

**UNION  
BUDGET  
2021**

DEFICIT **TAX** **COVID 19**  
ECONOMY CONSUMPTION DIVESTMENT  
**ATMANIRBHAR BHARAT** MSP  
SEBI PRIVATISATION  
DEBT FUNDS INFRASTRUCTURE  
**CAPITAL** GST **GROWTH** RBI

**VACCINATING  
THE ECONOMY**



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## FOREWORD

At the onset of a new decade, the Honorable Finance Minister Mrs. Sitharaman presented India's first digital budget and its third budget after an economic contraction. As the Indian economy emerges from the COVID-19 induced slumber, the now seasoned Finance Minister had her work cut out – ensure growth despite the constraints. With an aggressive borrowing plan and an even more aggressive divestment policy the Finance Minister has clearly signalled that she is willing to bet the national heirloom to deliver sustained economic expansion.

With little opportunity to meet divestment targets in the current financial year, Budget 2021 has placed significant emphasis on privatization of PSUs and divestment of non-core assets to support expenditure in capital formation and infrastructure. Walking on a fine thread of balance between fiscal discipline and inflation, the Finance Minister has set her Government a deficit target of 9% for the current year and 6.5% for financial year 2021-22.

With a view to curb tax structuring, the budget has introduced amendments relating to non-availability of depreciation on goodwill, taxation of slump-exchanges and taxation of money received by partners on retirement or dissolution. However, these may pose as a dampener to taxpayer entering into genuine asset transfer transactions.

The Government brought cheer to the market by keeping tax rates untouched for individual and corporate taxpayers. Focus on ease of doing business continued, with consolidation of securities regulations into a single code, decriminalization of corporate compliances and enhanced flexibility for operations as a one-person company. Building on the theme of digital India, the Government has moved additional compliances and proceedings online, including representations before Income-tax tribunals. The inherent limitations of technology, could result in the move being counter-productive and complicating tax litigation.

On the indirect front, the Budget has done away with requirement of an annual GST audit, further reducing the burden of compliance. Key changes to the GST regulations included the disregarding of the principle of mutuality, with retrospective effect, resulting in mutual associations like housing societies, clubs, trade bodies, being brought under the net of GST.

The Honourable Finance Minister has prepared the blue-print to steer the Indian economy towards a growth path in the post covid-19 world. The challenges in execution are not small and care needs to be taken to ensure that the nation does not take a back seat to petty politics.

To summarise, one can say that no bad news definitely means good news in the current scenario.

**February 1, 2021**

**Mumbai**

## KEY HIGHLIGHTS



**Ashok Shah**  
Founding Partner

“

The Hon'ble Finance Minister has presented her Budget around the theme of continuity, certainty and ease of compliance. No new taxes have been introduced nor given any relief to salaried class or small taxpayers who have suffered tremendously on account of COVID-19. Overall the Budget is a fine balance between the need for discipline and growth.

“

Bold moves in the finance sector have been made. The Government aims to simplify securities regulations into a single legislation. It will be interesting to see who will be the regulator of unified securities markets code as currently many regulators including SEBI, RBI and others play an active role.



**Sandeep Shah**  
Managing Partner



**Ajit Shah**  
Partner - Direct Tax

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Method of income determination established through landmark judgements of the apex court stands amended by new legislations introduced by the Finance Minister. Changes like disallowance of depreciation on goodwill and inclusion of slump exchange as “transfer” will have an impact on future transaction structuring and in some cases may lead to withdrawal of ongoing transactions and scheme of arrangements.

“

Substantive changes are proposed with regard to Not for Profit Organisations. It is expected that voluntary corpus donations & income of the NPO is tracked & utilised separately. Further excess spending in one year cannot be set off against future income which in essence overrules the decision of Supreme Court. NPOs will have to tread with caution to avoid unintended consequences.



**Rohit Adalja**  
Partner - Direct Tax

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New regulations have been introduced that will make supply of services to members of mutual associations like cooperative societies, clubs, trade associations etc. taxable. The amendments are against the established principle of mutuality and will in all probability end in litigation challenging its constitutional validity.



**Naresh Sheth**  
Partner - Indirect Tax

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The requirement of certifying reconciliation statement by a CA or CMA i.e. GST audit has been done away with. Reconciliation statement shall now be required to be submitted alongwith the Annual Return, which is self-certified. This would reduce the cost of compliance for the taxpayers.



**Parag Mehta**  
Partner - Indirect Tax



**Gopal Bohra**  
Partner - Direct Tax

“

The reduced time limit for reopening of assessments from 6 years to 3 years is a welcome change that will bring much needed certainty and closure of past proceedings.

On one hand for small and medium tax payers a Dispute Resolution Committee has been introduced, on the other hand the avenue for large tax payers for settling their tax disputes has been taken away with the abolishment of Settlement Commission.

“

In the earlier year, Government had introduced concept of Tax Collected at Source on sale of goods. This year, the Finance Minister has introduced the concept of TDS on purchase of goods. To avoid double taxation, where TDS is applicable, TCS will not be applicable.

It is difficult to see rationale of such introduction. This may lead to avoidable increase in cost of doing business and unwarranted confusion.



**Dhaval Selwadia**  
Partner - Direct Tax

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When it comes to taxes no news is good news. Tax rates have remained unchanged. The much feared “COVID-19 cess” has not made its way into the tax laws, which is definitely a respite for taxpayers.

Introduction of faceless tax tribunals has been received with mixed reactions. It would be interesting to see how it would pan out in actual practice.



**Aastha Dhowan**  
Partner - Direct Tax



## I DIRECT TAXES<sup>1</sup>

### A TAX RATES

#### PERSONAL TAX

- ♦ No change in tax slabs for individuals:

Tax Rate	Age below 60 years	Age over 60 years but less than 80 years	Age over 80 years
5%	INR 250,000 to INR 500,000*	INR 300,000 to INR 500,000*	-
20%	INR 500,001 to INR 1,000,000	INR 500,001 to INR 1,000,000	INR 500,001 to INR 1,000,000
30%	Above INR 1,000,000	Above INR 1,000,000	Above INR 1,000,000

\* No tax on individual having taxable income upto INR 500,000 as a result of rebate of INR 12,500

- ♦ Tax rates for individuals and HUF under new regime as per section 115BAC

Total Income	New regime	Old regime
INR 250,001 to INR 500,000	5	5
INR 500,001 to INR 750,000	10	20
INR 750,001 to INR 1,000,000	15	20
INR 1,000,001 to INR 1,250,000	20	30
INR 1,250,001 to INR 1,500,000	25	30
Above INR 15,00,000	30	30

#### CORPORATE TAX

- ♦ Basic tax rates for domestic companies remains unchanged and are as under:

Particulars	Tax rate
For companies whose total turnover or gross receipts in the FY 2018-19 does not exceed INR 400 crores	25%

<sup>1</sup> Proposed amendments are effective from AY 2022-23 unless otherwise specified.

For other companies	30%
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- ♦ Basic tax rate for foreign companies remains unchanged at 40%
- ♦ Basic tax rate for domestic companies opting for new tax regime under section 115BAA remains unchanged at 22%
- ♦ Basic tax rate for new domestic manufacturing companies opting for section 115BAB remains unchanged at 15%

#### FIRMS & LLP

- ♦ Basic tax rate remains unchanged at 30%

#### CO-OPERATIVE SOCIETIES

- ♦ Tax rate under old regime is as under:

Taxable Income	Tax rate
Upto INR 10,000	10%
INR 10,000 to 20,000	20%
Above 20,000	30%

- ♦ Tax rate for co-operative societies as per the new regime under section 115BAD remains unchanged at 22%

#### SURCHARGE ON INCOME-TAX

- ♦ Surcharge for domestic and foreign companies remains unchanged and is as follows:

Particulars	Domestic Company		Foreign Company
	Old regime	New Regime*	
Income exceeding INR 1 crore but not exceeding INR 10 crores	7%	10%	2%
Income exceeding INR 10 crores	12%	10%	5%

\*includes new domestic manufacturing company



- ♦ Surcharge for Individuals, HUF, AOP, BOI and AJP remains unchanged and is as under:

Particulars	Surcharge
Income exceeding INR 50 Lakhs but not exceeding INR 1 crore	10%
Income exceeding INR 1 crore but not exceeding INR 2 crores	15%
Income exceeding INR 2 crores but not exceeding INR 5 crores	25%
Income exceeding INR 5 crores	37%

- ♦ However, surcharge @ 25% or 37% shall not be levied on taxable income under section 111A, section 112A, section 115AD and on dividend income
- ♦ Surcharge for co-operative societies, firms & LLP remains unchanged at 12% on the total income exceeding INR 1 crore

#### CESS

- ♦ The Health & Education Cess in all cases remains unchanged at 4%

## B TAXATION OF INDIVIDUALS

#### RELAXATION TO SENIOR CITIZEN

- ♦ Senior Citizens aged 75 years or above, will not be required to file return of income if:
  - Income consists of pension and interest from the “specified bank” in which he is receiving pension income
  - Submission of declaration to the specified bank

#### EXEMPTION FOR LTC CASH SCHEME

- ♦ In view of the situation arising out of outbreak of COVID-19 pandemic, the Government had announced tax exemption on cash

allowance in lieu of LTC by way of a press release. It is now made part of the ITA

- ♦ An employee will be eligible for deemed LTC fare (subject to maximum of INR 36,000 per person of the family) which will be exempt, on the fulfillment of the following conditions:
  - The employee purchases goods or services worth 3 times the deemed LTC fare between 12<sup>th</sup> October, 2020 to 31<sup>st</sup> March, 2021
  - The goods or services attract GST of 12% or more
  - The payment should be made through digital mode
  - The LTC is available once in the block period of calendar year 2018 to 2021
- ♦ This amendment is applicable for AY 2021-22 only

#### **TAXATION OF HIGH PREMIUM ULIP**

- ♦ Presently, any sum received under ULIP is exempt from tax where premium payable during the term of the policy does not exceed 10% of the capital sum assured
- ♦ It is now proposed that this exemption shall not apply with respect to any ULIP, issued on or after the 1<sup>st</sup> February, 2021, if the annual premium exceeds INR 250,000 and such income will be taxable in the year of receipt as capital gain in the manner as may be prescribed
- ♦ However, amount received on death will continue to be exempt under section 10(10D)
- ♦ This amendment is applicable from AY 2021-22

#### **TAXABILITY OF INTEREST ON PROVIDENT FUNDS WHERE INCOME IS EXEMPT**

- ♦ Interest accrued on employee's contribution made on or after 1<sup>st</sup> April, 2021 exceeding INR 250,000 annually shall be taxable

## DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR A RESIDENTIAL HOUSE

- ♦ Interest on loan upto INR 150,000 can now be claimed for loans sanctioned till 31<sup>st</sup> March, 2022 for affordable residential house property under section 80EEA

## TAXATION OF INCOME FROM OVERSEAS RETIREMENT ACCOUNTS

- ♦ Currently there is mismatch in year of taxability in respect of income from overseas retirement account which was opened when taxpayer was a non-resident in India and resident of a notified country. In India income would be taxable on accrual basis and in notified country it would be taxable at the time of withdrawal or redemption. This resulted in hardship to the taxpayer
- ♦ It is proposed that income of such a person shall be taxed in the manner and in the year as may be prescribed by the Central Government

## C DEPRECIATION ON GOODWILL

- ♦ Presently, depreciation is allowed on goodwill on the basis of the decision of the Hon'ble Supreme Court holding that goodwill is a depreciable asset
- ♦ It is now proposed that goodwill shall not be eligible for depreciation even if it is paid for
- ♦ Where goodwill formed part of block of assets as at 1<sup>st</sup> April 2020, short term capital gain in the year of transfer shall be determined, in a manner as may be prescribed
- ♦ There is no consequential amendment of adjusting the opening block of asset of intangibles to exclude WDV of goodwill
- ♦ This amendment is applicable for AY 2021-22

## D SLUMP SALE

- ♦ Slump sale means transfer of one or more undertaking as a result of sale for a lump sum consideration without value being assigned to any individual assets or liabilities
- ♦ The Hon'ble Bombay High Court in case of Bharat Bijlee Limited (365 ITR 258) have held that provision of section 50B applies only to a "sale" for a "monetary consideration" and not to a case of "exchange" of the undertaking for any other assets. Accordingly, transaction involving slump exchange were out of the provision of section 50B
- ♦ In order to bring such transaction under the definition of slump sale, it is now proposed to amend the section to cover all types of transfers as defined in section 2(47) of the Act
- ♦ This amendment is applicable for AY 2021-22

## E DISSOLUTION OR RECONSTITUTION OF FIRM

- ♦ Presently, gain arising from the transfer of capital asset by way of distribution of capital assets on dissolution or reconstitution of a firm or AOP or BOI ('Specified Entity') is taxed in the hands of Specified Entity by considering FMV of such assets
- ♦ Now it is proposed to provide that where a partner/member receives capital asset which represents the balance in capital account at the time of dissolution or reconstitution of such specified entity, gains arising from receipt of such capital assets shall be chargeable as "Capital Gains" in the hands of the Specified Entity in the year of receipt. For this purpose, FMV of capital asset shall be considered as full value of consideration
- ♦ Where partner/member receives money or other asset at the time of dissolution or reconstitution of the Specified Entity, which is in excess of the balance in capital account, gains arising from receipt of such sum/other assets shall be chargeable as "Capital Gains" in the hands of the specified entity

- ♦ For this purpose,
  - value of money and FMV of other asset shall be considered as full value of consideration; and
  - balance in capital account, without considering increase on account of revaluation of asset or self-generated goodwill or asset shall be considered as cost of acquisition
- ♦ This amendment is applicable from AY 2021-22

## **F INCOME TAX ASSESSMENTS AND PROCEEDINGS**

### **REOPENING OF ASSESSMENT**

- ♦ Presently, assessment can be reopened if the AO has reason to believe that income of the assessee has escaped assessment
- ♦ Time limit for issue of notice is as under:
  - 4 years from the end of relevant assessment year where income escaping assessment does not exceed INR 100,000
  - 6 years from the end of relevant assessment year where income escaping assessment exceeds INR 100,000 and there is failure on the part of assessee to disclose all the relevant material necessary for the assessment
- ♦ It is now proposed to substitute the existing provision by:
  - Introducing a new section 148A under which the AO before issuing reopening notice, shall conduct enquiry with respect to information which suggests that the income chargeable to tax has escaped assessment. The AO shall also provide an opportunity of being heard as to why the case should not be reopened
  - Information with AO which suggests that the “income chargeable to tax has escaped assessment” shall mean:

- any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time
  - any final objection raised by the CAG of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of the ITA
- 
- The AO, after considering assessee's reply, shall pass an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with reopening notice on the assessee
  - With the amended provision, it appears that now reasons to believe/ new tangible material is not needed for reopening of assessment
  - Time limit for issue of notice is as under:
    - 3 years from the end of relevant assessment year where income escaping assessment does not exceed INR 5,000,000
    - 10 years from the end of relevant assessment year where income escaping assessment exceeds INR 5,000,000
    - However, for AY 2020-21 or earlier year, extended period of 10 years shall not apply if such notice could not have been issued at that time as per the erstwhile time limit
  - Assessment in case of search initiated on or after 1<sup>st</sup> April, 2021 shall not be governed by erstwhile search assessment but will be governed by the amended reopening of assessment provisions

## TIME LIMIT FOR FILING OF RETURN OF INCOME/ ASSESSMENT

Particulars	Current	Proposed
Belated/revised return of income	End of the relevant assessment year (i.e. 31 <sup>st</sup> March) or before completion of assessment, whichever is earlier	3 months prior to end of the relevant assessment year (i.e. 31 <sup>st</sup> December) or before completion of assessment, whichever is earlier
Processing of return of income	1 year from the end of the financial year in which the return of income is furnished	9 months from the end of the financial year in which the return of income is furnished
Selection of Scrutiny Assessment	6 months from the end of the financial year in which the return of income is furnished	3 months from the end of the financial year in which the return of income is furnished
Completion of assessment	12 months from the end of relevant assessment year	9 months from the end of relevant assessment year

- ♦ Scope of intimation for processing of return of income is expanded to include
  - increase in income reported by tax auditor but not taken into account by the assessee
  - to disallow profit-linked deductions unless return of income is furnished within the due date

## ITSC

- ♦ It is proposed that ITSC shall cease to operate from 1<sup>st</sup> February, 2021
- ♦ For pending applications, Interim Board for Settlement will be constituted
- ♦ Proceedings pending before the ITSC are excluded from Vivad se Vishwas Scheme



## FACELESS PROCEEDINGS BEFORE ITAT

- ◆ Presently, entire proceedings before ITAT are concluded on basis of physical submissions and face to face hearing
- ◆ It is now proposed to introduce faceless proceedings before ITAT

## TAX AUDIT APPLICABILITY

- ◆ Presently, tax audit is not required if turnover exceeds INR 1 crore but is less than 5 cores and cash receipts or payments do not exceed 5% of all receipts or payments
- ◆ It is now proposed to increase the turnover limit from INR 5 crores to INR 10 crores
- ◆ This amendment is applicable from AY 2021-22

## G ADVANCE TAX, TDS AND TCS

### INTEREST ON SHORTFALL OF ADVANCE TAX INSTALMENTS

- ◆ Presently, for payment of advance tax instalment, dividend income was required to be estimated
- ◆ It is now proposed that in computing advance tax instalments dividend has to be included only when the same is declared
- ◆ This amendment is applicable from AY 2021-22

### TDS ON PURCHASE OF GOODS

- ◆ It is proposed to insert new section so as to provide for TDS at the rate of 0.1% on purchase of goods with effect from 1<sup>st</sup> July, 2021, if:
  - turnover/sales/gross receipts of buyer for preceding previous year exceeds INR 10 crores
  - value of goods purchased exceeds INR 50 lakhs from the single seller

- ◆ This provision shall not be applicable for persons as may be notified by the Central Government
- ◆ This provision shall not be applicable to transactions if:
  - TDS is applicable under any other provisions of the ITA, and
  - TCS is applicable on such transactions (other than section 206C(1H))
- ◆ In case where PAN is not furnished, tax is required to be deducted at higher of:
  - Applicable rate or
  - 5%
- ◆ Where provisions of both TCS under section 206C(1H) and TDS are applicable, provisions of TDS shall prevail

#### **TDS AND TCS FOR NON-FILERS OF RETURN OF INCOME**

- ◆ Higher rate of TDS and TCS is applicable for:
  - a person who has not filed his return of income for 2 previous years and the due date for filing return of income has expired; and
  - aggregate amount of TDS or TCS as applicable is more than INR 50,000 in each of the 2 previous years
- ◆ Higher of following TDS rates shall be applicable:
  - Twice the applicable rate or
  - 5%

If such non-filer does not have PAN, TDS rate of 20% shall apply
- ◆ This provision shall not apply in case of TDS for payment of salaries, accumulated balance of PF, winning for lotteries or crossword puzzle, winning from horse races, income in respect of investment in securitisation trust, cash withdrawal from banks

- ♦ For TCS higher of the following rates shall be applicable:
  - Twice the applicable rate;
  - 5%
- ♦ The above provision of TCS shall not apply in case of non-residents not having permanent establishment in India

#### EXEMPTIONS FOR BUSINESS TRUST

- ♦ Tax deduction shall not be applicable in case of income credited or paid by a special purpose vehicle to a business trust in whose hands dividend is exempt

## H REAL ESTATE SECTOR

#### SAFE HARBOUR

- ♦ Presently, if stamp duty value exceeds 10% of the consideration, such difference is to be included while computing capital gain or business income in the hands of transferor and deemed income in the hands of the recipient
- ♦ In order to boost the demand in real estate sector, an ordinance was promulgated to increase the threshold limit for the purpose of section 43CA and 56(2)(x) from 10% to 20% on transfer of residential unit which satisfies the following conditions:
  - Transfer of residential unit shall take place between 12<sup>th</sup> November, 2020 to 30<sup>th</sup> June, 2021
  - Transfer should be first time allotment to any person
  - Consideration received shall not exceed INR 2 crores
  - The ordinance is now made part of the ITA
  - Explanation to the said section defines “residential unit” to mean “an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through

an interior door in a shared hallway and not by walking through the living space of another household.” This explanation was not there in the ordinance

#### **PROFIT LINKED DEDUCTION FOR HOUSING PROJECT**

- ♦ Time limit for approval of housing project extended from 31<sup>st</sup> March, 2021 to 31<sup>st</sup> March, 2022
- ♦ Benefit will also be extended for profits and gains derived from the business of developing and building rental housing project

#### **I NOT FOR PROFIT ORGANISATION**

- ♦ Application of income out of loan or borrowing, shall not be treated as application of income in the year of utilization, but can be claimed as application of income in the year of repayment of loan
- ♦ It is clarified that while calculating application of income, excess application of earlier years shall not be available for set off
- ♦ Presently, corpus donation is exempt in the hands of a charitable institution
- ♦ It is now proposed that corpus donation shall be exempt only if it is separately invested in specified modes. In the event any amount is spent from such corpus, it shall not be considered as an application of income. However, any amount subsequently deposited back in such specified investments shall be considered as application of income
- ♦ Presently, no specific approval was required for exemption of income of university or educational or hospital / medical institution if their aggregate annual receipts is less than INR 1 crore
- ♦ It is now proposed to increase the limit to INR 5 crores

## J MAT

- ♦ Presently, in computing book profit, prior period income attributable to secondary adjustment or APA or dividend received by a foreign company is included
- ♦ It is now proposed to exclude
  - prior period income attributable to secondary adjustment or APA on application being made
  - dividend (net of expenditure) where rate of tax under applicable DTAA is lower than MAT rate

## K MISCELLANEOUS

### DEFINITION OF TERM “LIABLE TO TAX”

- ♦ Presently, the term “liable to tax” is not defined under the ITA
- ♦ It is now proposed to defined term “liable to Tax” in relation to a person which means that there is a liability of tax under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided

### IFSC

- ♦ Proposed tax measures includes the following:
  - Relaxation of certain conditions for offshore fund manager located in IFSC
  - Tax neutral relocation of existing offshore fund to IFSC
  - Exemption of Income earned by the investment division of banking unit in IFSC
  - Exemption on transfer of non-deliverable forward contracts entered by non-resident with an offshore banking unit in IFSC
  - Exemption of royalty income earned by non-resident from aircraft leasing to IFSC unit

## EMPLOYEE CONTRIBUTION TO VARIOUS FUNDS

- ♦ Contribution received by employer from his employees towards provident funds, ESIC, Super annuation etc. is treated as his income under section 2(24)(x), if the same is not deposited to relevant fund accounts within due date specified by the funds
- ♦ However, various courts have ruled that even employee's contribution is governed by section 43B and same should not be disallowed, if it is paid within due date of filing of return of income
- ♦ It is now proposed that employee's contribution to any funds will not be governed by section 43B and same has to be deposited within the due date specified by the respective funds

## CONSTITUTION OF DISPUTE RESOLUTION COMMITTEE

- ♦ Last year Vivad se Vishwas Scheme was launched to settle pending disputes
- ♦ In order to provide early tax certainty and reduce future litigation, it is now proposed to introduce new scheme for preventing new dispute and settling dispute at initial stage. Some of the feature of the scheme:
  - Constitute one or more DRC
  - Committee will resolve dispute of such person or class of person which shall be specified by Board
  - Assessee would have option to opt for or not opt for the dispute resolution through DRC
  - Person whose returned income is less than INR 50 lakhs and aggregate proposed variation is less than INR 10 lakhs, shall be eligible to be considered by DRC
  - Search and survey cases or cases where information is received under agreement referred under section 90/90A, shall not be eligible to be considered by DRC
  - Subject to certain conditions DRC shall have power to reduce or waive any penalty or grant immunity from prosecution

## EQUALISATION LEVY

- ◆ Presently, exemption was available in respect of income arising from e-commerce supply of goods or services subject to equalisation levy from AY 2022-23
- ◆ It is now proposed to prepone such exemption from AY 2021-22
- ◆ It is clarified, that equalisation levy will not be applicable in case of consideration received/ receivable for specified services or for e-commerce supply of services if the same is taxable as fees for technical services or royalties as per the ITA read with DTAA. Consequently, exemption shall also not be available in such cases
- ◆ It is clarified that online sale of goods and online provision of services shall include any one or more of the following activity taking place online
  - acceptance of offer for sale
  - placing the purchase order
  - acceptance of the purchase order
  - payment of consideration
  - supply of goods or provision of services partly or wholly
- ◆ It is proposed to also include the consideration received/receivable from e-commerce operator
  - whether e-commerce operator owns goods or not
  - whether services are provided by e-commerce operator or facilitated by e-commerce operator
- ◆ This amendment is applicable from AY 2021-22

## EXTENSION OF DATE OF INCORPORATION FOR ELIGIBLE START UP FOR EXEMPTION AND FOR INVESTMENT

- ◆ Presently, for start-ups incorporated upto 31<sup>st</sup> March, 2021, deduction for profits was allowed for 3 consecutive years



- ♦ It is now proposed to extend the outer date of incorporation by 1 year i.e. upto 31<sup>st</sup> March, 2022

#### **INVESTMENT OF CAPITAL GAINS IN START-UP**

- ♦ Similarly, the outer date for investment in start-up for claiming exemption from long term capital gains arising to an individual / HUF from sale of residential property (a house or plot of land) has been extended from 31<sup>st</sup> March, 2021 to 31<sup>st</sup> March, 2022

#### **VIVAD SE VISHWAS SCHEME**

- ♦ Scheme has been extended from 31<sup>st</sup> January, 2021 to 28<sup>th</sup> February, 2021

#### **OTHERS**

- ♦ To facilitate disinvestment of public sector companies, certain provisions are proposed
- ♦ Certain conditions are relaxed for investment by SWF and PF
- ♦ Now, pre-filled ITR shall also include details of dividend, interest and capital gain from listed securities

## II GOODS AND SERVICES TAX <sup>2</sup>

### A PRINCIPLE OF MUTUALITY IS DONE AWAY WITH

- ♦ It is proposed to expand the scope of 'supply' retrospectively from 1<sup>st</sup> July, 2017 to include the activities or transactions between mutual association and its members
- ♦ It is proposed that association or body of individuals (whether incorporated or not) and its members or constituents shall be deemed to be two separate persons and any activities or transaction inter-se shall be deemed to be supply from one person to another
- ♦ Consequently, all mutual associations including co-operative housing societies, member's clubs, trade associations, professional associations etc. will be liable to GST on supply of goods or services to its members retrospectively from 1<sup>st</sup> July, 2017
- ♦ This proposal annuls the ratio laid down by Hon'ble Supreme Court in the case of Calcutta Club Limited

### B ADDITIONAL ELIGIBILITY CONDITION FOR CLAIMING ITC

- ♦ It is proposed that taxpayer will be eligible to claim ITC on vendor's invoices or debit notes only if such invoice or debit note is declared by the vendor in its statement of outward supply (i.e. Form GSTR-1)
- ♦ Taxpayer will not be entitled to claim ITC until the vendor files Form No GSTR 1 reflecting above referred Invoice or Debit Note
- ♦ This will cast an onus on taxpayer to ensure that his vendors are compliant and disciplined
- ♦ On amendment getting notified, Rule 36(4) of CGST Rules, 2017 stipulating the limit of ITC availment may become redundant

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<sup>2</sup> Proposed amendments will be effective from date to be notified unless otherwise specified

## **C GST AUDIT BY CHARTERED ACCOUNTANT OR COST ACCOUNTANT ABOLISHED**

- ♦ It is proposed to omit the requirement of certifying reconciliation statement in Form GSTR 9C ('GST Audit') by a Chartered Accountant or Cost Accountant
- ♦ The information required to be furnished in Form GSTR 9C will be merged with Annual Return in Form GSTR 9. This information will have to be self-certified by the taxpayers

## **D INTEREST WILL BE COMPUTED ON NET TAX LIABILITY - CLARIFIED**

- ♦ It was earlier notified that interest was leviable on net tax liability (i.e. after setting off Input Tax Credit) and not on gross tax liability with effect from 1<sup>st</sup> September, 2020
- ♦ The issue was open whether the interest was applicable on gross tax liability or net tax liability during the period 1<sup>st</sup> July, 2017 to 31<sup>st</sup> August, 2020
- ♦ It is proposed to make above referred beneficial amendment effective from 1<sup>st</sup> July, 2017
- ♦ Question still remains whether interest already paid on gross tax liability pursuant to then prevailing law is refundable to taxpayer

## **E ALL SUPPLIES TO SEZ WILL NOT QUALIFY AS ZERO RATED SUPPLY**

- ♦ Supply of goods or services to SEZ shall qualify as zero rated supplies only if such supply is to be used for authorised operations by SEZ unit or SEZ developer

## **F REFUND LIABILITY WITH INTEREST- EXPORT PROCEEDS NOT REALISED WITHIN TIME**

- ♦ It is proposed that supplier exporting goods without payment of tax shall be liable to pay back refund received by him on failure to realise the export proceeds within the time prescribed under FEMA

- ◆ Such amount shall be paid along with applicable interest within 30 days of expiry of time period prescribed under the FEMA

#### **G CRITERIA FOR ELIGIBILITY OF REFUND OF IGST TO BE SPECIFIED**

- ◆ Presently, the exporter of any goods or services are entitled to refund of IGST paid on such exports
- ◆ It is proposed that such refund will be allowed only in case of notified class of taxpayers or notified goods or services

#### **H CONCLUSION OF PENALTY PROCEEDINGS IN CASE OF CO-NOTICEE**

- ◆ Presently if recovery and penalty proceedings on main noticee (supplier) is concluded, the penalty proceedings against all co-noticees (including transporter) are deemed to have been concluded
- ◆ It is proposed to delink penalty proceedings on supplier (main noticee) and transporter (co-noticee)
- ◆ In case where penalty proceedings are initiated in respect of detention, confiscation or seizure of goods and / or vehicle, proceedings against transporter will not conclude on closure of proceedings against the supplier (main noticee)

#### **I SCOPE OF SELF-ASSESSED TAX CLARIFIED FOR RECOVERY PROCEEDINGS**

- ◆ It is proposed that self-assessed tax will include tax payable on invoices declared in the statement of outward supply (Form GSTR 1) even though not declared in GST Return (Form GSTR 3B) for recovery proceedings
- ◆ Consequently, tax officer will be empowered to recover unpaid self-assessed tax without resorting to adjudication process

#### **J POWER OF PROVISIONAL ATTACHMENT ENHANCED**

- ◆ Presently power of provisional attachment was restricted to non-filers of returns, unregistered persons, summary assessments,

inspection, search and seizure and adjudicated demand. Such power was restricted only to assets of the taxable person

- ♦ It is proposed to enhance power of provisional attachment further in the cases of self-assessment, provisional assessment and scrutiny of returns
- ♦ Moreover, the provisional attachment can be done in respect of assets of any other person retaining the benefit of unlawful transactions for which penalty is prescribed under section 122 of CGST Act

## **K PENALTY IN CASE OF DETENTION AND SEIZURE**

- ♦ Presently in case of detention and seizure, the goods and conveyance is released on payment of applicable tax and penalty equivalent to 100% of tax payable on goods where owner of goods comes forward for payment of such tax and penalty
- ♦ In case the owner does not come forward for payment of tax and penalty, goods and conveyance shall be released on payment of applicable tax and penalty equivalent to 50% of the value of the goods reduced by the tax amount paid thereon
- ♦ The goods can be released on provisional basis upon execution of a bond and furnishing of security in such manner and of such quantum as prescribed
- ♦ It is proposed to release the goods and conveyance on payment of penalty equivalent to 200% of tax payable on goods when the owner of goods comes forward for payment of such penalty
- ♦ In case the owner does not come forward for payment of penalty, goods and conveyance shall be released on payment of penalty equivalent to higher of 50% of the value of the goods or 200% of tax payable on such goods
- ♦ The power of provisionally releasing the goods on execution of the bond and furnishing of security has been withdrawn

- ♦ The officer shall be required to issue a notice within 7 days of detention or seizure of goods and conveyances specifying the penalty payable. Officer is further required to pass an order within the period of 7 days from the date of service of notice
- ♦ In case of non-payment of penalty within 15 days of receipt of the order, the proper officer is empowered to sale or dispose of goods or conveyance so detained for recovery of penalty
- ♦ The transporter may seek release of conveyance on payment of penalty or INR 1 lakh, whichever is less

#### **L PRE-DEPOSIT IN DETENTION AND SEIZURE CASES**

- ♦ Presently, any appeal (including in case of detention and seizure) to appellate authority can be filed on payment of 10 % of disputed tax dues (excluding demand for interest and penalty)
- ♦ It is proposed that in detention and seizure cases, appeal to appellate authority shall be admitted only upon payment of 25% of penalty

#### **M POWER TO COLLECT INFORMATION**

- ♦ Jurisdictional commissioner or an officer authorised by him is empowered to direct any person to furnish information relating to any matter dealt with in connection with GST Act
- ♦ The information collected shall not be used for the purpose of any proceedings under GST Act without giving an opportunity of being heard to the concerned person

### III ALLIED LAWS

#### A SECURITIES MARKET CODE

- ♦ It is proposed to consolidate SEBI Act, 1992, Depositories Act, 1996, Securities Contracts (Regulation) Act, 1956 and Government Securities Act, 2007 into a rationalized single Securities Markets Code

#### B NBFC

##### NBFCs TO COVER MORE ENTITIES UNDER SARFAESI

- ♦ For NBFCs with minimum asset size of INR 100 crores, the minimum loan size eligible for debt recovery under the SARFAESI is proposed to be reduced from existing INR 50 lakhs to INR 20 lakhs

#### C FDI IN INSURANCE SECTOR

- ♦ Increase in permissible investment limit for FDI in Insurance Companies from 49% to 74% with additional safeguards including majority of Directors on the Board and key management persons to be resident Indians, 50% of directors to be Independent Directors, and specified percentage of profits to be retained as general reserve

#### D FINANCIAL MARKET

- ♦ A Development Financial Institution to be set up for long term debt financing of the infrastructure sector as a catalyst for infrastructure lending
- ♦ InvITs and REITs have been permitted to raise debt from FPIs for augmenting funds for infrastructure and real estate sectors
- ♦ Government to support the development of a world class Fin-Tech Hub in GIFT-IFSC and provide further tax holidays



## IV CORPORATE LAWS

### A THE COMPANIES ACT, 2013

#### AMBIT OF SMALL COMPANIES WIDENED

- ♦ It is proposed to amend the definition of a small company by increasing the threshold limits as under:

Threshold limit [to be satisfied cumulatively]	Existing	Proposed
Paid-up share capital not exceeding	INR 50 lakhs	INR 2 crores
Turnover not exceeding	INR 2 crores	INR 20 crores

- ♦ The proposed amendment will enable more companies to qualify as a small company and avail certain benefits / exemptions which will ease their compliance requirements. This includes reduction in minimum board meeting from 4 to 2, non-applicability of cash flow statement, lower penalties, etc.

#### RELAXATION IN FORMATION & OPERATIONS OF ONE PERSON COMPANY

- ♦ Following measures have been proposed to incentivize incorporation of OPCs:
  - OPCs will be allowed to operate and grow without any restrictions on paid up capital and turnover. Currently OPCs are compulsorily required to be converted into a private or public limited company if the (a) paid up share capital exceeds INR 50 lakhs and (b) average annual turnover during the period of immediately preceding three consecutive financial years exceed INR 2 crores
  - OPCs allowed to convert into any other type of company anytime as against the current requirement that atleast 2 years must have elapsed since its incorporation

- Residency limit for an Indian citizen to set up an OPC is reduced from 182 days to 120 days
- NRIs would also be allowed to incorporate OPCs in India

## **B THE LLP ACT, 2008**

### **DECRIMINALISATION OF PROCEDURAL OFFENCES**

- ◆ Similar to decriminalisation of the procedural and technically compoundable offences under the Companies Act, 2013, it is now proposed to decriminalise similar offences under the LLP Act, 2008. This will help in ease of doing business

## GLOSSARY

AJP	Artificial Judicial Person
AO	Assessing Officer
AOP	Association of Person
APA	Advance Pricing Agreement
AY	Assessment Year
BOARD	Central Board of Direct Taxes
BOI	Body of Individuals
CAG	Comptroller and Auditor General
CGST	Central Goods and Services Tax
DRC	Dispute Resolution Committee
DTAA	Double Taxation Avoidance Agreement
EPFO	Employee's Provident Fund Organisation
ESIC	Employee State Insurance Corporation
FMV	Fair Market Value
FY	Financial Year
GST	Goods and Services Tax
HUF	Hindu Undivided Family
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
InvIT	Infrastructure Investment Trust
ITA	Income Tax Act
ITAT	Income Tax Appellate Tribunal
ITSC	Income Tax Settlement Commission
LTC	Leave Travel Concession
MAT	Minimum Alternate Tax
NBFC	Non - Banking Finance Companies
NRI	Non Resident Indian
OPC	One Person Company
PAN	Permanent Account Number
PF	Pension Fund
SGST	State Goods and Services Tax
SWF	Sovereign Wealth Fund
TDS	Tax Deducted at Source
ULIP	Unit Linked Insurance Policy
UTGST	Union Territory Goods and Services Tax
WDV	Written Down Value

Disclaimer:

This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.

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