



Tax Research Foundation

PRESENTS

BUDGET 23 ANALYSIS



Clause-by-Clause



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He has delivered more than 3000 lectures at national and international level. He is visiting faculty member at **National Academy of Direct Taxes, Nagpur and other regional campuses, Shri Ram College of Commerce**, ICAI, ICSI, ICWAI and Management Institutes. He is also faculty member of Certification Course on International Taxation for CAs. He was special invitee of **Direct Tax Committee of ICAI and International Taxation Committee of ICAI**. He has experience of handling various International Taxation including Transfer Pricing matters of big corporate.

He worked as Finance Analyst in P & G. He has won many laurels during school, college and CA student life. He presented many papers in International, National and regional conferences on various topics of Tax. He is a good orator and held many responsible positions.



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1. Tax Rates

i. Personal Tax Rates

New Tax Regime [Mandatory if not opted for old]

Individuals

Income (Rs)	Proposed rate of tax (AY 2024-25)
Upto 3,00,000	Nil
3,00,001-6,00,000	5%
6,00,001-9,00,000	10%
9,00,001 – 12,00,000	15%
12,00,001 – 15,00,000	20%
Above 15,00,000	30%

**Note- No deduction available except mentioned below.*

- Standard Deduction U/s 16(ia)
- Family Pension U/s 57(iia)
- Deposited in the Agniveer Corpus Fund u/s 80CCH(2)

Option (Old Regime) [Need to be opted]

Individuals other than Senior Citizen

Income (Rs)	Proposed rate of tax (AY 2024-25)
Upto 2,50,000	Nil
2,50,001-5,00,000	5%
5,00,001-10,00,000	20%
10,00,001 and above	30%

Senior Citizen (Between 60 – 80 years of age)

Income (Rs)	Proposed rate of tax (AY 2024-25)
Upto 3,00,000	Nil
3,00,001-5,00,000	5%
5,00,001-10,00,000	20%
10,00,001 and above	30%

Super Senior Citizen (Between above 80 years of age)

Income (Rs)	Proposed rate of tax (AY 2024-25)
Upto 5,00,000	Nil
5,00,001-10,00,000	20%
10,00,001 and above	30%

Note: Cess of 4% is leviable on the amount of income tax and surcharge, if any.

Rebate u/s 87A available for a resident Individual (whose income does not exceed 7,00,000). The amount of rebate is 100% of income tax calculated before education cess or 25000 whichever is less i.e. no tax under new regime upto Rs. 7 lakhs of Income.

Rebate u/s 87A continues under Old Regime for a resident individual (whose income does not exceed 5,00,000). The amount of rebate is 100% of income tax calculated before education cess or 12,500 whichever is less.

Surcharge to be added

Income (Rs)	Proposed rate of tax (AY 2024-25)	Rate of Tax (AY 2023-24)	Proposed rate of tax (AY 2024-25)	Rate of Tax (AY 2023-24)
	New Regime		Old Regime	
Upto 50 Lakhs	Nil	Nil	Nil	Nil
50 Lakhs -1 Crore	10%	10%	10%	10%
1 Crore- 2 Crore	15%	15%	15%	15%
2 Crore – 5 Crore	25%*	25%*	25%*	25%*
Above 5 Crore	25%*	37%*	37%*	37%*

*Surcharge on Dividend income and capital gains u/s 111A, 112 & 112A will be restricted to 15% only.

ii. Corporate Tax Rates

Income	Proposed rate of tax (AY 2024-25)
Domestic Company having total income less than 1 Crore	30%*
Domestic Company having total income more than 1 Crore but less than 10 Crore	30%* plus surcharge of 7%
Domestic Company having total income more than 10 Crore	30%* plus surcharge of 12%
Other Company having total income less than 1 Crore	40%
Other Company having total income more than 1 Crore but less than 10 Crore	40% plus 2%
Other Company having total income more than 10 Crore	40% plus 5%

Note: Cess of 4% shall be levied over and above the above taxes.

**Reduced rate of 25% shall be applicable where total turnover / receipts in the last P.Y. does not exceed Rs 400 Cr*

iii. Firms

Flat tax rate of 30% and surcharge @ 12% of income tax if net income exceeds Rs 1 Cr. Additionally, cess of 4% is applicable.

iv. Cooperative Societies

Particular	Rate of Tax
Having total income of less than 10,001	10%
Having total income of more than 10,000 but less than 20,001	1,000 plus 20% of total income in excess of Rs.10,000
Having total income of more than 20,000	3,000 plus 30% of total income in excess of Rs. 20,000

Surcharge to be added

Income (Rs)	Proposed rate of tax	Old rate of Tax
	(AY 2024-25)	(AY 2023-24)
Upto 1 Crore	Nil	Nil
1 Crore- 10 Crore	7%	7%
Above 10 Crore	12%	12%

Additionally, cess of 4% shall be levied.

A co-operative society resident in India have the option to pay tax at 22%, as per the provision of Section 115BAD, Surcharge would be at 10% on such tax.

A co-operative society resident in India have the option to pay tax at 15%, as per the provision of Section 115BAE, Surcharge would be at 10% on such tax.

2. Individual Tax

2.1 New Taxability on tax-free income received from business trust [AY 2024-25]

Generally, Income earned by Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT) [commonly referred to as business trusts] are tax free in the hands of the trust and the same is taxable in the hands of unit holders as a pass-through income unless specifically exempted. Many times, these business trusts distribute the income to unit holders which is in the nature of Repayment of debt and the same will be treated as exempted income which lead to the situation of dual non-taxation.

In order to curb the said situation, a new provision has been inserted u/s 56(2)(xii) as follows:-

- (i) income chargeable to income-tax under the head “income from other sources” shall also include any sum, received by a unit holder from a business trust, which-
 - (a) is not in the nature of income as referred to in clause (23FC) or clause (23FCA) of section 10 of the Act; and
 - (b) is not chargeable to tax under sub-section (2) of section 115UA of the Act;
- (ii) where the sum received by a unit holder from a business trust is for redemption of unit or units held by him, the sum received shall be reduced by the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received;

2.2 Rationalisation of exempt income under life insurance policies [AY 2024-25]

It is proposed to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. This income shall be taxable under the head “income from other sources.” Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier. The proposed provision shall apply for policies issued on or after 1st April 2023.

2.3 Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property. [AY 2024-25]

Normally, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head “Income from house property” under section 24 of the Act.

Many assesseees are also claiming double deduction of interest paid on borrowed capital for acquiring, renewing or reconstructing a property. Firstly, it is claimed in the form of deduction from income from house property under section 24, and in some cases the deduction is also being claimed under other provisions of Chapter VIA of the Act. Secondly while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement under section 48 of the Act.

In order to prevent this double deduction, it is proposed to insert a proviso after clause (ii) of the section 48 so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA.

2.4 Relief for contribution to Agnipath Scheme and withdrawal thereof [AY 2023-24]

New clause 10(1)(12C) exempts the payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or their nominee.

New clause 17(1)(ix) provides that the contribution made by the Central Government to the Agniveer Corpus Fund account shall be considered as salary of that individual. A corresponding deduction of the same has been provided as mentioned above.

New Section 80CCH provides that a deduction of amount deposited by assessee and by the Central Government to Agniveer Corpus Fund Account, shall be allowed as deduction.

It is to be noted that the above deduction in respect of Govt contribution is allowed in the New regime. On the other hand,

deduction in respect of contribution made by assessee is NOT ALLOWED in new regime

‘Agnipath scheme’ is defined as a scheme for the enrolment in Indian Armed Forces introduced by the Central Government, and ‘Agniveer Corpus Fund’ as a fund defined in para 2(c) of Agnipath Scheme notified by the Central Government.

2.5 TDS deduction by EPFO in No-PAN cases [w.e.f. 01.04,2023]

It is proposed to omit second proviso to Sec 192A which requires that TDS is required to be deducted at maximum marginal rate in case of non furnishing of PAN. After omission of the said proviso, TDS @20% shall be deducted in such cases.

3. Business Taxation

3.1 No Set off of any loss or unabsorbed depreciation under section 44BB and section 44BBB [AY 2024-25]

The amendment made in under section 44BB & 44BBB by inserting a new clause that no set off of unabsorbed depreciation and brought forward loss of previous year shall be allowed to the assessee if any assessee declaring his income under provisions of presumptive taxation.

3.2 Relief to sugar co-operatives from past demand [AY 2024-25]

In the case of sugar mill co-operative, by virtue of amendment made in Finance Act 2015, w.e.f 01.04.2016 the amount paid for purchase of sugarcane at a price which is equal to or less than the price fixed by or fixed with the approval of the Government was allowed as deduction.

New sub-section 155(19) is inserted to provide that where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee, being a co-operative society engaged in the business of manufacture of sugar, and such deduction has been disallowed wholly or partly in any previous year commencing on or before the 1st day of April, 2014, the Assessing Officer shall, on the basis of an application made by such assessee in this regard, recompute the total income of the assessee for such previous year after allowing deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed or approved by the Government for that previous year, and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of previous year commencing on the 1st day of April, 2022.

3.3 Expenses payable to MSME to be allowed on actual payment basis [AY 2024-25]

In order to promote timely payments to MSME, a new clause (h) in section 43B is proposed to be added which ensures that any sum payable by the assessee to a micro or small enterprise beyond the

time limit specified in section 15 of the MSMED Act 2006 shall be allowed as deduction only on actual payment made during the year only.

Further, the relief of proviso to section 43B of the Act , which related to payments made on or before the due date of filing of return, shall not apply to such payments to MSME enterprises.

3.4 Extension of date of incorporation for eligible start-up for exemption [AY 2023-24]

The existing provisions of the section 80-IAC of the Act, inter alia, provides for a deduction of 100% profits and gains derived from an eligible business by an eligible start-up for 3 consecutive years out of 10 years, from the year of incorporation, at the option of the assessee subject to the certain conditions.

The sunset clause for incorporation of such startups is extended by 1 year to 1st April 2024.

3.5 Facilitating certain strategic disinvestment [AY 2023-24]

To facilitate strategic disinvestment, it is proposed to provide relaxation in the definition of 'strategic disinvestment' in section 72A as following:

- a. The first condition, i.e. reduction of its shareholding to below 51%, shall apply in case the shareholding was above 51% before such sale of shareholding.
- b. The second condition of requirement of transfer of control may be carried out by either the Central Government or State Government or Public Sector Company (or any two of them or all of them).

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

3.6 Concessional tax for new manufacturing co-operative society [2024-25]

New Section 115BAE provides for an option of concessional rate of taxation @ 15% for new manufacturing co-operative societies registered on or after 01.04.2023, and the co-operative societies are required to commence manufacturing or production of an article or thing on or before 31st March 2024.

The conditions are materially similar to the conditions applicable to new manufacturing companies

Conditions are as follows:

- i. the condition for concessional rate shall be that the total income of the new manufacturing co-operative society is computed,—
 - a) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 33AB or section 33ABA or sub- clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub- section (2AA) of section 35 or section 35AD or section 35CCC or under any of the provisions of Chapter VI-A other than the provisions of section 80JJAA;
 - b) without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in ii(a) above; and
 - c) by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed;
- ii. the loss and depreciation referred to in (ii)(b) above shall be deemed to have been given full effect to and no further deduction for such loss shall be allowed for any subsequent year.
- iii. the concessional rate shall not apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under section 139(1) for furnishing the first of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April,

2024 and such option once exercised shall apply to subsequent assessment years;

- iv. the option so exercised cannot be withdrawn;
- v. if the income of the assessee, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and in respect of which no specific rate of tax has been provided separately under this Chapter, such income shall be taxed at the rate of twenty-two per cent and no deduction or allowance in respect of any expenditure or allowance shall be made in computing such income;
- vi. where it appears to the Assessing Officer that, owing to the close connection between the assessee to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom and such income shall be charged at the tax rate of thirty per cent.;
- vii. in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F. The amount, being profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the assessee. The income-tax payable in respect of the income, in such case shall be computed at the rate of thirty per cent;
- viii. the income-tax payable in respect of income, being short term capital gains derived from transfer of a capital asset on which no depreciation is allowable under the Act shall be computed at the rate of twenty-two per cent;

- ix. where the assessee fails to satisfy the specified conditions under the section in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply to the assessee as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.
- x. Any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, on fulfilment of certain specified conditions.
- xi. Any machinery or plant or any part thereof previously used for any purpose is put to use by the assessee and the total value of such machinery or plant or part thereof does not exceed twenty per cent of the total value of the machinery or plant used by the assessee, then, the concessional rate shall apply on fulfilment of the specified conditions.
- xii. The assessee shall not be engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.
- xiii. Business of manufacture or production of any article or thing shall include the business of generation of electricity, but not include certain specified businesses.

Domestic Transfer Pricing provision will also apply in this case.

3.7 Losses of start-ups to be carried forward for 10 years from incorporation [AY 2023-2024]

Proviso to section 79(1) is amended so that the carried forward loss of eligible start-ups as referred to in section 80-IAC shall be considered for set off for the period of 10 years (instead of 7 years earlier) beginning from the year in which such company was incorporated, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off.

3.8 Relaxation for claiming deduction for preliminary expenditure [AY 2024-25]

It is proposed to amend section 35D of the Act to remove the condition of activity in connection with preliminary expenses to be carried out by a concern approved by the Board. For allowability of expenses, the assessee shall be required to furnish a statement containing the particulars of this expenditure within the prescribed period to the prescribed income-tax authority in the prescribed form and manner.

3.9 Increasing threshold limits for presumptive taxation schemes [AY 2024-25]

It is proposed to insert proviso u/s 44AD whereby the threshold limit is increased to Rs. 3 cr where the cash amount received during the previous year does not exceed 5% of Total Turnover or Gross receipt. Further, amount received by cheque or DD which is not account payee, shall be deemed to be received in cash.

It is proposed to insert proviso u/s 44ADA whereby the threshold limit is increased to Rs. 75 Lacs where the cash amount received during the previous year does not exceed 5% of Total Turnover. Amount received by cheque or DD which is not account payee, shall be deemed to be received in cash.

4. Capital Gain

4.1 Limiting the benefit of section 54 and section 54F [AY 2024-25]

In order to prevent the misuse of these sections, Amendment is proposed in the section 54 and 54F to impose a limit of capital gain exemption under section 54 and 54F to Rs. 10 cr. Further, if the cost of the new asset purchased is more than Rs. 10 cr, the cost of such asset shall be deemed to be Rs. 10 cr. This will limit the deduction under the two sections to ten crore rupees.

4.2 Special provision for taxation of capital gains in case of Market Linked Debentures [AY 2024-25]

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

4.3 Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC [AY 2024-25]

The existing provisions of the sub-section (5A) of section 45 of the Act, inter alia, provide that on the capital gain arising to an assessee (individual and HUF), from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in ‘cash’.

It has been noticed that the taxpayers are inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the

consideration for the purpose of computing capital gains chargeable to tax under sub-section (5A) of section 45. This is not in accordance with the intention of law as is evident from the provisions of section 194-IC of the Act which, inter alia, provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in sub-section (5A) of section 45, paid to the deductee in cash or by way of issue of a cheque or draft or any other mode. Accordingly, it is proposed to amend the provisions of sub-section (5A) of section 45 so as to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by a cheque or draft or by any other mode.

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

4.4 Conversion of Gold to Electronic Gold Receipt and vice versa [AY 2024-25]

Clause 47(viid) is inserted in order to exclude conversion of actual gold to Electronic Gold Receipt (EGR) and vice versa from definition of transfer which will result in no Capital Gain tax.

The cost of acquisition of the EGR for the purpose of computing capital gains shall be deemed to be the cost of gold in the hands of the person in whose name the Electronic Gold Receipt is issued and vice versa.

The holding period for the purpose of capital gains, would include the period for which gold was held by the assessee prior to its conversion into EGR. Similarly, provisions for conversion from gold to EGR are inserted.

5. Other Sources

5.1 Taxation of winnings from online games [AY 2023-24]

As per the proposed provisions of Section 194BA, any income earned from winnings from online games is liable for deduction of income-tax at source @ 30% of this Act.

5.2 Expanding the scope of section 56(2)(viib) [AY 2024-25]

Earlier, Section 56(2)(viib) of the Act provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'.

Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act. But, the provisions are not applicable to consideration received from non-resident i.e. FDI route.

Now, It is proposed to make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status to bring the non resident within the ambit of section 56(2)(viib) to eliminate the possibility of tax avoidance.

6. International Taxation

6.1 Gift to not-ordinarily resident taxable [AY 2024-25]

The existing provision of section 9(1)(viii) of the Act relating to taxability of gifts exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India shall be income deemed to accrue or arise in India and taxable. The scope of the said provisions has been extended to Resident and not ordinary residents (RNOR). In simple words, gifts received by RNOR from India will be taxable.

6.2 Withdrawal of exemption provided to news agency [AY 2024-25]

As per existing provision under clause (22B) of section 10 of Income tax act provides exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news. The said exemption has been withdrawn w.e.f. 01st April 2024.

6.3 Eliminating Double Taxation on distributed income from International Financial Services Centre [AY 2024-25]

The income received by the IFSC Banking Unit (IBU) from the investments made under the ODI contract is taxed as capital gains, interest, and dividend. Currently, only the income of non-residents on transfer of Offshore Derivative Instruments (ODI) is exempt from tax under section 10 (4E) i.e. Capital gain exempted. However, the distributed Income, i.e. Interest and dividend, has no such exemption.

Therefore, this income is taxed twice in India i.e. when it is received by the IBU and then when it is distributed to the non-resident ODI holders. To prevent double taxation, clause 10 (4E) is amended to include exemption for the income distributed to the non-resident ODI holders. In addition to old conditions, this exemption on distributed income applies only if it is already taxed in the hands of the IFSC Banking Unit.

6.4 Non applicability of Thin Capitalization Rules on NBFCs [AY 2024-25]

It is proposed to amend section 94B(3) so as to provide that the provision of thin capitalization rules relating to deductibility of interest shall not apply to such class of NBFCs as may be notified by the Central Government in the Official Gazette.

6.5 Tax treaty relief at the time of TDS under section 196A of the Act [w.e.f 01.04.2023]

It is proposed to insert a proviso to section 196A(1) of the Act which seeks to provide that the TDS would be deducted @20% or the rate or rates provided in the DTAA, whichever is lower, provided the non-resident furnishes TRC and Form 10F, if applicable.

7. Charitable Trust

7.1 Exemption to development authorities etc. [AY 2024-25]

Section 10(46) of the Act provides exemption to any specified income arising to a body or authority or Board or Trust or Commission if the said entity is not engaged in any commercial activity. This restriction on any body or authority or Board or Trust or Commission has been a litigated issue before the Apex Court.

In view of the observations made by Hon'ble Supreme Court of India in case of Ahmedabad Urban Development Authority, and to subdue further litigation, it is proposed to amend the Act, so as to exclude income of a body or authority or Board or Trust or Commission, not being a company, from the scope of clause (46) of section 10 of the Act and insert a new clause (46A) in section 10 of the Act for their income, thereby removing restriction of commercial activity from such entities.

New clause 10(46A) is also inserted to exempt any income arising to a body or authority or Board or Trust or Commission, not being a company, which has been established or constituted by or under a Central or State Act with one or more of the specified purposes and notified by the Central Government in the Official Gazette for the purposes of this clause.

7.2 Depositing back of corpus and repayment of loans or borrowings

In order to ensure proper implementation of both the exemption regimes, it is proposed to provide that application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid. It is further proposed to provide that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes. It is also proposed to provide that where the application from corpus or

loan did not satisfy the conditions as specified, the repayment of loan or investment/depositing back in to corpus of such amount will not be treated as application

7.3 Treatment of donation to other trusts:

- 7.3.1 The income of the trusts and institutions under both regimes is exempt subject to the fulfillment of certain conditions.
- 7.3.2 Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.
- 7.3.3 In order to ensure intended application toward charitable or religious purpose, it is proposed that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation.

7.4 Omission of redundant provisions related to roll back of exemption

- 7.4.1 There are roll back provisions for the trust or institutions under the second regime. Sub-section (2) of section 12A of the Act provides that where an application for registration under section 12AB of the Act has been made, the exemption shall be available with respect to the assessment year relevant to the financial year in which the application is made and subsequent assessment years.
- 7.4.2 Second proviso to sub-section (2) of section 12A of the Act provides that where registration has been granted to the trust or institution under section 12AA or section 12AB of the Act, then, the provisions of sections 11 and 12 of the Act shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration if the objects and activities of such trust or institution remain the same for such preceding assessment year.

- 7.4.3 Third proviso to sub-section (2) of section 12A of the Act provides that that no action under section 147 of the Act shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non- registration of such trust or institution for the said assessment year.
- 7.4.4 Fourth proviso to sub-section (2) of section 12A of the Act provides that provisions contained in the second and third proviso to sub-section (2) of section 12A of the Act shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time under section 12AA of the Act or section 12AB of the Act.
- 7.4.5 Second, third and fourth proviso to sub-section (2) of section 12A of the Act discussed above have become redundant after the amendment of section 12A of the Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Now the trusts and institutions under the second regime are required to apply for provisional registration before the commencement of their activities and therefore there is no need of roll back provisions provided in second and third proviso to sub-section (2) of section 12A of the Act.
- 7.4.6 With a view to rationalize the provisions, it is proposed to omit the second, third and fourth proviso to sub-section (2) of section 12A of the Act.

7.5 Combining provisional and regular registration in some cases

- 7.5.1 It has also been brought to the notice that trusts and institutions under both the regimes are facing the following difficulties:
- Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.
 - Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.

In order to ensure rationalization of the provisions, it is proposed to allow for direct final registration/approval in such cases.

7.6 Specified violations under section 12AB and fifteenth proviso to clause (23C) of section 10

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

7.6.2 In order to rationalise the provisions, it is proposed to, insert clause (g) in Explanation 2 to the fifteenth proviso of clause (23C) of section 10 of the Act to provide that the “specified violation” shall also include the case where the application referred to in the first proviso is not complete or it contains false or incorrect information.

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

7.7 Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income. The trusts are also required to furnish audit report in form 10B/10BB one month before the due date for furnishing return of income. The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report.

a. In order to rationalise the provisions, it is proposed to provide for filing of Form No. 10A/9A at least two months prior to the due date specified under sub-section (1) of section 139 for furnishing the

return of income for the previous year. Necessary amendments in this regard are proposed in,

- c) clause (c) of Explanation 3 to third proviso of clause (23C) of section 10 of the Act;
- d) clause (2) of Explanation 1 sub-section (1) of section 11 of the Act;
- e) clause (c) of sub-section (2) of the said section 11 of the Act.

7.8 Denial of exemption where return of income is not furnished within time

As per the provisions of twentieth proviso to clause (23C) of section 10 of the Act, if the return of income is not furnished by a trust or institution under first regime within the time under section 139 of the Act, exemption under sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act shall not be available to such trust or institution.

- a. Similarly, as per the provisions of clause (ba) of sub-section (1) of section 12A of the Act, if the return of income is not furnished by a trust or institution under the second regime within the time under section 139 of the Act, exemption under section 11, 12 of the Act shall not be available to such trust or institution.
- b. Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.
- c. This resulted in unintended consequences of allowing exemption under section 11, 12 of the Act and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available to the trusts where they furnish updated return of income. Accordingly, it is proposed to clarify that the exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available only if the return of income has been furnished within the time allowed under sub-section (1) or sub-section (4) of section 139 of the Act.

8. Tax Administration and Compliance

8.1 New Provision for Inventory Valuation [AY 2023-24]

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

If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, direct the assessee to get either or both of the following, namely:—

- (i) to get the accounts audited by a CA, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require;
- (ii) to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf and to furnish a report of such inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars, as may be prescribed, and such other particulars as the Assessing Officer may require:

Provided that the Assessing Officer shall not direct the assessee to get the accounts so audited or inventory so valued unless the assessee has been given a reasonable opportunity of being heard.

8.2 Withholding of refunds in certain cases[AY 2023-24]

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

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

Section 241A is made inapplicable from 1st April, 2023.

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

However, the proposed amendment shall not impact the existing position with regard to all other types of interest, except additional

interest under sub-section (1A) of section 244A, payable to the assessee as required under the Act.

8.3 Clarification for Interest u/s 234B while filing Updated Return [AY 2022-23]

It is proposed to amend section 140b(4) to provide that interest payable under section 234B for updated return, shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any.

8.4 Time Limit for Rectification before Interim Board of Settlement extended [W.e.f. 01-02-2021]

The Finance Act, 2021 abolished the Settlement Commission w.e.f. 01.02.2021 and the Central Government was empowered to constitute one or more Interim Boards for Settlement (IBS) but the same was constituted on 10.08.2021. As an interim measure, for settlement of applications pending with Settlement Commission as on 31.01.2021 was to be dealt at IBS.

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

There was huge pendency before IBS as on date. In order to provide time to IBS, it proposed to be substituted with a new clause to provide that where the time-limit for amending an order or for making an application expires on or after 01.02.2021 but before 01.02.2022, then such time-limit shall stand extended to 30.09.2023.

8.5 New authority of Joint Commissioner (Appeals) for small appeals [AY 2023-24]

At present, all CIT (Appeals) are overburdened due to the huge number of appeals and the pendency being carried forward every year. In order to clear this bottleneck, a new authority for appeals is being proposed to be created at JCIT/ Add CIT level to handle certain class of cases involving small amount of disputed demand. Such authority will have all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.

But, an appeal cannot be filed before the JCIT (Appeals) where an order is passed by or with the approval of an income-tax authority above the rank of DCIT.

For all pending appeals before CIT(A), the CBDT or an income-tax authority so authorised by the CBDT in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the JCIT (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred.

Further, the CBDT or an income-tax authority so authorised by the Board in this regard, may transfer any appeal which is pending before a JCIT (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the CIT (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred.

In case of transfer of appeal from CIT(A) to JCIT(A) or vice versa, the appellant shall be provided an opportunity of being reheard. The complete scheme in this regard will be notified by CBDT.

8.6 Reducing the time provided for furnishing TP report [AY 2023-24]

During TP Assessment, TPO is required to provide the 30 days time to the assessee from the date of receipt of a notice issued for submission the TP Study document prepared as per Rule 10D of Income Tax Rules 1962. The said time period may further, on an application made by

the assessee, be extended by an additional period of 30 days.

It is proposed to reduce the time period from 30 days to 10 days and the further extension can be given for a period not exceeding thirty days.

8.7 Rationalisation of Appeals to ITAT [AY 2023-24]

Normally, Penalty under sections 271AAB, 271AAC and 271AAD are levied by the AO. But, Finance Act, 2022, has given the said power to CIT(Appeals) also to pass an order imposing penalty under the said sections. But, an aggrieved assessee cannot appeal against such penalty orders passed by CIT(Appeals) i.e. the said order was unappealable. Therefore, it has been proposed to amend the provisions of section 253 of the Act to provide that appeal against penalty orders passed by CIT(Appeals) u/s 271AAB, 271AAC and 271AAD shall be made to ITAT.

Similarly, now appeal against an order passed under section 263 of the Act by Principal Chief Commissioner or Chief Commissioner or an order passed under section 154 of the Act in respect of any such order shall also be made to ITAT.

Earlier, the a memorandum of cross-objections before ITAT can be filled only in the case of appeal against the order of CIT(A). Now, amendment has been proposed to enable filing of memorandum of cross-objections in all classes of cases against which appeal can be made to ITAT.

8.8 Assistance to authorised officer during search and seizure [AY 2023-24]

During the course of search, the authorised officer may requisition the services of any police officer or any officer of the Central Government, to assist him for any of the actions required to be performed during the course of such search, and it shall be the duty of such officer to comply. Further, the authorised officer may make a reference to a valuation officer for estimating the fair market value of the property and such reference can be made during the search or within 60 days from the date of executing the last authorisation for search.

The authorized officer often required the help of expert/ professional for valuation of undisclosed assets and decryption of information often require specific domain experts like digital forensic professionals, valuers, archive experts etc. In addition to this, services of other professionals like locksmiths, carpenters etc. are also required in most of the cases, due to typical nature of the operations.

Therefore, it is proposed to amend relevant provisions of the section to provide that during the course of search the authorised officer, may requisition the services of any other person or entity, as approved by the PCCIT or the CCIT, in accordance with the procedure prescribed by the Board in this regard, to assist him for the purposes of the search either during the search or post search.

8.9 Meaning of the last of authorisation for search [AY 2022-23]

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

The last of authorisation for search shall be deemed to have been executed,---

- (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or
- (b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.

8.10 Provisions related to business reorganization [AY 2023-24]

Section 170A of the Act was inserted vide Finance Act, 2022 in order to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating

Authority under the Insolvency and Bankruptcy Code, 2016. But, there was no prescribed procedure to be followed by the Assessing Officer after the modified return is furnished by the successor entity.

Now, It is being provided that,

- if proceedings of assessment or reassessment for the relevant assessment year have been completed on the date of furnishing of modified return, the Assessing Officer shall pass an order modifying the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.
- Where proceedings of assessment or reassessment for the relevant assessment year are pending on the date of furnishing of modified return, the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

8.11 Increase in time-limit for assessment [AY 2023-24]

The time available for completion of assessment relating to the assessment year commencing on or after the 1st day of April, 2022 shall be 12 months from the end of the assessment year in which the income was first assessable. The time available for completion of assessment proceedings in the case of an updated return is also proposed to be increased to 12 months from the end of the financial year in which such return is furnished.

Increased time limit of 12 months has been proposed by inserting 153(3A) to provide that where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (1A), (2) and (3) of the said section, shall be extended by 12 months in a case of an assessee where such search is initiated under section 132 or such requisition is made under section 132A or in the case of an assessee to whom any

money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or in the case of an assessee to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to.

8.12 Provisions relating to reassessment proceedings [AY 2023-24]

Return in response to a notice under section 148 of the Act shall be furnished within three months from the end of the month in which such notice is issued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the assessee. However, any return which is furnished beyond the period allowed in the section 148 to furnish such return of income shall not be deemed to be a return under section 139 of the Act. As a result, the requirement of issuing notice u/s 143(2) would not be mandatory for such returns.

A new proviso has been inserted to section 149 to provide that in cases where a search under section 132 is initiated or a search for which the last of the authorization is executed or requisition is made under section 132A, after the 15th March of any financial year a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice under section 148 and the notice so issued shall be deemed to have been issued on the 31st day of March of such financial year.

Further, another proviso in the section 149 of the Act has also been inserted to provide that in cases where the information deemed to be with the Assessing Officer emanates from a statement recorded or documents impounded under summons or survey, as the case may be, on or before the 31st day of March of a financial year, in consequence of, a search initiated or last of the authorization executed under section 132 or a requisition made under section 132A, after the 15th day of March of such financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice under section 148 and the show cause notice issued u/s 148A(b) in such case shall be deemed to have been issued on the 31st day of March of such financial year.

9. Penalty

9.1 Penalty for cash loan/ transactions against primary co-operatives[AY 2023-24]

A proviso is inserted in both Section 269SS and Section 269T to increase threshold limit from Rs. 20,000 to Rs. 2,00,000 from imposition of penalty in the case of primary agricultural credit society (PACS) and a primary co-operative agricultural and rural development bank(PCARD). Therefore, where

1. a deposit is accepted by
2. a loan is taken from
3. a deposit is paid by
4. a loan is repaid to

from/by its members does not exceeds Rs. 2,00,000, the penalty would not be leviable.

9.2 New Penalty u/s 271FAA [AY 2023-24]

New penalty of Rs. 5,000 shall be imposable if there is any inaccuracy in the statement of financial transactions submitted by a prescribed reporting financial institution and such inaccuracy is due to false or inaccurate information submitted by the account holder, in addition to any other penalty leviable on such financial institution, if any.

10. Tax Deduction at Source

10.1 TDS on payment of interest on listed debentures [w.e.f. 2023-24]

Now, TDS needs to be deducted u/s 193 of the Act on Interest payment on debentures issued by a company which is listed in Indian stock exchange of India and payment made to Resident of India.

10.2 TDS and taxability on net winnings from online games [AY 2024-25]

As per previous provisions of section 194B & 194BB of this act , deductors are required to deduct tax under section 194B and 194BB of the Act if payment made is more than Rs 10,000/- per transaction. Now, as per amendment made in section 194B & 194BB, TDS should be deducted in case of single payment or aggregate of payments made exceeds Rs. 10,0000 during the financial year. Gambling or betting of any form or nature has also been included within the scope of Section 194B.

New section 194BA has inserted for deduction of TDS on net winnings from online games from user account at the end of the financial year or at the time of withdrawal of money, whichever earlier. The special rate of tax @ 30% on income by way of winning from online games has been introduced u/s 115BBJ.

10.3 Increasing rate of TCS for Foreign remittances [w.e.f. 1-07-2023]

S.No.	Type of remittance	Present rate	Proposed rate
(i)	For the purpose of any education, if the amount being remitted out is a loan obtained from any financial institution as defined in section 80E.	0.5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No change.

(ii)	For the purpose of education, other than (i) or for the purpose of medical treatment.	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	No change.
(iii)	Overseas tour package	5% without any threshold limit.	20% without any threshold limit.
(iv)	Any other case	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	20% without any threshold limit.

10.4 Increasing threshold limit for co-operatives to withdraw cash without TDS [AY 2024-25]

Section 194N of the Act provides that a banking company or a banking co-operative society or a post office, while paying sum aggregating to above 1 Cr during the year, shall deduct 2% of such aggregated sum, as income-tax.

However, in case of a recipient, who is a non-filer, TDS is to be deducted at the rate of 2% on any sum exceeding Rs. 20 lakh but not exceeding Rs. 1 crore in aggregate during the year and, at the rate of 5% on sum exceeding Rs. 1 crore in aggregate during the year.

A new proviso is inserted to provide that where the recipient is a co-operative society, the threshold of 1 Cr shall be increased to 3 Cr in case of filers and non-filers which can be summarised as under:

In case of regular assessee

Upto Rs. 3 Cr

NIL TDS

Above Rs. 3 Cr

TDS to be deducted @ 2%

and in case of non-filers

Above 20 Lakhs but Upto Rs. 3 Cr

TDS to be deducted @ 2%

Above Rs. 3 Cr

TDS to be deducted @ 5% .

10.5 TDS Credit of income declared in past years [w.e.f. 01.10.2023]

Generally, in case of government contractors, TDS is deducted on payment basis but the income was declared by the contractor on due basis. TDS is deducted at the time of payment which is in subsequent years only. There is a big problem about the allowability of TDS credit in subsequent years.

In order to remove this difficulty, it is proposed to insert a new section 155(20) which applies where any income has been included in the return of income furnished by an assessee under section 139 of the Act for any assessment year (hereinafter referred to as the "relevant assessment year") and tax has been deducted at source on such income and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year. In such a case, the assessee can make an application in the prescribed form to the Assessing Officer within two years from the end of the financial year in which such tax was deducted at source. Then, the Assessing Officer shall amend the order of assessment or any intimation allowing credit of such TDS in the relevant assessment year.

It has been further provided that the provisions of section 154 of the Act shall also apply in this case and the period of four years shall be reckoned from the end of the financial year in which such tax has been deducted.

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

11. Miscellaneous Amendments

11.1 Rationalization of the provisions of the Prohibition of Benami Property Transactions Act, 1988 (the PBPT Act) [AY 2023-24]

Under the existing provisions of section 46 of the PBPT Act, any person, including the Initiating Officer (IO), aggrieved by the order of the Adjudicating Authority, may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date of the order. The order often takes time to reach the office of the Initiating Officer or the approving authority and, it is difficult to file an appeal within the prescribed time limit and leads to delay in such filing.

Now, the time limit of 45 days will start from the date when such order is received in the office of the Initiating Officer or the aggrieved person as the case may be.

Notes

[illegible]

Notes

[illegible]



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