Clause-Wise Analysis of Finance Bill 2023 –

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CHARTERED ACCOUNTANTS

Direct Tax Amendments

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Direct Tax- Section 115BAC - Tax on income of individuals and Hindu undivided family – (1/2)

PROPOSED AMENDMENT

Inserted a new Subsection (1A) to Section 115BAC:

• With effect from assessment year 2024-25, it is proposed that the following rates provided under the proposed sub-section (1A) of section 115BAC of the Act shall be the rates applicable for determining the income-tax payable in respect of the total income of a person, being an individual or Hindu undivided family or association of persons [other than a co-operative society], or body of individuals, whether incorporated or not, or an artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2.

Sl. No	Total Income	Rate of Tax
1	Up to Rs.3,00,000	Nil
2	From Rs.3,00,001 to Rs.6,00,000	5%
3	From Rs.6,00,001 to Rs.9,00,000	10%
4	From Rs.9,00,001 to Rs.12,00,000	15%
5	From Rs.12,00,001 to Rs.15,00,000	20%
6	Above Rs.15,00,000	30%

• The Rates given in sub-section (1A) of section 115BAC of the Act are the default rates. But taxpayers can choose for old tax regime if they required.

• Further, the income-tax payable in respect of the total income of the person [other than a person who has exercised an option under sub-section (6) of section 115BAC], shall be computed without allowing for any exemption or deduction as provided under clause (i) of subsection (2) of section 115BAC of the Act. Moreover, following deduction will be allowed from AY 2024-25:

- **standard deduction as provided under clause (ia) of section 16 of the Act,**
- **deduction in respect of income in the nature of family pension as provided under clause (iia) of section 57 of the Act, and**
- **deduction in respect of the amount paid or deposited in the Agniveer Corpus Fund as proposed to be provided under sub-section (2) section 80CCH of the Act, shall be allowed for the purposes of computing the income chargeable to tax under sub-section (1A) of section 115BAC**

Direct Tax- Section 115BAC - Tax on income of individuals and Hindu undivided family – (2/2)

PROPOSED AMENDMENT

• A person having income from business or profession who has exercised the above option of shifting out of the regime provided under the proposed sub-section (1A) of section 115BAC shall be able to exercise the option of opting back to the regime under proposed subsection (1A) of section 115BAC only once. However, a person not having income from business or profession shall be able to exercise this option every year.

• Further, in case where the income of the individual or HUF or association of persons [except in case of an association of persons consisting of only companies as its members], or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act, is chargeable to tax under sub-section (1A) of section 115BAC of the Act, the surcharge at the rate of 37% on the income or aggregate of income of such person (excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Act) exceeding five crore rupees shall not be applicable. In such cases the surcharge shall be restricted to 25%.

• Insertion of a subsection in Section 87A:
From assessment year 2024-25 onwards, an assessee, being an individual resident in India whose income is chargeable to tax under the proposed sub-section (1A) of section 115BAC, shall now be entitled to a rebate of 100 per cent of the amount of income-tax payable on a total income not exceeding Rs 7 lakhs.

- Now, new tax regime can be opted by individuals, HUF, AOP (Other than co-operative society),BOI and Artificial Juridical person. Beneficial to the taxpayers opting new regime
- New tax regime will be default. So if taxpayer is opting for old tax regime they have to opt on or before due date of filing the income tax return.
- Standard deduction of Rs.50,000, family pension deduction and contribution to Agniveer Corpus fund will be allowed for persons opting for new tax regime.
- Persons having income from business or profession, who has opted out of the scheme, can opt back only once again into the new scheme- Taxpayers should analyse whether old scheme is beneficial or the new scheme is benefical.
- Rebate u/s 87A is increased to 100% for persons opting for new tax regime and having income upto Rs.7 Lakhs.

Direct Tax- Section 56(2) (viib) – Non-residents in the ambit of tax avoidance provisions

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

- This clause was introduced to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section was not applicable for consideration (share application money/ share premium) received from non-resident investors.
- It is proposed to include the consideration received from a non- resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause.
- This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status which shall ensure accountability of the money infused based on the valuation of the company.

Section 92D - Reducing the time provided for furnishing TP report to the Assessing Officer

OLD PROVISION	PROPOSED AMENDMENT
As per sub-section (3) of section 92D of the Act, the Assessing Officer (AOs) or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish any information or document, as provided under rule 10D of the Rules, within a period of 30 days from the date of receipt of a notice issued in this regard. It has been further provided that on an application made by the assessee the time period of 30 days may be extended by an additional period of 30 days.	It is proposed to furnish any information or document referred therein, within a period of ten days from the date of receipt of a notice issued in this regard; and the Assessing Officer or the Commissioner (Appeals) may, on an application made, extend the period of ten days by a further period not exceeding thirty days.

- The said provisions are amended in pursuance of providing time for the assessing officers to peruse the TP report and documents in order to determine the appropriateness of arms length price of the International Tranasaction.

Widening and deepening of tax base / Anti Avoiding

OLD PROVISION	PROPOSED AMENDMENT
Section 9 (1) clause (viii) states that sum exceeding fifty thousand rupees, received by **non resident** without any consideration from a person resident in India, shall be income deemed to accrue or arise in India	Section 9 (1) (viii) states that sum exceeding fifty thousand rupees received by **not ordinarily resident** without consideration from a person resident in India, shall be income deemed to accrue ory arise in India

- The not ordinary residents have also been brought into the ambit of taxation in case of gifts received from residents without any consideration.
- This is a welcome move which shall ensure curb of tax avoidance measures.

Increasing rates of TCS for Certain Remittances

Type of Remittance	Present Rate	Proposed Rate
Overseas tour package	5% without any threshold limit.	20% without any threshold limit.
Any other cases	5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakh.	20% without any threshold limit.

Direct Tax - Section 47 Capital Gain on transfer of Physical gold to EGR

Conversion of Gold to Electronic Gold Receipt and vice versa

Gold Exchange, SEBI has been made the regulator of the entire ecosystem of the proposed gold exchange. SEBI has come out with a detailed regulatory framework for spot trading in gold on existing stock exchanges through the instrument of Electronic Gold Receipts (EGR).

New clause in section 47 of the Act so as to provide that any transfer of a capital asset, being **physical gold to the Electronic Gold Receipt** issued by a Vault Manager or such Electronic Gold Receipt to physical gold **shall not be considered as 'transfer'**.

New sub-section (10) to section 49 of the Act to provide that where an Electronic Gold Receipt issued by a Vault Manager, became the property of the person as consideration of a transfer, as referred in the newly inserted clause in section 47, **the cost of acquisition of the asset** for the purpose of the said transfer, shall be **deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued.** Similarly, where **the gold released against an Electronic Gold Receipt**, which became the property of the person as consideration for a transfer, as referred in the newly inserted clause in section 47, t**he cost of acquisition of the asset (being gold) for the purposes of the said transfer shall be deemed to be the cost of the Electronic Gold Receipt in the hands of such person.**

New clause (hi) to Explanation 1 of sub-section (42A) of section 2 of the Act to provide that the **holding period** for the purpose of capital gain **shall include the period** for which the Gold was held by the assessee **prior to conversion into the Electronic Gold Receipt.**

These amendments 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.

- A welcome relief is provided by excluding the conversion of gold to electronic gold receipt and vice versa from the definition of transfer and thereby exempting it from capital gain.
- The government with this relief intends to promote investments in electronic equivalent of gold as part of Digital India.

Direct Tax – Section - 54 and 54F – Limit on exemption

OLD PROVISION	PROPOSED AMENDMENT
The existing provisions of section 54 and section 54F of the Income-tax, 1961 (the Act) allows deduction on the Capital gains arising from the transfer of long-term capital asset if an assessee, within a period of one year before or two years after the date on which the transfer took place purchased any residential property in India, or within a period of three years after that date constructed any residential property in India. It does not specify any threshold limits for maximum deduction.	It is proposed to impose a limit on the maximum deduction that can be claimed by the assessee under section 54 and 54F to rupees ten crore. It has been provided that if the cost of the new asset purchased is more than rupees ten crore, the cost of such asset shall be deemed to be ten crores. This will limit the deduction under the two sections to ten crore rupees.

- The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity.

- However, it has been observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections and therefore amendment in such regard is necessitated.

Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property

OLD PROVISION	PROPOSED AMENDMENT
Benefit of Interest under both the sections: 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. Section 48 of the Act, inter alia, provides that the income chargeable under the head "Capital gains" shall be computed, by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.	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. This amendment is proposed to 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.

It has been observed that some assesses have been 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 IFHP 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.

Therefore, in order to curb the double benefits, the provisions of the Act has been amended.

Defining the cost of acquisition in case of certain assets for computing capital gains

OLD PROVISION	PROPOSED AMENDMENT
section 55 of the Act, inter alia, defines the ‘cost of any improvement’ and ‘cost of acquisition’ but does not specifically provides cost of Intangibles or rights for which no consideration is paid.	To define the term ‘cost of acquisition’ and ‘cost of improvement’ of such assets, it is proposed to amend the provisions S.55(1)(b)(i) and S.55(2)(a)(i) so as to provide that the ‘cost of improvement’ or ‘cost of acquisition’ of a capital asset being any intangible asset or any other right shall be ‘Nil’

To provide clarity and solve legal disputes, assets like intangible assets or any sort of right for which no consideration has been paid for acquisition, the cost of acquisition of such assets is clearly defined as ‘nil’ in the proposed amendment

This amendment is 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.

Direct Tax - Section 43B - Promoting timely payments to Micro and Small Enterprises

Promoting timely payments to Micro and Small Enterprises

New clause (h) in section 43B of the Act to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. However, it is also proposed that the proviso to section 43B of the Act shall not apply to such payments (i.e. The assessee cannot make payment before the due date of filing income tax return and avail deduction for the same).

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

This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

- This compliance will ease financial complexities such as delayed payments surrounding small businesses.
- MSME are growth enginee of our economy. Thus with this amendment the government has brought MSME payments in par with the statutory dues.

Alignment of provisions of Section 45(5A) with the TDS provisions of Section 194-IC

OLD PROVISION	PROPOSED AMENDMENT
In case of Individual or HUF, Capital Gain arising from transfer of a Capital asset (being land or building or both) under a JDA, and the for the purpose of S.48 the Full Value of Consideration is the SDV as increased by the consideration received in **CASH**	It is proposed to amend the provisions of S.45(5A), 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.

The Amendment comes as a clarificatory in nature whereby 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 S.45(5A).

This is not in line with the provisions of S.194-IC which provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in S.45(5A), paid to the deductee in cash or by way of issue of a cheque or draft or any other mode.

Applicability: 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.

Ease in claiming deduction on amortization of preliminary expenses

SEC 35D-Amortization of preliminary expenditure

OLD PROVISION	PROPOSED AMENDMENT
Section 35D of this act provides for amortization of certain preliminary expenses, this section further provides that the preparation of the reports should be carried out either by the assesses or by a concern which is approved by the board.	To ease in claiming deduction on amortization of preliminary expenses, The condition of activity in relation to the expenses to be carried out by the concern approved by the board has been removed. Instead the assesses is required to maintain a statement of expenditure in the prescribed period to the prescribed tax authority

SEC 44AD / 44ADA - Special provision for computing profits and gains of business / Profession on presumptive basis

OLD PROVISION	PROPOSED AMENDMENT
Residents carrying on eligible business and having a turnover of 2 cr or less. Under this scheme a sum equal to 8% of turnover is deemed to be the profit and gains from the business subject to certain conditions.	There has been an addition to the provision, it states that if amount received in cash in the previous year does not exceed 5% of total turnover then the threshold limit shall be three crore rupees.
Residents engaged in any profession referred in sec 44AA(1) and whose gross receipt does not exceed fifty lakh rupees in the previous year. Under this sec, a sum equal to 50% of gross receipt is deemed to be the profit and gains from the business.	There has been an addition in the provision, it states that is the cash received in the previous year does not exceed 5% of the total turnover then the threshold limit would be seventy five lakhs.

- To promote cashless transactions and to ease the compliance requirements, the threshold limits for presumptive taxation has been increased

Direct Tax- Section 194B and 194BB – TDS provisions

OLD PROVISION	PROPOSED AMENDMENT
The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle card game and other game of any sort or horse race in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.	It is Proposed to amend the section 194B and section 194BB of the act to provide that deductions of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year.

- The proposed amendment ensures that the assessee does not take undue advantage of the threshold limit and the TDS is deducted on amounts exceeding INR 10,000 during the financial year.

Insertion of New Section 194BA – TDS on online gaming apps

PROPOSED AMENDMENT
It is proposed to insert a new section 194BA in the Act, with effect from 1st July 2023, to provide for TDS on net winnings in the user account for online games, In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year.

- Owing to the booming gaming industry, this is a welcome move from the government to provide for TDS on net winnings from online gaming.
- Circulars and guidelines from CBDT shall be issued for providing clarity in application of such TDS provisions.

Direct Tax- Section 192A- Payment of accumulated balance due to an employee

PROPOSED AMENDMENT
Omission of Second Proviso to the section which states that: **Any person entitled to receive any amount on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.**

- **It was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases under section 192A.**
- **So the above proviso was omitted and due to this now in case of failure to furnish pan card tax will be deducted at 20% instead of maximum marginal rate. This will benefit the low paid employees who does not have pan card.**

Direct Tax- Section 206AB-Special provision for TDS for non-filers of income-tax return & Section 206CCA- Special provision for collection of tax at source for non-filers of income-tax return

PROPOSED AMENDMENT
The definition of the "specified person" in sections 206AB and 206CCA of the Act amended so as to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

- **There may be certain persons who are not required to furnish the return of income. It is not the intention to include such persons in the category of non-filers and in order to provide relief to those persons the definition is amended.**

Direct Tax- Section 28- Profits and gains of business or profession

PROPOSED AMENDMENT
Clarification issued w.r.t. Benefit or perquisite in cash: **It is proposed to amend clause (iv) of section 28 of the Act to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.**

- **Clause (iv) was inserted to bring chargeability that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession will be chargeable to tax. But Courts have interpreted that if the benefit or perquisite are in partly cash / kind, it is not covered within the scope of this clause of section 28 of the Act.**
- **So to align with the legislation this amendment is proposed.**

Direct Tax- Section 194R- Deduction of tax on benefit or perquisite in respect of business or profession

PROPOSED AMENDMENT
Explanation inserted to section (1): **It is proposed to clarify by way of insertion of an Explanation to section 194R of the Act to provide that provisions of sub-section (1) apply to benefit or perquisite whether in cash or in kind or partly in cash and partly in kind.**

Direct Tax- Section 17- Salary, perquisite and profits in lieu of salary defined

PROPOSED AMENDMENT
Amendment to Section 17(2) Sub-clause (i) and (ii) **• It is proposed to take the power of prescription of the method for computation of the value of rent-free accommodation provided to the assessee by his employer and also the value of any accommodation provided to the assessee by his employer at a concessional rate.** **• It is proposed to amend the Explanation 1 to sub-clause (ii) of clause (2) of section 17 of the Act so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner exceeds the rent recoverable from or payable by the assessee.** **• It is proposed to delete the Explanation 2, Explanation 3 and Explanation 4 of sub-clause (ii) of clause (2) of section 17 of the Act to rationalize the section and specify the method of computation for the value the accommodation provided to employee by his employer through proper prescription of the Rules.**

Direct Tax- Section 46 and Section 2(18) of Benami Property Transactions Act,1988 (the PBPT Act)

PROPOSED AMENDMENT
Amendment to Section 46 as follows: **It is proposed that the provisions of section 46 of the PBPT Act may be amended to allow the filing of appeal against the order of the Adjudicating authority within a period of 45 days from the date when such order is received in the office of the Initiating Officer or the aggrieved person as the case may be. Similar change is also proposed with reference to the order passed by an authority under section 54A of the PBPT Act.** **Amendment to Section 2(18) as follows:** **It is proposed to amend section 2(18) of the PBPT Act to modify the definition of 'High Court' by inserting a proviso so as to provide that where the aggrieved party does not ordinarily reside or carry on business or personally work for gain in the jurisdiction of any High Court or where the Government is the aggrieved party and any of the respondents do not ordinarily reside or carry on business or personally work for gain in the jurisdiction of any High Court, then the High Court shall be such within whose jurisdiction the office of the Initiating Officer is located.**

Direct Tax- Section 140B- Tax on updated return

OLD PROVISION	PROPOSED AMENDMENT
As per Section 140B(4) of the Income Tax Act, 1962, the interest payable under section 234B of the Act shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. This means that interest was payable only on the difference of the assessed tax and advance tax.	Amendment to Section 140B(4) of the Income Tax Act, 1962 that interest payable under section 234B shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any. Applicable retrospectively from the 1st day of April, 2022.

- To clarify the provisions of the sub-section (4) of section 140B of the Act, an amendment has been proposed in the said sub-section, and this will remove litigation on interest component in the future.

Direct Tax- Section 43B - Certain deductions to be only on actual payment & Section 43D - Special provision in case of income of public financial institutions, public companies, etc.

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

Direct Tax- Section 155 - Other Amendments

PROPOSED AMENDMENT

Insertion of new subsection (20) which states that: (Applicable w.e.f. 01.10.2023)

Where any income has been included in the return of income furnished by an assessee under section 139 of the Act for any assessment year (hereinafter referred to as the "relevant assessment year") and tax has been deducted at source on such income and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year. In such a case the assessee can make application in the prescribed form to the Assessing Officer within two years from the end of the financial year in which such tax was deducted at source. Then Assessing Officer shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year. It has been further provided that the provisions of section 154 of the Act shall, so far as may be, apply thereto, and the period of four years specified in sub-section (7) of that section shall be reckoned from the end of the financial year in which such tax has been deducted.

Amendment to Section 244A due to insertion of above subsection:

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.

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

- **To overcome the above mentioned difficulty this subsection is introduced. This will be beneficial to the taxpayers.**

Direct Tax- Section 10AA- Special provisions in respect of newly established Units in Special Economic Zones.

PROPOSED AMENDMENT

Provision inserted in subsection (1) after clause (ii) before the explanation as follows: - "Provided that no such deduction shall be allowed to an assessee who does not furnish a return of income on or before the due date specified under sub-section (1) of section 139."

Inserted a new Subsection (4A) to the section:
This section applies to a Unit, if the proceeds from sale of goods or provision of services is received in, 32 or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

Explanation 1.—For the purposes of this sub-section, the expression "competent authority" means the Reserve Bank of India or the authority authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.
Explanation 2.—The sale of goods or provision of services shall be deemed to have been received in India where such export turnover is credited to a separate account maintained for that purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.'

Substitution in clause (i) of explanation 1 as follows:
Clause (i): "convertible foreign exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 2 to section 10A;
Clause (ia): "export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee in convertible foreign exchange in accordance with the provisions of sub-section (4A), but does not include freight, telecommunication charges or
insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.

- To align Section 143(1) and Section 10AA and to bring timeline for filing the return within due date the proviso is inserted in subsection (1) as this was not there in Section 10AA
- It has been observed that there is no time- limit prescribed in the Act for timely remittance of the export proceeds from sale of goods or provision of services by SEZ Units for claiming deduction under the said section as is provided under other similar export related deductions in the Act. **So, time limit is now introduced.**

Direct Tax- Section 148- Issue of notice where income has escaped assessment

OLD PROVISION	PROPOSED AMENDMENT
As per Section 148 assessee has to provide income tax returns within a month of the notice period or within a period that has been clearly mentioned in the received notice.	section 148 of the Act may be amended to provide that a return in response to a notice under section 148 of the Act shall be furnished **within three months from the end of the month** in which such notice is issued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the 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 **consequential requirements viz. notice under sub-section (2) of section 143 etc. would not be mandatory for such returns.**

- Amendments have been proposed in the provisions relating to conduct of reassessment proceedings under the Act to further streamline them and facilitate their conduct and completion in a seamless manner.

Provisions relating to reassessment proceedings

Section 149 Assessment

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

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

These amendments will take effect from the 1st day of April, 2023

OLD PROVISION	PROPOSED AMENDMENT
Section 151 of the Act contains provisions relating to the specified authority who can grant approval for the purposes of sections 148 and 148A of the Act. The said section provided that the authority would be the **Principal Chief Commissioner** and where there is no Principal Chief Commissioner, the **Chief Commissioner** shall give approvals beyond a period of three years.	It was seen that the **clause (ii)** of the said section was resulting in misinterpretation as well as confusion with regards to the specified authority for the cases where re-opening was being done after three years from the relevant assessment year. Therefore, to clarify the position of law in this regard, an amendment has been proposed to provide that the specified authority under clause (ii) of section 151 of the Act shall be **Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General**. At the same time, to give further clarity with regards to the "**specified authority"** a **proviso is proposed to be inserted** in the section 151 to provide that while computing the period of three years for the purposes of determining the specified authority the period which has been excluded or extended as per **the provisos in section 149 of the Act from the time limit for issuance of notice under section 148 of the Act shall be taken into account**

Direct Tax - Section 10 – Corpus Fund Agnipath Scheme, 2022

Agniveer Corpus Fund

As per Agnipath Scheme, 2022, the Competent Authority has decided to create a non-lapsable dedicated Agniveer Corpus Fund in the interest-bearing section of the Public Account head.
The package given to an Agniveer from Agniveer Corpus Fund maintained by **Ministry of Defence (MoD)** is called as '**Seva Nidhi.**

Consolidated contributions of all the Agniveers and matching contributions of the Government along with interest on these contributions would be held in their respective accounts.

The Agniveer shall receive the following at the end of 4 years, each Agniveer is to contribute **30% of his monthly customized Agniveer Package.**The **Government will also contribute a matching amount** to the 'Agniveer Corpus Fund'.
The Government will also pay to the subscriber **interest** as approved from time to time on the **contributions standing in his account**

New clause (12C) in section 10 any payment received from the Agniveer Corpus Fund - shall be **exempted from income tax**.
New section 80CCH – Subscribers to the Agniveer Corpus Fund on or after the 1st day of November, 2022, entire contribution by the Agniveer and the Central government **will be allowed as deduction, from his total income.**

The new tax regime of section 115BAC an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund shall get a **deduction of the government contribution to his Seva Nidhi [sub-section (2) of section 80CCH].**

These amendments will take effect from the 1st day of April, 2023 and will apply in relation to assessment year 2023-24 and subsequent assessment years

- The government aims at creating a youthful profile of the armed forces and train the 'Agniveers' for new technologies. In order to implement this scheme successfully in the favor of both the soldiers & the country, the government has ensured to keep all the benefits provided to the Agniveer (through Corpus fund) exempt from Income tax.

Direct Tax - Section 155 - Deduction based on SMP for Co-operative society

Relief to sugar co-operatives from past demand

Sugar factories operating in the co-operative sectors in certain States of India pay to sugarcane growers a final amount, often referred to as Final Cane Price (FCP) which is over and above the Statutory Minimum Price (SMP) fixed by the Central Government under the Sugarcane Control Order, 1996.

The payment of FCP by the co-operative sugar factories over and above the SMP for purchase of sugarcane **had resulted into tax litigation.**

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

Amendment to section 155 of the Act to insert a new sub-section (19).

The Assessing Officer shall allow such deduction to the extent such expenditure is incurred at a price which is **equal to or less than the price fixed or approved by the Government** for that previous year. Also, the provision of section 154 shall, so far as may be, apply thereto, and the **period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of previous year commencing on the 1st day of April, 2022.**

- Relief to sugar co-operatives from the past demand is provided on account of business expenditure claimed w.r.to Final Cane Price over and above Statutory Minimum Price by amending section 155 by inserting sub clause (19) to provide the necessary relief u/s 154 by providing time limits from 01.04.2022 to address the undergoing litigations.

Direct Tax - Section 194N TDS on cash withdrawal for Co-operative Society

OLD PROVISION	PROPOSED AMENDMENT
Section 194N of the Act provides that a **banking company or a co-operative society** engaged in carrying on the business of banking or a post office, which is responsible for paying any sum to any person (referred to as the recipient) shall, **at the time of payment of such sum in cash, deduct an amount equal to two per cent of such sum, as income-tax**. The requirement to deduct tax applies only when the payment of amount or aggregate of amount in cash during the year **exceeds one crore rupees.** However, in case of a recipient who is a **non-filer of income tax (not filed 3 yrs IT returns)** 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 financial year and, **at the rate of 5%** on sum exceeding Rs. 1 crore in aggregate during the financial year.	**<u>Increasing threshold limit for co-operatives to withdraw cash without TDS</u>** It is proposed to **amend section 194N** of the Act by inserting a new proviso to provide that where the recipient is a **co-operative society**, the provisions of this section shall have effect, as if for the words **"one crore rupees", the words "three crore rupees" had been substituted.** This amendment will take effect from 1st April, 2023.

- TDS limit u/s 194N (TDS on cash withdrawals) in respect of a Cooperative society is increased from "Rs. 1 Crore" to "Rs. 3 crores".

Direct Tax - Section 269SS & 269ST Acceptance & Repayment of loans by Co-operative Society

OLD PROVISION	PROPOSED AMENDMENT
Penalty for cash loan/ transactions against primary co-operatives **Section 269SS** of the Act provides that no person shall take from any person **any loan or deposit** otherwise than by an **account payee cheque or account payee bank draft or online transfer through a bank account**, if the amount of such loan or deposit is **Rs. 20,000 or more**. Similarly, **section 269T** provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of **such loan or deposit is Rs. 20,000 or more**. Certain exceptions have, however, been specified in the provisions.	Amendment may be made in the **section 269SS** of the Act by **raising the limit of Rs. 20,000 to Rs. 2 lakh for PACS and PCARD.** This will imply where such deposit is accepted by a **primary agricultural credit society or a primary co-operative agricultural and rural development bank** from its member or such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member. The penalty would be leviable only if the amount of a loan or deposit is Rs. 2 lakh or more. **Section 269T** of the Act and **increase the limit of Rs. 20,000 to Rs. 2 lakh in the case of PACS and PCARD.** As a result, in a case where a deposit is paid by a PACS or a PCARD to its member or a loan is repaid to a PACS or a PCARD by its member, payment shall be made by an account payee cheque or account payee bank draft or online transfer through a bank account if the amount of such or deposit is more than Rs. 2 lakh. Penalty shall be imposable if the amount of such loan or deposit exceeds Rs. 2 lakh. These amendments will take effect from 1st April, 2023.

- This Amendment is most welcoming for PACS and PCARD co-operative societies as the limits in cash transactions for these type of entities is more owing to the nature of the transactions undertaken by them.

Direct Tax - Section 79 Carrying forward & Setting off of losses for eligible start-ups

OLD PROVISION	PROPOSED AMENDMENT
Section 79 of the Act restricts carrying forward and setting off of losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change in shareholding. **The carried forward loss is set off only if at least 51% shareholding (as on the last date of the previous year) remains same with the company on the last date of the previous year to which the loss belongs.** There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of **seven years** beginning from the year in which such company is incorporated.	**<u>Relief to start-ups in carrying forward and setting off of losses</u>** Relaxation has been provided in case of an eligible start-up as referred to in section 80-IAC of the Act. The condition of continuity of at least 51%shareholding is **not applicable to the eligible start-up,** 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. Amendment to the proviso to sub-section (1) of section 79 of the Act so that the carried forward loss of eligible start-ups shall be considered for set off under this proviso, if such loss has been incurred during the period of **ten years** beginning from the year in which such company was incorporated. This amendment will take effect from 1st day of April, 2023 and will accordingly apply to the assessment year 2023-2024 and subsequent assessment years.

- India is now the third largest ecosystem for startups globally and rank second in quality among middle income countries. Thus, to promote the startups the government has proposed these relaxation of at least 51%shareholding in case of an eligible start-up as referred to in section 80-IAC of the Act.

- The startups are allowed to carried forward losses for set off under this proviso, for **ten years** beginning from the year in which such company was incorporated.

Direct Tax - Section 80-IAC - Period of Incorporation of eligible start-ups

OLD PROVISION	PROPOSED AMENDMENT
Section 80-IAC provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the assessees subject to the condition that, (i) the total turnover of its business does not exceed one hundred crore rupees, (ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and (iii) i**t is incorporated on or after 1st day of April, 2016 but before 1st day of April 2023.**	**<u>Extension of date of incorporation for eligible start-up for exemption</u>** In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to amend the provisions of **section 80-IAC** of the Act so as to **extend the period of incorporation of eligible start-ups to 1st day of April 2024.** This amendment will take effect from the 1st day of April, 2023 and shall accordingly, apply in relation to the assessment year 2023-24 and subsequent assessment years

- The government has extended the period of incorporation of eligible startups by one more year till March 31, 2024, for providing tax incentives to encourage budding entrepreneurs. In budget, 2023 series of steps has been taken to **promote startups in the country**.

Direct Tax - Section 10 Income distributed to Non-Residents on off-shore derivative instruments

OLD PROVISION	PROPOSED AMENDMENT
Over the past few years several tax concessions have been provided to units located in International Financial Services Centre (IFSC) under the Act to make it a global hub of financial services sector. **Income of non-residents on transfer of Offshore Derivative Instruments (ODI) entered into with IFSC Banking unit is exempt under section 10 (4E) of the Act.** Under the ODI contract, the IFSC Banking Unit (IBU) makes the investments in permissible Indian Securities. **Income earned by the IBU on such investments is taxed as capital gains, interest, dividend under section 115AD of the Act. After the payment of tax, the IBU passes such income to the ODI holders.** Presently, the exemption is provided only on the transfer of ODIs and not on the distribution of income to the non-resident ODI holders, hence this distributed income is taxed twice in India.	**Tax Incentives to International Financial Services Centre** **Amend clause (b) of the Explanation to clause (viiad) of section 47** of the Act to **extend the date for transfer of assets of the original fund**, or of its wholly owned special purpose vehicle, to a resultant fund **in case of relocation to 31st March, 2025 from current limitation of 31st March, 2023.** **In order to remove the double taxation**, it is proposed to **amend clause (4E) of section 10 of the Act**, to also provide **exemption to any income distributed on the offshore derivative instruments,** entered into with an offshore banking unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, which fulfils such conditions as may be prescribed. It has also been provided that such exempted income shall include only that amount which has been charged to tax in the hands of the IFSC Banking Unit under section 115AD. **IFSCA (Fund Management) Regulations, 2022 has come into force from May 19, 2022. To bring the reference of the said regulation in the provisions of the Act, it is proposed to amend the definition of "Specified Fund", "Resultant Fund" and "Investment Fund"** to include the reference of IFSCA (Fund Management) Regulations, 2022 in the Act. The above amendments referred to in para 2(i) and 2(iii) will take effect from the 1st day of April, 2023 and accordingly apply to assessment year 2023-24 and subsequent assessment years. The amendment in Para 2(ii) will take effect from the 1st day of April, 2024 and accordingly apply to assessment year 2024-25 and subsequent assessment years.

- **Government by exempting the income distributed to the non resident ODI holders has avoided double taxation on transfer of offshore derivatives instruments this comes with the view to promote foreign investments.**

Section 10 Clause 46A – Taxability of Income arising to Authority/Body/Trust/Commission

OLD PROVISION	PROPOSED AMENDMENT
Exemption to development authorities etc. **Clause (46) of section 10** of the Act provides exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which— (a) has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public; (b) is not engaged in **any commercial activity**; and (c) is notified by the Central Government in the Official Gazette for the purposes of this clause. **The restriction on undertaking commercial activities by anybody or authority or Board or Trust or Commission notified under clause (46) of section 10 has been a litigated issue.** Our Comment - The Insertion of new clause (46A) exempts certain income of body or authority or Board or Trust or Commission constituted by or under a Central or State Act. This comes as clarification with respect to what constitute a commercial activity and whether or not it is a public functions/services.	The Hon'ble Court has also made **a fine distinction in respect of statutory authorities, boards etc. which have been established by the State government or Central governments, for achieving essentially "public functions/services"**. In such cases, the court have held that **the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the mischief of business or commercial receipts as their objects are essential for advancement of public purposes/ functions.** The **new clause (46A) proposes 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 following purposes, namely: - (i) dealing with and satisfying the need for housing accommodation; (ii) planning, development or improvement of cities, towns and villages (iii) regulating, or regulating and developing, any activity for the benefit of the general public; or (iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created. It is also required to be notified by the Central Government in the Official Gazette for the purposes of this clause Consequential amendment is also proposed in the Explanation to the nineteenth proviso of clause (23C) of section 10 of the Act. Similarly, consequential amendment is also proposed in sub-section (7) of section 11 of the Act. These amendments will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

Section 72A & 72AA Strategic Disinvestment of Public companies & Banking Companies

OLD PROVISION	PROPOSED AMENDMENT
Section 72A of the Act relates to provisions on carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. **Sub-section (1) of section 72A** provides that in specified cases, accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the accumulated loss and unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was affected. Conditions have also been laid down in the said section to facilitate **carry forward and set off of loss and unabsorbed depreciation in the case of strategic disinvestment.** Strategic disinvestment has been defined as **sale of shareholding by the Central Government or any State Government in a public sector company** which results in reduction of its shareholding **below fifty-one per cent along with transfer of control to the buyer.** **Section 72AA** of the Act relates to carry forward of accumulated losses and unabsorbed depreciation allowance in a scheme of amalgamation in certain cases, which, inter-alia, includes **amalgamation of one or more banking company with any other banking institution.**	**<u>Facilitating certain strategic disinvestment</u>** It is proposed to **amend the definition of 'strategic disinvestment'** in **section 72A** of the Act so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government, the State Government **or Public Sector Company** in a public sector company or a company which results in (i) reduction of its shareholding below fifty-one per cent, and (ii) transfer of control to the buyer. The first condition shall apply in case the shareholding was above fifty one percent before such sale of shareholding. The requirement of transfer of control may be carried out by either the Central Government or State Government or Public Sector Company (or any two of them or all of them). **Amendment to section 72AA** of the Act to allow carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution **or a company subsequent to a strategic disinvestment, if such amalgamation takes place within 5 years of strategic disinvestment.** This amendment will take effect from 1st April, 2023 and will accordingly apply to the assessment year 2023-24 and subsequent assessment years.

Section 115BAE – Tax regime for new manufacturing co-operative societies - (1/4)

OLD PROVISION	PROPOSED AMENDMENT
The Taxation Laws (Amendment) Act, 2019, inter-alia, inserted section 115BAB in the Act which provides that new manufacturing domestic companies set up on or after 01.10.2019, which commence manufacturing or production by 31.03.2023 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15 per cent. The time for commencing manufacturing or production has been extended to 31.03.2024 by the Finance Act, 2022. **However, the same provision has not been provided for new manufacturing co-operative societies.** Representation has been received for providing a level playing field between new manufacturing co-operative societies and new manufacturing companies by providing for the concessional tax regime of 15% to new manufacturing co-operative societies as well.	**15% concessional tax to promote new manufacturing co-operative society** It is proposed to insert a **new section 115BAE** to the Act in which concessional tax regime is being provided for the **new manufacturing cooperative societies** as well.

Section 115BAE – Tax regime for new manufacturing co-operative societies - (2/4)

Section 115BAE -New Manufacturing Cooperative Societies

The conditions are materially similar to the conditions applicable to new manufacturing companies, which are as under:-

- Notwithstanding anything contained in the Act but subject to the provisions of Chapter XII, other than those mentioned under section 115BAD, the income-tax payable in respect of the total income of an assessee, being a cooperative society resident in India, for any previous year relevant to the **assessment year beginning on or after the 1st day of April, 2024, shall, at the option of such assessee, be computed at the rate of fifteen per cent, on satisfaction of certain specified conditio**ns;

- the **condition for concessional rate -** 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 subclause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or subsection (2AA) of **section 35 or section 35AD or section 35CCC or under any of the provisions of Chapter VI 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;

- 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**.

- 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 sub-section (1) of section 139** 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;

- **the option so exercised cannot be withdrawn;**

Section 115BAE – Tax regime for new manufacturing co-operative societies - (3/4)

Section 115BAE -New Manufacturing Cooperative Societies

- 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;**

- 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**.;

- 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;**

- 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;**

- 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.

Section 115BAE – Tax regime for new manufacturing co-operative societies - (4/4)

Section 115BAE -New Manufacturing Cooperative Societies

- It is further proposed to provide that 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.
- It is also proposed that where 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.
- It is proposed to provide that the assessee shall **not be engaged in any business other than the business of manufacture or production** of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.
- Further, it is proposed that the business of manufacture or production of any article or thing **shall include the business of generation of electricity, but not include certain specified businesses**.
- Further, it is proposed to insert a **new clause (vb) in the section 92BA** of the Act to include the transaction between the Cooperative society and the other person with close connection within the purview of **'specified domestic transaction'**

These amendments are proposed to 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.

- **The government through Section 115 BAE for co-operative societies provides concessional tax rate of 15% to the new manufacturing co-operative society.**
- **This comes with the government's aim to promote the start-ups in Co-operative sector.**

Direct Tax- 80G - Deduction in respect of donations

OLD PROVISION	PROPOSED AMENDMENT
Clause a of Sub Section 2 of Section 80G includes the following funds: (*ii*) - the Jawaharlal Nehru Memorial Fund ******** (*iiic*) - the Indira Gandhi Memorial Trust, ***** (*iiid*) - the Rajiv Gandhi Foundation, *****	In order to remove such funds, it is proposed to omit the said sub-clauses (ii), (iiic) and (iiid) of clause (a) of sub-section (2) of section 80G of the Act. This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the AY 2024-25 and subsequent AY's.

- There are three funds with names of persons and therefore the same has been removed from the list of funds for which deduction under section 80G can be claimed.
- Any donations made to the funds shall not be allowed as deduction under section 80 G of the Act.

Direct Tax- Section 241A, 245 and 244A– Set off and Withholding of Refunds in certain cases

OLD PROVISION	PROPOSED AMENDMENT
Section 241A of the Act deals with withholding of refund in cases where assessment is started for an AY and issuing of refunds could adversely affect the revenue department. Section 245 of the Act deals with set off of refunds against tax remaining payable after giving due intimation to the assessee. There is an overlap between the two provisions.	It is also proposed to amend section 241A of the Act to make the provisions of that section inapplicable from 1st April, 2023, and to integrate the two sections by substituting section 245, so as to provide that refund shall be adjusted against the tax remaining payable by the assessee and post such adjustment, the refunds shall be withheld in case where assessment is started for an AY and issuing of refunds could adversely affect the revenue department. Further a proviso shall be inserted in section 244A stating that that in case of an assessee where proceedings for assessment or reassessment are pending, the additional interest shall not be payable to the assessee. These amendments will take effect from the 1st day of April, 2023.

- The amendment shall provide clarity and procedure for adjustment and withholding of refunds for the assessee's.
- Addition of Proviso to section 244A shall also ensure that the Interest is not paid to the assessee's in case where refunds are withheld where the assessment / reassessments are pending.

Direct Tax- Section 276A – Decriminalisation of certain administrative matters

OLD PROVISION	PROPOSED AMENDMENT
Section 276A provides for prosecution of liquidator for non-compliance with section 178. It also imposes personal liability on such liquidator for the same noncompliance. Further, with the operationalisation of the IBC 2016, waterfall mechanism for payment of dues is now in place for companies under liquidation and sub-section (6) of section 178 provides that this section shall not have effect when provisions of the IBC are in contrary. Moreover, the liquidator is now working under the oversight of this specific law. Rigorous imprisonment upto 2 years.	In view of this, it is proposed to amend section 276A by providing a sunset clause on the section with effect from 31.03.2023. Hence, it is proposed that no fresh prosecution shall be launched under this section on or after 1st April, 2023. The earlier prosecutions will however continue. This amendment will take effect from 1st April, 2023.

- Decreminilising minor offences for ease of doing business.
- Relief was sought for relaxing the criminal provisions on administrative matters. This is a welcome move owing to the genuine cases whereby administrative aspects might get delayed.

Section 10(10D) - Rationalisation of exempt income under Life Insurance Policy

OLD PROVISION	PROPOSED AMENDMENT
Clause (10D) of section 10 of the Act provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed ten per cent of the actual capital sum assured.	It is 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**. This income shall be taxable under the head "income from other sources". Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier. The proposed provision shall **apply for policies issued on or after 1st April, 2023**. There will not be any change in taxation for polices issued before this date. **The said provisions shall not apply in case where the amount is received on account of death of a person.** **S.56(2)(xiii) -** Where any sum received under a life insurance policy, which is not exempt under S.10 clause (10D), **the amount exceeding the premium shall be taxable under the head IFOS under section 56**

- The Amendment have been introduced in line to curb the misuse of the exemption given for maturity of LIC policy in case of high net-worth assessee's paying huge premiums for the purpose of claiming tax benefits.
- The amendment also provide benefits where the maturity proceeds are received owing to the death of the assessee.

Extension of time for disposing pending rectification applications by Interim Board for Settlement

OLD PROVISION	PROPOSED AMENDMENT
Clause (iv) of sub-section (9) provides that where the time-limit for amending any order or filing of rectification application as per sub-section (6B) expires on or after 01.02.2021, then the period from 01.02.2021 till the constitution of IBS shall be excluded from computing the time-limit, and after such exclusion, if the time-limit available for amending the order or for making application is less than 60 days, such period shall be extended to 60 days. Therefore, as per the provisions of clause (iv) of sub-section (9) of section 245D, the period between 01.02.2021 till 10.08.2021 (when the order constituting IBS was issued) shall be excluded for computing the time-limit.	Accordingly, clause (iv) of sub-section (9) of section 245D is proposed to be substituted with a new clause to provide that where the time-limit for amending an order or for making an application under sub-section (6B) expires on or after 01.02.2021 but before 01.02.2022, such time-limit shall stand extended to 30.09.2023.

This amendment will take effect retrospectively from the 1st day of February, 2021 and provides administrative relief.

Provisions related to business organization

OLD PROVISION	PROPOSED AMENDMENT
Section 170A of the Act was inserted vide Finance Act, 2022 in order to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016. The section provides that in case of business reorganisation, where a return of income has been filed by the successor under section 139 of the Act, such successor shall furnish a modified return within six months from the end of the month in which such order of business reorganisation was issued, in accordance with and limited to the said order.	Accordingly, it is proposed to substitute section 170A, to provide that notwithstanding anything contained in section 139, in a case of business reorganisation, where prior to the date of order of the tribunal or the High Court or Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, any return of income has been furnished for any assessment year relevant to a previous year, by an entity to which such order applies, the successor shall furnish, within a period of six months from the end of the month in which the said order was issued, a modified return in the form and manner, as may be prescribed, in accordance with and limited to the said order. This would also enable modification of the returns filed by the predecessor wherever required If proceedings of assessment or reassessment for the relevant assessment year have been completed on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order modifying the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished. Where proceedings of assessment or reassessment for the relevant assessment year are pending on the date of furnishing of modified return under sub-section (1), the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

Direct Tax- Modification of directions related to faceless schemes and e-proceedings:

Central Government has notified various schemes in the act and issued directions for implementation of e-proceedings and faceless schemes. Time limits were also incorporated into statues for issuing directions, with an intent to implement these reforms in a timely manner. Those time limits and Schemes are as follows:

S.NO	SECTION	SCHEME	TIME LIMIT
1	135A	e-Verification Scheme, 2021	31.03.2022
2	245MA	e-Dispute Resolution Scheme, 2022	31.03.2023
3	245R	e-advance rulings Scheme, 2022	31.03.2023
4	250	Faceless Appeal Scheme, 2021	31.03.2022
5	275	Faceless Penalty Scheme, 2022	31.03.2022

Proviso added in above schemes as," that where any direction has been issued for the purposes of giving effect to the scheme under that section before the expiry of limitation, i.e., 31st March, 2022 or 31st March, 2023, as the case may be, the Central Government may, amend such direction at any time by notification in the Official Gazette". These amendments will take effect from the 1st day of April, 2022 for sections 135A, 250 and 274, and for sections 245MA and 245R, these amendments will take effect from the 1st day of April, 2023.

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

Direct Tax- Section 153-Time limit for completion of assessment, reassessment and recomputation

OLD PROVISION	PROPOSED AMENDMENT
Proviso to Sec.153 (1) **Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted.** **Section 153(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of nine months from the end of the financial year in which such return was furnished.** **The time line provided in section 153 of the Act under sub-sections (3), (5) and (6) to pass an order of assessment or reassessment or order under section 92CA by the Transfer Pricing Officer does not refer to the orders of revision so passed by Principal Chief Commissioner or Chief Commissioner empowered by Section 263.**	**Proviso to Sec.153 (1)** **Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.** **Section 153(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished.** **Now, section 153 may be amended to provide that the provision of the said sub-section (3), (5) and (6) shall also be applicable to order under section 263 or section 264, passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.**

- **A lot of co-ordination is required between the different units in every single scrutiny assessment and adequate time is essential for a rational and speaking order. The period given earlier was short to complete the entire process of assessment.**
- **As a result, taxpayers' grievances of not being given enough time to explain themselves or provide evidences in their favour may arise. This may also compromise the dispensation of reasonableness of orders as well as natural justice to the assessee.**
- **To overcome the above issues the time limit was proposed to be extended**

Direct Tax- Section 271FAA- Penalty for furnishing inaccurate statement of financial transaction or reportable account

PROPOSED AMENDMENT
New Subsection (2) is inserted to Section 271FAA: **"It shall provide that if there is any inaccuracy in the statement of financial transactions submitted by a prescribed reporting financial institution and such inaccuracy is due to false or inaccurate information submitted by the account holder, a penalty of five thousand rupees shall be imposable on such institution, in addition to the penalty leviable on such financial institution in the said section, if any. This penalty shall be levied by the income tax authority prescribed under sub-section (1) of section 285BA of the Act."**

- **Under Rule 114 H of income Tax rules, 1962, Self-certifications by reportable persons and the account holders are mandated for various purposes. There was no penal provision for the submission of a false self-certification which in turn leads to furnishing of incorrect statement under Section 285BA.**
- **Therefore, there was a need to introduce a provision for penalizing false self-certification in the Act and that is why this subsection is introduced.**
- **The above penalty will be paid by the prescribed reporting financial institution and reporting financial institution may recover the amount so paid on behalf of the account holder or retain out of any moneys that may be in its possession or may come to it from every such reportable account holder**

Direct Tax- Section 271C- Penalty for failure to deduct tax at source

PROPOSED AMENDMENT

Insertion of two new sub clauses to clause (b) in Subsection (1) of Section 271C: (w.e.f 01.04.2023)

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

Insertion of a new sub clauses to clause (b) in Subsection (1) of Section 271C: (w.e.f 01.07.2023)

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

Since there is no penalty (as there in Sec 271C) or prosecution (As therein Sec.276B) for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind, in case of first proviso to Section 194 R, 194S and the proposed Section 194BA. So, this clauses where added to enable penalty and prosecution in the above mentioned provisions.

GST Amendments

2

CGST Act,2017- Section 10(2)(d)/10(2A)(C)-Composition Levy

OLD PROVISION	PROPOSED AMENDMENT
The registered person shall be eligible to opt under sub-section (1), if he is not engaged in making any supply of goods 8[or services] through an electronic commerce operator who is required to collect tax at source under section 52	***The registered person shall be eligible to opt under sub-section (1), if he is not engaged in making any supply of ~~goods 8[or~~ services] through an electronic commerce operator who is required to collect tax at source under section 52***

Our Comments- Favourable

- Right from inception of GST law, there is **EXPLICIT RESTRICTION** that a person who is Compositions Dealer u/s 10 cannot engaged in supply of Goods through E-Commerce operator.
- Currently, on account of increase in scaling E-Commerce operators at consumer level business (Eg: Meesho/Zepto etc) and enabling small business players to enhance its business through E-commerce operator, various representations were made to GST council to amend the provisions of the GST law to allow composition dealers to also do business through E-Commerce operator.
- Based on the recommendation made in 47th GST council meeting. The corresponding amendment has been made which shall be **WIN-WIN** Situation for both E-commerce operators and the small business registered under Composition scheme.

CGST Act,2017-Second Proviso to Section 16(2)-Eligibility and conditions for taking input tax credit

OLD PROVISION	PROPOSED AMENDMENT
Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed	***Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~added to his output tax liability, along with interest~~ paid by him along with interest payable under section 50, in such manner as may be prescribed***

Our Comments- Clarificatory

- As per the prevailing provisions, the taxpayer if not paid value of supply along with Tax within 180 days, then the same is required to be added to output liability (WHICH WAS DRAFTED EARLIER BASED ON THE SYSTEM OF AUTOMATED RETURNS ENVISAGED)-GSTR-1-2-3
- The Amendment has been made in the Proviso to enable taxpayer at the time of filing GSTR-3B, self-assess the interest u/s 50 and voluntarily pay the ITC availed by disclosing in GSTR-3B under Other reversals-Table-4(B)(2) along with Interest @18% per section 50 of CGST Act.
- Primarily the fine tuning in the wordings of the section is to align the said sub-section with the return filing system provided in the said Act.

CGST Act,2017-Third Proviso to Section 16(2)-Eligibility and conditions for taking input tax credit

OLD PROVISION	PROPOSED AMENDMENT
Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.	**Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.**

Our Comments- Clarificatory

- The inclusion of words **to the Supplier** in the Proviso is **CLARIFICATORY** amendment to primarily confirm that if the payment of value of supply along with GST is paid to the Supplier, then the ITC reversed can be reclaimed
- As stated in memorandum of the budget, these changes are made fine to align with the prevailing return filing system provided in the said Act.
- The said amendment is not material and shall currently not impact the prevailing return filing system, however reporting in GSTR-3B of ITC reversed and re-availment as per revised format becomes critical and important.

CGST Act,2017-Explanation to Section 17(3)-Apportionment of credit and blocked credits

OLD PROVISION	PROPOSED AMENDMENT
For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule	**For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except, -** ***(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and*** ***(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule***

Our Comments - Not favourable

- It seeks to amend explanation to section 17 (3) of the CGST Act so as to restrict availment of ITC in respect of certain transactions specified in paragraph 8(a) of Schedule III Act ***[i.e., Supply of warehoused goods to any person before clearance for home consumption]***
- Thus, now value of exempt supply include the value of Supply of warehoused goods to any person before clearance for home consumption on account of which **COMMON ITC REVERSAL** is required as per RULE 42 OF CGST rules.
- One side Government has provided clarification that it is “NON-GST SUPPLY” retrospectively and on the other side Government has included the specific entry supply of warehouse goods before home consumption as **EXEMPT SUPPLY** which shall result in additional **BURDEN** to the taxpayers to reverse ITC availed.
- Our view is that the said amendment shall be “PROSPECTIVE” from the date when the same is **NOTIFIED.**

CGST Act,2017-Section 17(5)(fa) -Apportionment of credit and blocked credits on CSR

PROPOSED AMENDMENT (NEWLY INSERTED)

Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to ***his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013***

Our Comments - Not favourable

- From the inception of GST, there has been controversies on eligibility of ITC on goods and services used by taxpayers for meeting CSR obligations as per Companies Act.
- Divergent **ADVANCE RULING** in state of Gujarat **ALLOWING** ITC on CSR Spents in case of ***Dama India (P.) Ltd. [Advance Ruling No. Guj./GAAR/R/44/2021, dated 11-8-21]*** and **DIS-ALLOWING** Uttar Pradesh-***Dwarikesh Sugar Industries Ltd., In re [2021] 125 taxmann.com 329 (AAR - UP)*** has added cherry to the cake of confusion and anamoly.
- Under Income Tax Act, the expense incurrent for CSR spendings is not allowed as “BUSINESS EXPENSE” for the purpose of computation of Total Income.
- Based on this new insertion, the Government has made parity in the provisions of Income tax law and GST law by dis-allowing ITC on CSR spents by including the same in **NEGATIVE LIST**.
- The Government Seeks to amend section 17 (5) so as to **INCLUDE** ITC in respect activities relating to obligations under corporate social responsibility (CSR) referred to in section 135 of the Companies Act, 2013 in the negative list.
- In our view the amendment is **PROSPECTIVE.**

CGST Act,2017-Section 23-Persons not liable for registration

OLD PROVISION	PROPOSED AMENDMENT
(1) The following persons shall not be liable to registration, namely:-	**Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—** **(a) the following persons shall not be liable to registration, namely:—**

Our Comments - Clarificatory

- From the inception of GST, there has been confusion whether Section 23 is **OVERRIDING** provision of section 22 and section 24.
- Through this amendment Government by way of insertion of **NOTWITHSTANDING CLAUSE has clarified that section 23 is overriding** provision notwithstanding anything contained in section 22-Person liable for registration and 24-Compulsary registration which provides BIG relief that the following persons are NOT REQUIRED TO TAKE REGISTERATION:
    - The Person engaged in only supplying **EXEMPT SUPPLIES**
    - Agriculturist to the extent of supply of produce out of cultivation of land.

CGST Act,2017-Section -37,39,44 and 52 of CGST Act, 2017

PROPOSED AMENDMENT (NEWLY INSERTED)

A registered person shall not be allowed to furnish the details/returns/statements for a tax period after the expiry of a period of three years from the due date of furnishing the said details/returns/statements:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details/returns/statements, even after the expiry of the said period of three years from the due date of furnishing the said details/returns/statements.

Our Comments – Favourable

- The amendment is in line with 48th Council meeting amendment wherein the council has proposed that they shall make necessary amendment in GST law to **RESTRICT FILING of VAROIUS UNDER GST LAW**

- Based on the above insertion, the taxpayers **CANNOT FILE return after 3 YEARS OF DUE DATE AS PER PROVISIONS OF GST LAW.**
  - ❑ Section 37 i.e., Furnishing details of Outward Supplies (GSTR-1)
  - ❑ Section 39 i.e., Furnishing of Returns (GSTR-3B)- ***TIME LIMIT ALREADY LAPSED FOR JULY-17 TO NOV-19??***
  - ❑ Section 44 i.e., Annual Return(GSTR-9)
  - ❑ Section 52 i.e., Collection of TCS

CGST Act,2017-Section 54(6)-Refunds of tax

OLD PROVISION	PROPOSED AMENDMENT
Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.	**Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, ~~excluding the amount of input tax credit provisionally accepted,~~ in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.**

Our Comments – Clarificatory

- Section 41(1) and 41(2) has been substituted by Finance Act 2022, to avail ITC on self-assessment basis as per the provisions of the GST law, that is availability of the same in GSTR-2B and subject to other conditions of Section 16 of CGST Act 2017.
- The Concept of PROVISIONAL ITC in GST is NO MORE APPLICABLE after insertion of section 16(2)(aa) and 16(2)(b)(a) read with amendment substituted section 41 which has resulted in need to REMOVE the term provisional credit from the GST law for which the amendment has been made in section 54(6) to be in line with the current mechanism of availing ITC on self-assessment basis as prescribed in section 41 of CGST Act, 2017.

CGST Act,2017-Section 56-Interest on delayed refunds

OLD PROVISION	PROPOSED AMENDMENT
If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund ~~from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax~~	If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed

Our Comments – Enabling Provision

- Section 56 provides for payment of Interest for delayed sanctioned of Refund application. However, there is prescribed mechanism or enabling provisions under GST law to provide enabling provisions under a particular section to prescribe rules which provides for mechanism as to how to **COMPUTE** along with the **CONDITIONS** and **RESTRICTIONS** to be prescribed.

- The insertion of above wordings in section 56 enables and empowers government to frame rules for computation of interest which was missing since implementation.

CGST Act,2017-Section 122(1B)- Penalty for certain offenses

PROPOSED AMENDMENT (NEWLY INSERTED)

Any electronic commerce operator who—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

Our Comments – Not Favourable to ECO

- The Section 122 has been amended to to provide for PENAL PROVISIONS APPLICABLE TO ELECTRONIC COMMERCE OPERATORS in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.
- The Penalty is ranging from 10k to tax amount on such goods under transit whichever is **HIGHER.**

Retrospective amendment w.r.t Non – GST Supply

A. Effective from 1 February 2019, the following transactions of Schedule III to CGST Act neither treated as supply of Goods / Services).

- **Para 7:** Supply of Goods from one country to another country
- **Para 8(a):** Supply of goods before warehouse clearance of home consumption
- **Para 8(b):** High Sea Sales

B. The Amendment in finance bill has the following impact

- All the amendments shall be effective from 1 July 2017
- Refund of tax paid on such transactions is not allowed (period – 1 July 2017 from 31 January 2019)

B

Our Comments – Favourable and clarificatory

- This is welcome change for the taxpayers as the Department was demanding tax from 1 July 2017 from 31 January 2019 by sending SCN.
- In case, Taxpayers has paid the tax during the said period, then Taxpayers can approach the Hon'ble High Court and file the Writ petition for the refund of tax. Notable that the Department would disallow refund of tax paid on such transactions.
- The amendment is **APPLICABLE** RETROSPECTIVE AND it is based on recommendations of 48th Council Meeting.

CGST Act,2017-Section 158A-Consent based sharing of information furnished by taxable person

PROPOSED AMENDMENT (NEWLY INSERTED)

(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—
(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
(c) such other details as may be prescribed.
(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —
(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.
(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Our Comments – Not favourable

- The insertion of new section gives power to Government to SEAMLESSLY SHARE THE DATA AND INFORMATION AVAILABLE WITH THEM in respect of taxpayers which has is available in common portal during the course of registration, filing of returns (Monthly/Annual) to other systems **(NOT YET NOTIFIED)** such as INCOME TAX, CUSTOMS ETC, TRACES etc for better Tax administration or Tax collection.

- Further, the section also protects the Government from any liability on account of making such information available to other systems which foes against the basic principle of Data privacy and Protection of the taxpayers.

IGST- Act- Removal of Proviso in respect of Outbound shipments

Section 12(8) of IGST Act: It provides place of supply of services for transportation of goods where both supplier and recipient is in India.

The Proviso which mentioned the place of destination in case of export shipments is been deleted to remove anomaly in availability of ITC and the POS in case of export consignment shall also be driven by 12(8)

Further, it is proposed in finance bill to to omit the proviso to Section 12(8) of IGST Act (i.e., destination of goods shall be place of supply in case goods exported outside India (including mail or courier).

ISSUE under CONSIDERATION	CLARIFICATION
POS of service for service provided by Transporter	Foreign destination where goods are being transported.
Supply of service – Intra or Inter?	Inter (Section 7(5) of IGST Act). Reason: Location of supplier – India Place of supply – Outside India.
ITC eligibility for recipient of transportation service?	• Eligible ITC U/S 16 & 17. There is no Provision in GST Law (Section 16/17) in hands of recipient if POS is OUTSIDE INDIA
State Code to be mentioned in GSTR-1	• The POS shall be “96”- Foreign Country” • ITC is shown as eligible in GSTR-2A

Customs Law- Snapshot

3

Customs- Section 25(4A)- Power to grant exemption from Duty

New Insertion of Proviso to Section 25(4A)

"Provided further that nothing contained in this sub-section shall apply to any such exemption granted to, or in relation to,—

(a) any multilateral or bilateral trade agreement;

(b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organizations;

(c) privileges of constitutional authorities;

(d) schemes under the Foreign Trade Policy; (

(e) the Central Government schemes having validity of more than two years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act,1975, other than duty of customs leviable under section 12."

Our Comments

- Earlier Section 25(4A) of Customs Act provides upper **TIME LIMIT of 2 Years from the date of** for applicability of Exemption notification issued u/s 25(1) of Customs Act, 1961.
- The Insertion of Proviso to section 25(4A) has **CLARIFIED** that the time limit of 2 years provided in exemption notification shall **NOT** apply to Free-Trade agreements signed with member countries, Various Customs exemption schemes such as Advance authorization, EPCG etc.
- The above Insertion of proviso is **CLARIFICATORY** in nature stating that 2 years of time limit shall not be applicable for listed cases as the customs exemption is driven by separate statute or agreement entered which cannot be restricted for 2 years.

Customs- Rate Rationalization

Amendments to the First Schedule to Customs Tariff Act, 1975

INCREASE in Tariff Rate

(To be effective from 02.02.2023)

Notified Changes in Tariff Rate Without ant changes to the Effective rate of Customs Duty **(BCD to AIDC and Vice-versa)**

REDUCTION of Tariff Rate **(To be effective from 02.02.2023)**

Review of Exemptions

Review of Conditional exemption rates of BCD prescribed in NT-50/2017 **EXTENDING** the period up to **31.03.2024**

Standalone Customs exemption notifications **EXTENDED** to the period up to **31.03.2024**

REMOVAL of Conditional/Un-Conditional exemption

Our Comments

- The BCD rate has been increased for certain tariff line items impacting **Chemicals & Petrochemicals, Rubber, Gems and Jewelry Sector, Electrical Goods, Automobiles and Toys.**
- Most of the changes in the tariff are on account of rate rationalization that is AIDC & BCD are **RE-CALIBRATED** while maintaining the existing incidence of Customs duties on Gold, Gold Dore, Platinum, Coal, Peat and lignite..
- The EXEMPTION notifications are reviewed currently for which the exemption has been extended for the period of 1-2 years and wherever the Customs duty is reduced on capital goods which are further used for MANUFACTURE of lithium-ion Cells of for batteries used in **EV.**

Customs Duty Rate Impact -Illustrative list of items

What gets CHEAPER

- Customs duty on parts of open cells of **TV PANELS** cut to 2.5 per cent
- Govt proposes to reduce customs duty on the import of certain inputs for **MOBILE PHONE** manufacturing
- Govt to reduce basic customs duty on seeds used in manufacturing of **LAB-GROWN DIAMONDS**
- Govt to reduce customs duty on **SHRIMP FEED** to promote exports.
- Exemption from Customs Duties has been provided to "**GREEN MOBILITY PRODUCTS**"

What Gets Costler

- Taxes on **CIGARETTES** hiked by 16 per cent
- Basic import duty on **COMPOUNDED RUBBER** increased to 25 per cent from 10 per cent
- Basic customs duty hiked on **ARTICLES MADE FROM GOLD BARS and IMPORTED SILVER**
- Customs duty on **KITCHEN ELECTRIC CHIMNEY** increased to 15 per cent from 7.5 per cent
- Rates of duties on main feed stock **NAPHTHA is Increased from 1% to 2.5%**
- **IMPORTED VEHICLES** rate has been increased from **60% to 70%**
- Removal of exemption for **Capital Goods** used for **TEXTILE Sector**

Thank You!

For clarification of any issues

Connect @

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