

# UNION BUDGET 2022



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## FOREWORD

On the backdrop of various state elections, the Honorable FM Nirmala Sitharaman has attempted to juggle between the revival of a covid-19 tattered economy and managing the fiscal deficit target while pegging the GDP growth at 9.2% for FY 22-23.

The budget hit the bull's eye on the front of infrastructure development with a large capital outlay for development of national highways, Vande Bharat trains, Multi-Modal transport connectivity and ropeways. The Government's promotion of drone utilization in the agriculture sector and supportive policies for sunrise opportunities like artificial intelligence, geospatial systems, semi-conductors, electric vehicles, green energy, etc. have great potential towards sustainable development and employment generation in India. The actual execution holds the key to the benefits that we may reap from these policies.

A combination of technology and content driven measures for skill development, education promotion and mental health initiatives are a sign of an agile and progressive outlook for reaching out to the masses.

Boosting the digital economy further, the government has also proposed launch of central bank digital currency to be issued by RBI, using blockchain and other technologies. The government has tactfully acknowledged virtual digital assets such as cryptocurrencies, non-fungible tokens, etc. by introducing a 30% tax on income from such assets.

The budget failed to provide tax benefits and incentives to the Aam Aadmi. Individuals aspired to receive tax benefits after immensely suffering during the second and third wave of COVID and salary cuts. Further, it also did not address the issues concerning SPAC structures which are necessary to fuel the entrepreneurship spirit and the start-up ecosystem. The finance bill harped on legislative intent while clarifying certain tax positions, however, retrospective amendments could undo litigation won fair and square.

The FM added to the budget speech highlighting the GST collections for January, 2022 but on the other hand, complicated the ITC regime. The GST council has now been empowered to prescribe a limit on utilization of the ITC which may create a cascading impact, working capital blockage and cash flow issues.

With prudence to invest in capital expenditure and missed opportunities for general populace, it was a bittersweet budget. Foretaste of Amrit Kaal could have been given now rather than later.

**February 1, 2022**

**Mumbai**



## KEY HIGHLIGHTS



**Ashok Shah**  
Founding Partner

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The FM has made a bold move by bringing virtual digital assets like crypto, NFT etc. under the tax net without even legally recognizing cryptocurrency as a legal tender. High taxes coupled with increased procedural compliance might make investment and trading in digital assets unviable. Procedural clarity for computing income and deducting taxes should be addressed.

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One has to live in short term to enjoy long term fruits. The Budget could have extended tax reliefs and incentives to MSME sector, individuals and other COVID-19 impacted industries. Neither stock market buoyancy nor the corporate tax rate growth reflects disposable income at grassroot level. Introduction of measures to accelerate winding-up of companies and establishment of International Arbitration Centre in GIFT City forms part of Ease of Doing Business 2.0.



**Sandeep Shah**  
Managing Partner

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Budget aims to specifically disallow deduction for cess and surcharge with retrospective effect. This proposal is introduced for overruling the well-considered and reasoned judgements of the Courts and Tribunals, which is a regressive step. This proposal is against the Government's established policy of not bringing about retrospective amendments and indicates that it is a sore loser.



**Ajit Shah**  
Partner - Direct Tax

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Substantial changes are proposed for Not-for-Profit Organisations including educational institutions, hospitals, and trusts. NPOs will have to tread with caution to keep up with the changes in computation mechanism and introduction of rigorous penalties.



**Rohit Adalja**  
Partner - Direct Tax

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Proposed restriction of utilization of ITC, non-allowability on account of non-compliance by vendor are some of the stringent and cumbersome conditions to avail ITC. This could be detrimental to the interests of genuine taxpayers and lead to unwarranted liquidity crunch. Denial of ITC is against the core cannons of value added tax regime and could disrupt the GST credit claim chain.



**Naresh Sheth**  
Partner - Indirect Tax

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FM needs to be complimented for extending time limits for taking ITC credits, issuing credit notes and rectification of errors in return by 2 months. These measures encourage taxpayers to comply in an informed fashion.

Taking note of various judicial pronouncements, Budget also provides for non-levy of interest on ITC wrongly availed but not utilized. This was a much-needed clarification for genuine error by taxpayers.



**Parag Mehta**  
Partner - Indirect Tax





**Gopal Bohra**  
Partner - Direct Tax

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Option to file Updated Tax Returns has been introduced to provide opportunity to the taxpayers to correct any omissions or wrong statements in the returns filed within 2 years. However, this comes with an additional tax outflow of 25% and 50%. Entities undertaking business reorganisation have now been permitted to revise returns for giving apropos effect.

These provide necessary relief from compliance related hardships and should reduce litigation considerably.

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There has been no respite for small individual taxpayers who have suffered tremendously due to COVID-19. Tax rates have remained unchanged and new tax regime introduced in the previous budget remains unattractive. Much awaited increase in standard deduction and allowance for work-from-home expenses for salaried class did not find its place in the budget.

Surcharge on long term capital gains on all capital assets has been reduced for high net-worth individuals and is a welcome relief.



**Dhaval Selwadia**  
Partner - Direct Tax

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There has been no increase in tax rates for corporations. This is in sharp contrast to general market sentiment that a special COVID-19 cess could be levied. Extension of beneficial tax regime for new manufacturing companies and start-ups by 1 year is a timely relief.

Concessional tax rate on dividend from foreign group company has been withdrawn but set-off shall be available for onward dividend distribution by Indian companies.



**Aastha Dhowan**  
Partner - Direct Tax

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

### A TAX RATES

#### PERSONAL TAX

- ♦ No change in tax slabs for individuals and HUF under the old regime:

<b>Tax Rate</b>	<b>Age below 60 years / HUF</b>	<b>Age over 60 years but less than 80 years</b>	<b>Age over 80 years</b>
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

- ♦ No change in tax rates for individuals and HUF under new regime:

<b>Total Income</b>	<b>New regime</b>
INR 250,001 to INR 500,000	5
INR 500,001 to INR 750,000	10
INR 750,001 to INR 1,000,000	15
INR 1,000,001 to INR 1,250,000	20
INR 1,250,001 to INR 1,500,000	25
Above INR 1,500,000	30

<sup>1</sup> Proposed amendments are effective from AY 2023-24 unless otherwise specified.

## CORPORATE TAX

- ♦ Tax rates for companies remains unchanged as under:

Particulars	Tax rate
Domestic companies whose total turnover or gross receipts in the FY 2019-20 does not exceed INR 400 crores	25%
For other domestic companies	30%
Foreign companies	40%
Domestic companies opting for new tax regime under section 115BAA	22%
New domestic manufacturing companies opting for section 115BAB	15%

## FIRMS & LLP

- ♦ Tax rate remains unchanged at 30%

## CO-OPERATIVE SOCIETIES

- ♦ Tax rate under old regime remains unchanged 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 under new regime remains unchanged at 22%

## SURCHARGE ON INCOME-TAX

- ♦ Surcharge for domestic and foreign companies remains unchanged:

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%



- ♦ Surcharge for Individuals, HUF, AOP, BOI and AJP 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%

- ♦ Surcharge on STCG (STT paid), LTCG (STT paid), dividend and capital gains from securities in the hands of FII which was capped at 15% is now proposed to be extended to all LTCG
- ♦ Surcharge for firms & LLP remains unchanged at 12% on the total income exceeding INR 1 crore
- ♦ Surcharge for co-operative societies reduced to 7% on the total income exceeding INR 1 crore but not exceeding INR 10 crores and remains unchanged at 12% on the total income exceeding INR 10 crores

#### CESS

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

## **B SCHEME FOR TAXATION OF VIRTUAL DIGITAL ASSETS**

- ♦ It is proposed to insert a new section to provide that the income from transfer of any virtual digital assets will be taxed at 30% plus applicable surcharge and cess
- ♦ No deduction on account of any expenses will be allowed except only the cost of acquisition
- ♦ Loss under any other head will not be allowed to be set-off against income from transfer of virtual digital asset
- ♦ Loss from transfer of virtual digital assets cannot be set off against any other income
- ♦ Loss from transfer of virtual digital assets will not be allowed to be carried forward
- ♦ Virtual digital assets shall mean any information or code or number or token generated through cryptographic means, non-fungible token etc.
- ♦ Receipt of virtual digital asset by a person by way of gift or for inadequate consideration will be taxable as income from other sources, if the aggregate value of benefit exceeds INR 50,000. However, exemption given for gift from relative would continue to apply
- ♦ This amendment will take effect from AY 2023-24

## **TDS**

- ♦ Tax at source is proposed to be deducted at 1% on consideration for transfer of virtual digital asset (whether in cash or in kind or in exchange of another virtual digital asset)



- ♦ Where cash consideration is not sufficient to meet the liability of TDS, before releasing the consideration, the buyer has to ensure that tax has been paid on the transaction
- ♦ TDS is not required to be deducted where:
  - the consideration is payable by a specified person and the aggregate value of such consideration is not in excess of INR 50,000 in a financial year; or
  - In other cases, if consideration does not exceed INR 10,000
- ♦ Specified persons mean an Individual or HUF:
  - whose total sales, turnover or gross receipts does not exceed INR 1 crores in case of business or INR 50 lakhs in case of profession, during the preceding financial year in which virtual digital asset is transferred;
  - who does not have income from business or profession
- ♦ In the event the seller who does not furnish PAN, then rate of TDS will increase to 20% and where the seller furnishes PAN but has not filed return of Income then rate of TDS will increase to 5%
- ♦ This amendment will take effect from 1<sup>st</sup> July, 2022

## **C EXPENDITURE FOR EARNING EXEMPT INCOME**

- ♦ Section 14A deals with disallowance of expenditure incurred for earning exempt income. Various courts have held that in absence of any exempt income during the year no disallowance can be made
- ♦ To overrule the judicial decisions, it is proposed to disallow expenditure incurred on tax free investments whether or not any exempt income is accrued or received during the year



## **D EXPENDITURE PROHIBITED UNDER ANY LAW**

- ◆ Expenditure incurred in respect of any offence or which is prohibited under any law is not allowable. However, under certain judicial decisions expenditure of compounding nature, benefits provided by pharma companies to doctors by way of travel, hospitality, gifts and conference etc. is held to be allowable
- ◆ It is proposed that the following expenditure will not be allowed on the ground that it constitutes an offence/prohibition under any law:
  - Expenditure incurred for an offence under or which is prohibited by any law in or outside India;
  - Any benefit or perquisite provided to a person and acceptance of such benefit or perquisite by such person which is in violation of any law or rule or regulation or guidelines governing the conduct of such person;
  - Compounding fees in or outside India
- ◆ This amendment is applicable from AY 2022-23

## **E EDUCATION CESS AS EXPENSE**

- ◆ Various courts have held that 'education cess' paid on income tax is allowable as business expenditure
- ◆ It is proposed to insert a clarification that such education cess is covered by the term "tax" and hence not allowable as expense
- ◆ This amendment is retrospectively applicable from AY 2005-06

## **F CONVERSION OF OUTSTANDING INTEREST INTO DEBENTURE**

- ◆ Section 43B provides deduction of interest payable to banks/NBFCs and other financial institutions only on payment basis

- ♦ Certain courts have held that conversion of outstanding interest into debenture can be considered as a payment and hence allowable
- ♦ It is now proposed that such conversion of interest into debentures or other debt instruments does not constitute payment

## **G CASH CREDITS**

- ♦ Presently, taxpayer is required to explain identity and credit worthiness of creditor and genuineness of the transaction in respect of credits in the books of accounts. Based on many judicial precedents, the taxpayer was not required to explain the source of funds in the hands of creditor
- ♦ It is now proposed that where the sum so credited consists of loans or borrowings, the creditor also offers satisfactory explanation about nature and source of such sum

## **H DIVIDEND RECEIVED FROM FOREIGN COMPANIES**

- ♦ Presently, dividend received by domestic companies from specified foreign company is taxed at the concessional rate of 15%
- ♦ It is proposed to withdraw the concessional rate of tax. Accordingly, the dividend income would be taxed at normal income tax rate as applicable to the domestic companies
- ♦ It may be noted that no expenses were allowable for earning dividend from foreign companies. With withdrawal of concessional rate, companies receiving dividend income would be entitled to claim such expenses in accordance other provisions of the Act

## **I DIVIDEND AND BONUS STRIPPING**

- ♦ Presently, the provisions in respect of non-allowance of loss incurred through dividend/bonus stripping is applicable to units of mutual funds and non-allowance of loss incurred through dividend stripping is applicable to securities

- ♦ It is proposed that units of InvIT, REIT and AIF shall also be covered for the purpose of such non-allowance of loss for bonus or dividend stripping
- ♦ Further, non-allowance of loss incurred through bonus tripping is also proposed to be made applicable to securities

## **J RATIONALISATION OF TAXATION OF TRUSTS / INSTITUTIONS**

### **RATIONALISATION**

- ♦ It is proposed to rationalize the provision of section 10(23C) (first regime) and section 11 (second regime) with respect to the trust/institution claiming exemption under both the regimes

### **MAINTENANCE OF BOOKS OF ACCOUNT**

- ♦ Presently, there is no specific provision for maintenance of books of accounts by trusts/institutions covered by section 10(23C) (first regime) and section 11 (second regime) whose income exceeds INR 250,000
- ♦ It is proposed to provide for maintenance of specified books of accounts for the above trusts/institutions

### **TAXATION OF UNUTILISED INCOME OF TRUST**

- ♦ Presently, where the trust/institution does not utilize accumulated income within period of 5 years, then such income is chargeable to tax in the 6<sup>th</sup> year
- ♦ It is now proposed to tax income remaining to be utilized in the 5<sup>th</sup> year itself



## PENALTY FOR PASSING BENEFIT TO TRUSTEE OR SPECIFIED PERSON

- ♦ Presently, there is no provision for levy of penalty if trust or institution has passed on any unreasonable benefit to trustees or specified persons
- ♦ In order to discourage the misuse of funds by trust/institution, it is now proposed to levy penalty for passing unreasonable benefit to trustees or specified persons at 100% of such benefit in case of first violation and thereafter at 200%

## CANCELLATION OF REGISTRATION

- ♦ Finance Act, 2020 provided mechanism of reregistration or provisional approval for existing trust/institution, under automated manner by filing requisite forms
- ♦ To keep a tab on approval granted to non-genuine trust/institution under automated approval system, it is now proposed to provide provisions for cancellation of registration by CIT on specified violations
- ♦ The CIT can cancel the registration if trust or institute for following violations:
  - has applied income other than for the object of the trust;
  - has income from business or profession which is not incidental to the attainment of the object of the trust;
  - does not maintain separate books of account in respect of business income incidental of its object;
  - income or property is not applied for benefit of public by religious trust;
  - income or property is applied for benefit of particular religious community or cast;

- activity of the trust is not genuine
- ◆ This amendment is applicable from AY 2022-23

#### **CLAIM OF EXPENDITURE IN CASE OF DENIAL OF EXEMPTION**

- ◆ Presently, in case of following violations by the trust/institution:
  - Having receipts from trade, commerce etc while advancing the object of general public utility, in excess of 20% of total receipt;
  - Not getting books of accounts audited;
  - Not filing return of income

the income of the trust/institution is chargeable to tax

- ◆ It is now proposed to provide that trust/institution can claim deduction of expenditure from the total income provided following conditions are fulfilled:
  - such expenditure is not from the corpus of the trust;
  - such expenditure is not from any loan or borrowing;
  - no depreciation on those assets, whose acquisition cost is claimed as application of income;
  - such expenditure is not in form of any contribution or donation
- ◆ This amendment is applicable from AY 2022-23

#### **TAXATION OF SPECIFIED INCOME AT SPECIAL RATE**

- ◆ It is proposed to tax specified income at the rate of 30% in the hands of trust/institution without allowing any deduction of expenditure



- ♦ Specified income means:
  - Income accumulated or set apart in excess of 15% where such accumulation is not allowed under specific provision of Act;
  - Accumulated amount is not invested in the specified mode of investment;
  - Income accumulated but not applied for the charitable purposes;
  - Income applied for the benefit of specified person;
  - Income applied for charitable purpose outside India

#### **APPLICATION ALLOWED ONLY ON ACTUAL PAYMENT**

- ♦ Presently, the provision requires 85% of the income is to be applied. The term application includes expenses accrued
- ♦ It is now proposed to clarify that term “applied” means actual payment for being considered as application of income
- ♦ This amendment is applicable from AY 2022-23

#### **APPLICATION OF VOLUNTARY CONTRIBUTION BY TRUST**

- ♦ It is proposed to that voluntary contribution for the purpose of renovation or repairs of temple, mosque, gurudwara, church etc. may be considered as corpus by the trust/institution provided following conditions are fulfilled:
  - Such corpus is applied only for the purpose for which it is received;
  - Does not apply the corpus for making contribution or donation to any person;

- amount is invested in specified mode and same is separately identifiable
- ◆ This amendment is retrospectively applicable from AY 2021-22

## **K FILING OF AN UPDATED RETURN**

- ◆ Presently, the time limit for filing revised return of income is 3 months from the end of the relevant assessment year
- ◆ It is proposed to insert a new section, whereby the taxpayer shall be allowed to file an updated return
- ◆ Taxpayer can file the updated return within 2 years from the end of the relevant assessment year
- ◆ Following taxpayers shall not be eligible to file the updated return
  - In case where search has been initiated under section 132 or documents are requisitioned under section 132A of such taxpayer
  - In case where survey has been conducted under section 133A on such taxpayer
- ◆ Provision for filing updated return shall not apply in the following scenarios where:
  - Updated return is already filed
  - Updated return is the return of loss
  - Updated return has the effect of decreasing the tax liability as compared to the original or revised return
  - Updated return results in refund or increasing of refund as compared to the original or revised return

- Any proceeding relating to assessment or reassessment or revision is pending or has been completed for the said year
- The assessing officer has information relating to such person in respect of the specified laws such as Prohibition of Money Laundering Act, Black Money Act, Benami Property Transaction Act etc. and the assessing officer has communicated to such person on or before the date of filing updated return
- If any information has been received in respect of such person exchange of information under tax treaty
- If any prosecution proceeding has been initiated against such person
- ◆ Taxpayer filing the updated return shall be liable to pay the tax along with interest on the additional income declared in the updated return. The total tax payable shall be as follows

Timelines	Total tax payable
If updated return is furnished within 12 months from the end of the relevant assessment year	Tax and interest on additional income plus 25% thereon
If updated return is furnished after 12 months but before the end of 24 months from the end of the relevant assessment year	Tax and interest on additional income plus 50% thereon

## L WIDENING THE SCOPE OF REASSESSMENT

- ◆ It is proposed to widen the scope of reassessment by extending the definition of information which suggests that the income chargeable to tax has escaped assessment as under:

Present	Proposed
Any final objection raised by the CAG that the assessment has	Any audit objection, or any information received from a foreign jurisdiction under an

not been made in accordance with the provisions of Act	agreement or directions contained in a court order, or information received under faceless collection of information scheme
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This amendment will take effect from 1<sup>st</sup> April, 2022

- ◆ Presently, in case of search or survey, Assessing Officer could reopen assessment for 3 preceding years without making enquiry
- ◆ It is now proposed to remove the limitation of 3 years and hence Assessing Officer can now reopen assessment for 10 preceding years without making enquiry

This amendment will take effect from 1<sup>st</sup> April, 2021

- ◆ Presently, a case can be reopened for more than 3 years and upto 10 years only if the Assessing Officer has information which reveals that the income chargeable to tax, represented in the form of asset, has escaped assessment for amounts exceeding or is likely exceed INR 5,000,000 or more for that year
- ◆ It is now proposed to widen the scope by including the instances where escaped income is on account of expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account

## **M RATIONALISATION OF REPETITIVE LITIGATION**

- ◆ Presently, where the case of the assessee is pending before Hon'ble Supreme Court for other assessment year on identical question of law then department is allowed to file an appeal for the relevant year when the decision on the question of law becomes final for other assessment year
- ◆ It is now proposed to widen the scope to include the cases where identical question of law is pending before jurisdictional High Court



in case of any assessee. However, the department is required to take approval of the taxpayer

## **N RELIEF ON ACCOUNT OF COVID-19**

- ♦ CBDT vide press release had provided for exemption of ex-gratia amount received on death or expenditure for treatment of COVID-19
- ♦ To implement above, it is proposed to provide exemption for amount received in respect of expenditure incurred on taxpayer or his family members with respect to medical treatment in relation to COVID-19 upon fulfilment of conditions as may be prescribed
- ♦ Further, it is also proposed that the following amount received by a family member of the taxpayer who died on account COVID-19 shall not be taxable if received within 12 months of death of individual, upon fulfilment of conditions as may be prescribed:
  - Any amount received from employer of deceased Individual; and
  - Amount received upto INR 10 lakhs from any other person
- ♦ It is also proposed that the amount received by employees towards expenditure incurred for medical treatment for taxpayer or his family member for COVID-19 shall not be taxable as perquisite
- ♦ This amendment shall be applicable from AY 2020-21

## **O BENEFIT OF LOSSES OF ERSTWHILE PUBLIC SECTOR COMPANY**

- ♦ Presently, if there is change in voting power of more than 49%, the losses are not allowed to be carried forward and set off
- ♦ It is now proposed to allow the benefit of set-off of losses incurred by erstwhile public sector company to new buyer subject to the condition that new buyer continues to hold directly or through its subsidiaries at least 51% of voting power in aggregate



- ◆ This amendment shall be applicable from AY 2022-23

#### **P RATIONALISATION OF PROVISION FOR DISABLED DEPENDANT**

- ◆ Presently, deduction for premium paid by resident individual or HUF is available only if the lumpsum payment or annuity is made available to the disabled dependent on the death of proposer of policy
- ◆ It is proposed that benefit of deduction shall be available even if the lumpsum payment or annuity is made available during the lifetime of the proposer of policy i.e. upon attaining age of 60 years or more

#### **Q EXTENSION OF TIME LIMIT**

##### **FOR COMMENCEMENT OF MANUFACTURING OR PRODUCTION**

- ◆ The last date by which new domestic manufacturing companies opting for lower rate of tax of 15% is required to commence the manufacturing or production activity is now proposed to be extended from 31<sup>st</sup> March 2023 to 31<sup>st</sup> March, 2024

##### **FOR ELIGIBLE START UP**

- ◆ Presently, eligible start-ups incorporated upto 31<sup>st</sup> March, 2022 are eligible for deduction of profits for 3 consecutive years
- ◆ It is now proposed to extend the outer date of incorporation upto 31<sup>st</sup> March, 2023

##### **FOR FORMULATION OF FACELESS SCHEME**

- ◆ Time limit for formulation of faceless scheme for transfer pricing cases, international taxation cases and ITAT appeals is extended to 31<sup>st</sup> March 2024



## FOR DISPUTE RESOLUTION SCHEME

- ♦ Time limit allowed to Central Government to make a scheme for the purpose of issuance of directions by the dispute resolution panel is extended from 31<sup>st</sup> March 2022 to 31<sup>st</sup> March 2024

## OTHER

- ♦ Presently, the Assessing Officer is required to pass an assessment order within a period of 9 months from the end of the relevant AY. Now, it is proposed that the time limit to pass an order shall be 9 months from the end of the financial year in which such return was furnished
- ♦ It is proposed that where the transfer pricing officer gives effect to an order or direction of the CIT, Assessing Officer shall be required to pass an order within 2 months from the end of the months in which transfer pricing order is received

## R TAX DEDUCTED AT SOURCE

### ON PURCHASE OF IMMOVABLE PROPERTY

- ♦ Presently, tax at source at 1% is deductible if consideration paid for purchase of immovable property exceeds INR 50 lakhs
- ♦ It is now proposed to deduct TDS at 1% of the stamp duty value or consideration paid, whichever is higher
- ♦ This amendment shall be applicable from 01<sup>st</sup> April 2022

### ON BENEFIT OR PERQUISITE OF BUSINESS OR PROFESSION

- ♦ New section 194R is proposed to be inserted whereby person carrying business or profession is required to deduct tax at source at 10% of value of benefit or perquisite (whether in cash or in kind) provided to a resident, before releasing such benefit or perquisite



- ◆ However, this section will not apply to an individual or HUF, whose total sales, turnover or gross receipts does not exceed INR 1 crores in case of business or INR 50 lakhs in case of profession, during the immediately preceding financial year or if the value of benefit or perquisite does not exceed INR 20,000
- ◆ This amendment will take effect from 1<sup>st</sup> July, 2022

## **S RATIONALIZATION OF PROVISIONS OF SECTION 206AB AND 206CCA**

- ◆ Presently tax is required to be deducted or collected at higher rate in case of non-filers who have not filed return of income for both the preceding two years and in whose case aggregate TDS or TCS exceeds INR 50,000 in each year
- ◆ It is now proposed to reduce the requirement of non-filing from 2 years to 1 year
- ◆ It is proposed that provision relating to higher rate of TDS in case of non-filer will not be applicable to specified individuals and HUF who are required to deduct tax at source on purchase of immovable property, payment of rent, professional fees, commission or brokerage and contractor charges exceeding specified amounts
- ◆ These amendments will take effect from 1<sup>st</sup> April, 2022

## **T APPLICATION TO ASSESSING OFFICER FOR REFUND OF TAX DEDUCTED AT SOURCE**

- ◆ Presently, in case payment to non-resident, to claim refund of the TDS which was not deductible, the taxpayer had to file an appeal before the CIT(A)
- ◆ It is now proposed that an application for such refund can be made before the Assessing Officer

## **U SET-OFF OF LOSS IN SEARCH CASES**

- ◆ Presently, there is no provision to restrict set-off of loss or unabsorbed depreciation against income detected owing to search



& seizure or survey though restriction is there for incomes in the nature of unexplained cash credit or investment

- ♦ It is now proposed to provide that set-off of loss or unabsorbed depreciation will not be allowed against undisclosed income

## **V BUSINESS REORGANIZATION**

- ♦ Presently, various courts have held that the assessment proceedings in case of predecessor entity are invalid on account of subsequent order of business reorganization, whereby the predecessor entity ceases to exist in law
- ♦ It is now proposed to clarify that such proceedings shall be valid and shall be deemed to have been made on the successor entity
- ♦ Presently, there is no separate time limit which allows the successor entity to file revised return in order to give effect of re-organization
- ♦ It is now proposed to enable the successor entity to file modified return within six months from the end of the month in which the reorganization order is issued

## **W OTHERS**

- ♦ The rate of AMT for co-operative societies is proposed to be reduced from 18.5% to 15%
- ♦ Benefit of deduction at 14% of salary towards the contribution to NPS by employer is now proposed to extend to State Government employees in addition to Central Government employees. This amendment is retrospectively applicable from AY 2020-21

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

### A ADDITIONAL CONDITION FOR CLAIMING ITC

- ♦ It is proposed to provide an auto-generated statement on GST portal which will prescribe the manner, conditions and restrictions for claiming ITC on inward supplies
- ♦ It is further proposed that taxpayer will be eligible to claim credit of input tax only if such credit is not restricted in auto-generated statement made available to said taxpayer in prescribed form
- ♦ The auto-generated statement will contain following details:
  - Inward supplies on which ITC can be availed by recipient; **and**
  - Inward supplies from registered persons (supplier) on which ITC cannot be availed, wholly or partly, by the recipient:
    - within prescribed period of taking registration by supplier
    - where supplier has defaulted in payment of taxes for continued period of time as may be prescribed
    - where output tax payable (as per Form GSTR-1) exceeds output tax paid (including ITC) by supplier (as per Form GSTR-3B) by such limit as may be prescribed
    - where supplier has availed ITC in respect of prescribed period which is in excess of ITC actually available to him
    - where supplier has discharged his output tax liability through Electronic Credit Ledger (i.e. ITC) in excess of permissible limits
    - inward supplies from prescribed class of registered persons

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



## **B REVERSAL OF ITC ON NON-PAYMENT OF TAX BY SUPPLIER**

- ♦ It is proposed that ITC availed in respect of inward supplies where tax has not been paid by the supplier, the recipient availing such credit should reverse the same along with applicable interest (i.e. 18%)
- ♦ Further, recipient shall be entitled to re-avail the credit so reversed on payment of tax by the supplier

## **C RESTRICTIONS IN UTILIZATION OF BALANCE IN ELECTRONIC CREDIT LEDGER**

- ♦ It is proposed to prescribe restrictions in respect of utilization of available ITC in the Electronic Credit Ledger
- ♦ Government may specify the proportion of output tax which may be discharged through the balance in Electronic Credit Ledger subject to such conditions and restrictions as may be prescribed

## **D EXTENSION OF TIME LIMIT TO AVAIL ITC**

- ♦ Presently, taxpayer is entitled to claim ITC in respect of invoice or debit note pertaining to a financial year up to due date of filing of GSTR-3B for the month of September following the end of said financial year
- ♦ It is proposed that taxpayer shall be entitled to claim ITC in respect of invoice or debit note pertaining to a financial year up to 30<sup>th</sup> November following the end of said financial year

## **E TRANSFER OF BALANCE IN ELECTRONIC CASH LEDGER**

- ♦ It is proposed to allow transfer of any amount (i.e. tax, interest, penalty, fee or any other amount) of CGST and / or IGST available in Cash Ledger of a registered person to another registration (in same or different state) having same PAN
- ♦ It is further proposed that transfer to another registration (in same or different state) having the same PAN will not be allowed if



registered person has any unpaid liability in his Electronic Liability Register

- ♦ Transfer of balance in Electronic Cash Ledger shall be deemed to be a refund from the Electronic Cash Ledger

## **F CANCELLATION OF GST REGISTRATION**

- ♦ Presently, GST authorities are empowered to cancel GST registration where:
  - composition taxpayer has failed to furnished returns (i.e. yearly) for three consecutive tax periods
  - regular taxpayer has failed to furnished returns for a continuous period of six months
- ♦ It is proposed that GST authorities will be empowered to cancel GST registration where:
  - composition taxpayer has failed to furnish return (i.e. Form GSTR 4) for the financial year beyond three months from due date of furnishing said return (i.e. 30<sup>th</sup> April following the end of relevant financial year)
  - regular taxpayer has failed to furnish returns for consecutive tax periods as may be prescribed

## **G EXTENSION OF TIME LIMIT TO ISSUE CREDIT NOTE**

- ♦ Presently, taxpayer is allowed to issue credit note in respect of any supply made by him in a financial year up to 30<sup>th</sup> September following the end of relevant financial year
- ♦ It is proposed that taxpayer shall be allowed to issue credit note in respect of any supply made by him in a financial year up to 30<sup>th</sup> November following the end of relevant financial year



## **H EXTENSION OF TIME LIMIT TO RECTIFY ERRORS OR OMISSIONS IN THE RETURN**

- ♦ Presently, the time limit for rectification of errors or omissions in following returns is due date of furnishing such returns for the month of September following end of relevant financial year:
  - Statement of outward supplies in Form GSTR-1
  - Return in Form GSTR-3B
  - Statement furnished by e-commerce operator in Form GSTR-8
- ♦ It is proposed to extend the above time limit to 30<sup>th</sup> November following end of relevant financial year

## **I FURNISHING DETAILS OF OUTWARD SUPPLIES**

- ♦ It is proposed to prescribe conditions and restriction for furnishing details of outward supplies as well as for communicating details of such outward supplies to the recipient
- ♦ It is further proposed that taxpayer shall not be allowed to furnish details of outward supplies (i.e. Form GSTR 1) for a tax period, if details of outward supplies for previous tax periods are not furnished by him

## **J FURNISHING OF RETURN BY NON-RESIDENT TAXABLE PERSON**

- ♦ Presently, non-resident taxable person is required to furnish his return (i.e. Form GSTR-5) for every calendar month on or before 20<sup>th</sup> of the following month
- ♦ It is proposed that non-resident taxable person shall furnish his return (i.e. Form GSTR-5) every calendar month on or before 13<sup>th</sup> of the following month

## **K FURNISHING QUARTERLY RETURNS BY TAXPAYERS**

- ♦ It is proposed to provide following option to taxpayers furnishing quarterly returns:
  - pay tax on self-assessment basis duly considering inward and outward supplies of goods or services and ITC available; **or**
  - pay an amount as may be prescribed

## **L FURNISHING OF RETURNS**

- ♦ Presently, taxpayer is not entitled to furnish return (i.e. Form GSTR-3B) if he has not furnished such return for any of the previous tax periods
- ♦ It is proposed that taxpayer will not be entitled to furnish return (i.e. Form GSTR-3B), if:
  - he has not furnished return (i.e. Form GSTR-3B) for any of previous tax periods; **or**
  - he has not furnished details of outward supplies (i.e. Form GSTR-1) for the same tax period

## **M LEVY OF LATE FEES FOR DELAYED FILING OF TCS RETURN**

- ♦ It is proposed to levy late fee for delayed filing of return (i.e. Form GSTR-7) in respect of tax collected at source by e-commerce operator on supplies made through it

## **N INTEREST IN RESPECT OF ITC WRONGLY AVAILED AND UTILIZED**

- ♦ Presently, GST authorities are of the view that interest at the rate of 24% is payable on wrong availment of ITC even where such credit was not utilized

- ♦ It is proposed that w.e.f. 1<sup>st</sup> July, 2017 the interest would be leviable at the rate of 18% on ITC only when such credit is wrongly availed and utilized. Thus, there will not be recovery of interest on unutilized ITC reversed

#### **O CLAIMING REFUND OF BALANCE LYING IN ELECTRONIC CASH LEDGER**

- ♦ Presently, there is an express provision to claim refund of balance lying in Electronic Cash Ledger through Form GSTR-3B. However, GST portal did not permit such refund claim through Form GSTR-3B
- ♦ It is now proposed that refund of balance lying in Electronic Cash Ledger shall be claimed in such form and such manner as may be prescribed

#### **P EXTENSION OF TIME LIMIT FOR CLAIMING REFUND BY SPECIFIED CLAIMANTS**

- ♦ Presently, the time limit for applying refund of tax paid on inward supplies by specialised agency of United Nations Organisation, Consulate or Embassy of foreign countries is six months from the last day of quarter in which such supply is received
- ♦ It is proposed to extend such time limit to two years from the last day of quarter in which inward supply is received

#### **Q ADJUSTMENT OF REFUND AGAINST UNPAID LIABILITY**

- ♦ Presently, proper officer is empowered to withhold or adjust the refund of accumulated ITC due to registered person who has defaulted in furnishing any return or who has not paid undisputed tax, interest or penalty till such default is rectified where such refund is on account of zero-rated supplies as well as inverted duty structure
- ♦ It is proposed to widen above referred power to withhold any refund due to registered person under any provision of GST law

## **R RELEVANT DATE FOR REFUND ON SUPPLIES MADE TO SEZ DEVELOPER / UNITS**

- ◆ Presently, the relevant date for claiming refund in respect of supplies made to SEZ Developers or SEZ Units is the date of payment of tax
- ◆ It is proposed that relevant date for claiming refund in respect of supplies made to SEZ Developers or SEZ Units shall be due date for furnishing Form GSTR-3B in respect of such supplies
- ◆ The time limit of claiming refund will now be two years from the date of furnishing Form GSTR-3B by the supplier and not from the date of payment of tax

## **S RETROSPECTIVE EXEMPTION FROM LEVY OF TAX**

- ◆ It is proposed that no tax shall be levied on supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil from 1<sup>st</sup> July, 2017 to 30<sup>th</sup> September, 2019
- ◆ It is further proposed that granting of alcoholic liquor license by state government during the period 1<sup>st</sup> July, 2017 to 30<sup>th</sup> September, 2019 shall neither be treated as supply of good nor supply of services
- ◆ It is also proposed that no refund shall be granted for taxes already paid on above activities or transactions



### **III ALLIED LAWS**

#### **A GIFT - IFSC**

- ♦ International Arbitration Centre to be set up in the GIFT City for timely settlement of disputes under international jurisprudence
- ♦ World-class foreign universities and institutions to be allowed in the GIFT City to offer financial and technology courses independent of domestic regulations

#### **B CENTRAL BANK DIGITAL CURRENCY**

- ♦ The Finance Bill proposed to amend the RBI Act to facilitate the introduction of digital currency

#### **C ACCELERATED CORPORATE EXIT**

- ♦ Centre for Processing Accelerated Corporate Exit (C-PACE) to be established to facilitate and speed up the voluntary winding-up of companies from the currently required 2 years to less than 6 months

## GLOSSARY

AIF	Alternate Investment Fund
AJP	Artificial Judicial Person
AMT	Alternate Minimum Tax
AOP	Association of Person
AY	Assessment Year
BOI	Body Of Individuals
CAG	Comptroller and Auditor General of India
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
CGST	Central Goods and Services Tax
FII	Foreign Institutional Investor
FY	Financial Year
GIFT	Gujarat International Finance Tec
GST	Goods and Services Tax
HUF	Hindu Undivided Family
IFSC	International Financial Services Centre
IGST	Integrated Goods and Services Tax
InvIT	Infrastructure Investment Trust
ITAT	Income Tax Appellate Tribunal
LLP	Limited Liability Partnership
LTCG	Long Term Capital Gains
NBFC	Non - Banking Finance Companies
NPS	National Pension System
PAN	Permanent Account Number
REIT	Real Estate Investment Trust
SGST	State Goods and Services Tax
STCG	Short Term Capital Gains
STT	Securities Transaction Tax
TAN	Tax Deduction and Collection Account Number
TCS	Tax Collected at Source
TDS	Tax Deducted at Source

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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