to instruments created by Overseas Depository Bank. International Financial Services Center will have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005
- ✓ Amendment to section 115UB - Widens the scope of section 115UB by including investment funds established and regulated under 'International Financial Services Centers Authority Act, 2019'.

11.8. Facilitating strategic disinvestment of public sector company

Finance Act, 2021 relaxes the provisions of Sec. 2(19AA) (prescribes condition for transfer to be demerger) and Sec. 72A (provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.) for public sector companies in order to facilitate strategic disinvestment by the Government.

Sec. 2(19AA) is amended to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if:

- ✓ such reconstruction or splitting up has been made to transfer any asset of the

demerged company to the resultant company, and

- ✓ the resultant company is a public sector company on the appointed date, and
- ✓ fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

Amends Sec. 72A(1) by substituting clause (c) to provide that the provision of Sec.72A(1) shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.

Inserts clause (d) to provide that the provision of Sec.72A(1) shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies if:

- the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
- the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

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

Inserts an Explanation to sub-section (1) to define “Control”, “Erstwhile public sector company” and “Strategic Disinvestment”

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

11.9. Provisions of Sec.115AD to apply to investment division of an offshore banking unit

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

Also inserts a proviso in Sec.115AD(1)(i) clarifying that the amount of tax calculated

on income by way of interest u/s 194LD shall be @ 5%.

These amendments will take effect from April 1, 2022 and will accordingly apply to theassessment year 2022-23 and subsequent assessment years.

11.10. Tax Neutral Conversion of Urban Cooperative Bank into Banking Company

The Reserve Bank of India (RBI) has permitted voluntary transition of primary cooperative bank [urban co-operative banks (UCB)] into a banking company by way of transfer of Assets and Liabilities vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.

The existing Sec.44DB provided that in the case of business re-organization of cooperative banks, the deductions under sections 32, 35D, 35DD and section 35DDA will be apportioned between the predecessor co-operative bank and the successor cooperative bank in the proportion of the number of days before and after the date of business reorganization. Further, transfer of a capital asset by the predecessor cooperative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization is also not regarded as transfer u/s 47.

Expands the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under Sec. 44DB shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company. Likewise, provides thattransfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion and consequential share allotment to shareholders of co-operative society shall not be treated as transfer undersection 47.

These amendments will take effect from April 1, 2021 and will accordingly apply to theassessment year 2021-22 and subsequent assessment years.

11.11. Issuance of zero coupon bond by infrastructure debt fund

Existing Sec.2(48) provides for definition of zero coupon bond, as a bond issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank and in respect of which no payment and benefit is received or receivable before maturity or redemption. In order to enable infrastructure debt fund (notified u/s 10(47)) to issue zero coupon bond necessary amendments are made in clause (48) of section 2 of theAct.

Finance Act, 2021 amends the said clause so as to insert infrastructure debt fund in sub-clauses (a) and (b) thereof so as to enable notified infrastructure debt fund also to issue zero coupon bonds.

Rules 2F (Guidelines for setting up an Infrastructure Debt Fund for the purpose of exemption under clause (47) of section 10) and 8B (Guidelines for notification of zero coupon bond) of Income-tax Rules shall be amended subsequently. Consequential amendment has also been made in section 194A(3)(x) which will take effect from April 1, 2021.

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

11.12. Discontinuance of Income-tax Settlement Commission

Income-tax Settlement Commission (ITSC) shall be discontinued and Interim Board of settlement for pending cases would be constituted. The various amendments made are as under:

- ✓ ITSC shall cease to operate on or after 1st February, 2021 and no application u/s. 245C for settlement of cases shall be made on or after 1st February, 2021.

- ✓ Central Government shall constitute 1 or more Interim Board to settle pending applications consisting of 3 members each being an officer of the rank of Chief Commissioner, as may be nominated by the Board.

- ✓ On and from Feb 1, 2021, all the powers vested in the hands of ITSC shall mutatis mutandis vested in the hands of the Interim Board.

- ✓ The amendments *inter-alia* provide for which cases shall be treated as 'pending applications' for this purpose, withdrawal of pending applications etc.

These amendments will take effect from February 1, 2021

11.13. Adjudicating authority under Benami Transactions (Prohibition) Amendment Act, 2016

Presently, Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (PMLA), and the Appellate Tribunal

established u/s 25 of PMLA is performing the functions of the respective counterparts of the Prohibition of Benami Property Transactions Act, 1988 (PBPT).

Provides that the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act w.e.f 1st July, 2021. Further extends the period of limitation under sub-section (7) of section 26 of the PBPT Act to provide that where the time limit for passing order under subsection (7) of section 26 of the PBPT Act expires during the period beginning from 1st July, 2021 and ending on 29th September, 2021, the time limit for passing such order shall stand extended to September 30, 2021.

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About Us:

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