Budget 2023: Direct Taxes
A deep dive

Vikram. V, Advocate

M/s Subbaraya Aiyar, Padmanabhan & Ramamani Advocates

Direct Tax amendments – FB 2023

(A) Rates of Income-tax;

(B) Socio economic welfare measures;

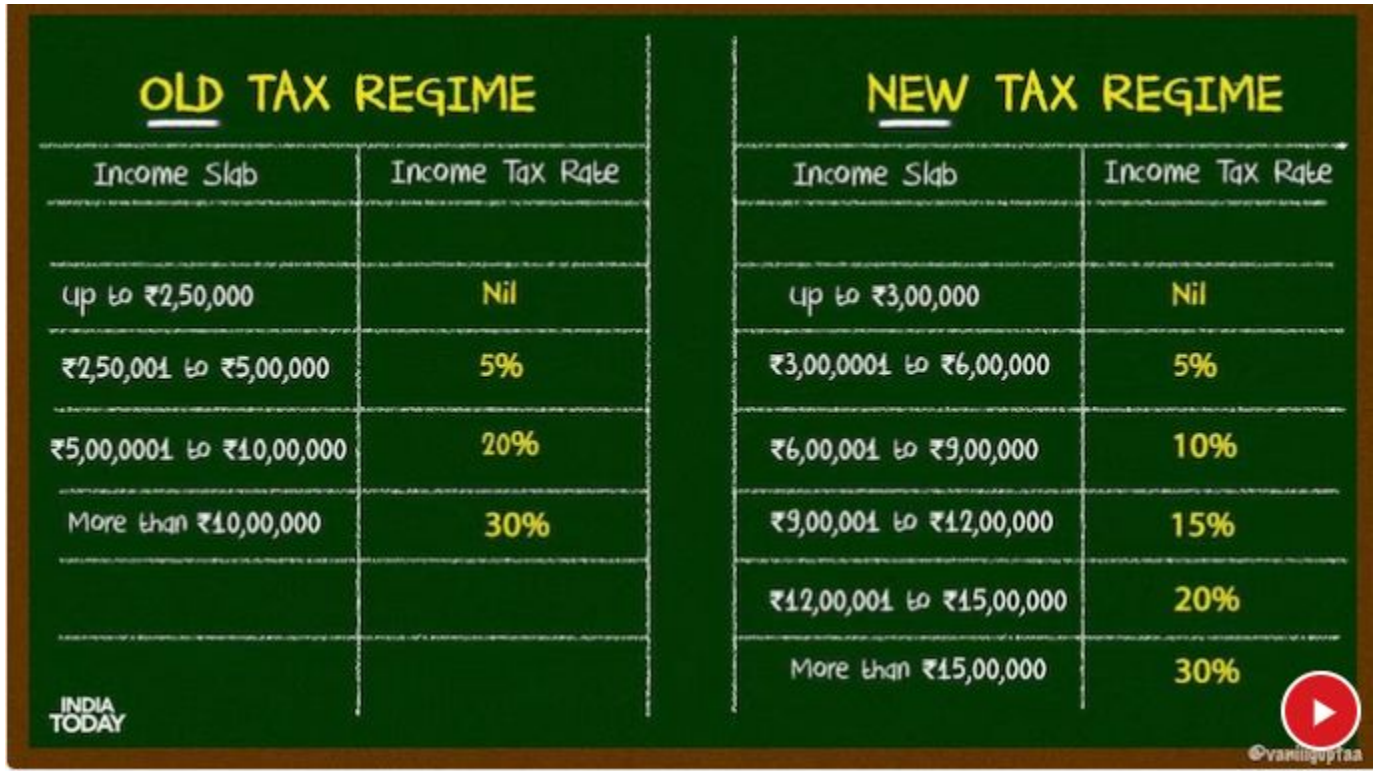
(C) Widening and deepening of tax base/Anti-Avoidance;

(D) Improving compliance and Tax administration;

(E) Rationalisation of Provisions; and

(F) Miscellaneous

A. Rates



Tax outgo with Rs 50k Standard Deduction (Proposed New Tax Regime)		
Income		Tax
Up to Rs 3 lakh	0%	0
Rs 3 lakh to Rs 6 lakh	5%	15000
Rs 6 lakh to Rs 9 lakh	10%	30000
Rs 9 lakh to Rs 12 lakh	15%	45000
Rs 12 lakh to Rs 15 lakh	20%	60000
Total tax payable		150000

- Increase the rebate limit to ₹ 7 lakh in the new tax regime.
- Standard deduction Rs.50k brought into new tax regime
- In new regime reduce, highest surcharge rate on income above 5 crores from 37% to 25%, which will reduce the Maximum Marginal rate of Tax from 42.74% to 39% of income.
- New Regime default!

A. Rates

- **NEW:** If you have an annual income of ₹12 lakh and invest ₹1.5 lakh in Public Provident Fund (PPF) under S.80C, then your tax outgo under the old regime comes to ₹1.17 lakh versus only ₹85,800 under the new regime.
- **NEW:** For someone with a higher annual income of say ₹50 lakh and the same investment in PPF, the tax outgo under the old regime comes to ₹13 lakhs versus ₹12.32 lakh under the new regime.
- **NEW:** For someone with an even higher income of ₹6 crore–who will now be subject to a surcharge of 25% instead of 37% under the old regime–the tax outgo comes to ₹2.53 crore under the old regime versus ₹2.3 crores under the new regime (numbers have been rounded off, based on EY's calculator).
- **OLD: But, if someone has a saving mentality** and avails of, say, ₹1.5 lakh deduction for PPF investment, ₹50,000 deduction for national pension system NPS investment, and another ₹2 lakh as deduction for interest paid on home loan (total ₹4 lakh deduction), the balance can start tilting in favour of the old regime.
    - For example, for someone with an annual income of ₹50 lakh, and claiming deduction of ₹4 lakh, the tax outgo under the old regime would be ₹12.25 lakh versus ₹12.32 lakh under the new regime.
- **Bottomline: Are you saving? Do you have home loans? Its not black and white….even now**

B. Socio-economic welfare measures

#	Title	Sections Affected
1	Promoting timely payments to Micro and Small Enterprises	S.43B
2	15% concessional tax to promote new manufacturing co-operative society	S.115BAE
3	Exemption to development authorities etc.	S.10(46A), S.10(23C), S.11(7)
4	Relief to sugar co-operatives from past demand	S.155(19)
5	Penalty for cash loan/ transactions against primary co-operatives	S.269SS, S.269T
6	Relief to start-ups in carrying forward and setting off of losses	S.79(1)
	Extension of date of incorporation for eligible start-up for exemption	S.80-IAC
7	Agnipath Scheme, 2022	S.10(12C), S.80CCH, S.17(1)
8	Conversion of Gold to Electronic Gold Receipt and vice versa	S.47(viid), S.49, S.2(42A)
9	Facilitating certain strategic disinvestment	S.72A, S.72AA
10	Increasing threshold limit for co-operatives to withdraw cash without TDS	S.194N Proviso
11	Tax Incentives to International Financial Services Centre	S.10(4E), S.47(viiad)

Promoting timely payments to Micro and Small Enterprises – S.43B(h)

- Section 43B of the Act provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.
- To promote timely payments to MSE, include payments made to them u/S 43B
  - Accordingly, insert **43B(h)** to provide that any sum payable by the assessee to a micro or small enterprise beyond time limit in S.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.
- S.15 of MSMED Act mandates payments to MSME within the time as per written agreement, not more than 45 days.
  - If no written, payment shall be made within 15 days as per MSMED.
- Amendment will allow payment as deduction only on payment basis. Can be allowed on accrual basis only if the payment is within time u/S15 of MSMED Act. From AY 2024-25.

15% concessional tax to promote new manufacturing co-operative society

- S.115BAB was inserted by FA 2019 which provides that new manufacturing domestic companies set up on or after 01.10.2019, which commence manufacturing or production by 31.03.2024 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15%
- To provide level playing field between new manufacturing co-operative societies and new manufacturing companies **new S.115BAE** to the Act in which concessional tax regime is being provided for the new manufacturing cooperative societies as well. **The conditions are materially similar to the conditions applicable to new manufacturing companies**
- Proposed to insert a S.92BA(vb) to include the transaction between the Cooperative society and the other person with close connection within the purview of 'specified domestic transaction'.
- From AY 2024-25 and onwards

"115BAE. (1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BAD, the income-tax payable in respect of the total income of an ***assessee, being a co-operative 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. if the conditions contained in sub-section (2) are satisfied:*

....

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the cooperative society has been set-up and registered on or after the 1st day of April, 2023, and has commenced manufacturing or production of an article or thing on or before the 31st day of March, 2024 *and,—"*

Exemption to development authorities etc.

- Hon'ble SC in ***ACIT(Exemptions) vs. Ahmedabad Urban Development Authority in CA No 21762 of 2017 dated 19.10.2022*** has 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.
- Proposed to insert S.10(46A) 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;

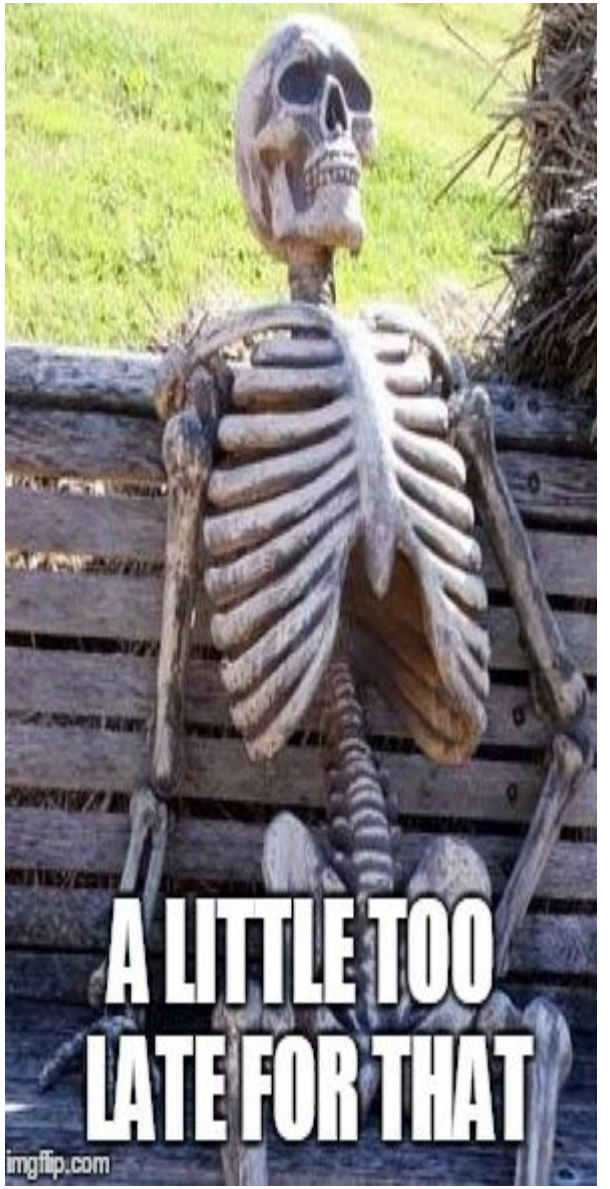
(iii) regulating, or regulating and developing, any activity for the benefit of the general public; or

(iv) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

- Consequential amendment in Explanation to the nineteenth proviso of S.10(23C) and S.11(7) of the Act. **From AY 2024-25 and onwards**

Relief to sugar co-operatives from past demands

- Final Cane Price (FCP) paid by sugar factories to sugarcane growers over and above Statutory Minimum Price (SMP)
- Co-op sugar factoies claimed as business expenditure whereas disallowed by Dept 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.
- **S.36(1)(xvii)** was inserted to provide that the amount paid for purchase of sugarcane by the co-operative societies engaged in the manufacture of sugar at a price which is equal to or less than the price fixed by or fixed with the approval of the Government shall be allowed as deduction for computing business income of the sugar co-operative factories. **AY 2016-17 onwards by FA 2015.** Pending demands and litigation still persisted in respect of AYs prior to 2016-17.
- **To conclude the matter logically and to extend benefit of the abovementioned relief to all the applicable years**, proposed to **insert S.155(19)** of Act to provide that in the case of a sugar mill cooperative, where any deduction in respect of any expenditure incurred for the purchase of sugarcane has been claimed by an assessee and such deduction has been disallowed wholly or partly the AO, shall on basis of appl., recompute the total income and shall allow such deduction to the extent such expenditure is incurred at a price which is equal to or less than the price fixed by Govt. for that previous year.
- Also, S.154 provision shall apply thereto and the period of 4 years in 154(7) shall be reckoned from the end of previous year commencing on 1.4.2022

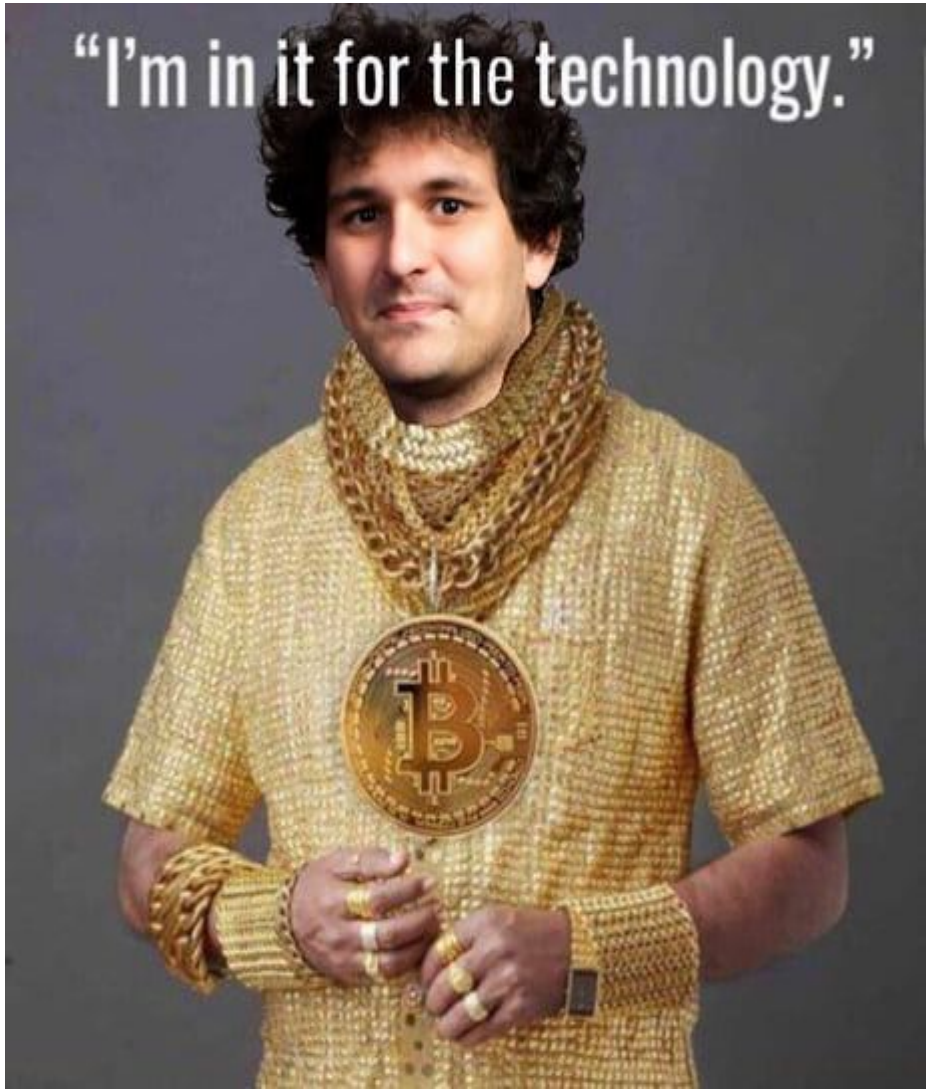


Penalty for cash loan/ transactions against primary co-operatives

- **S.269SS** : no person shall take from any person any loan or deposit otherwise than by an account payee cheque / bank draft or online transfer through a bank account, if the amount of such loan or deposit is Rs. 20,000 or more.
- **S.269T** provides that no loan or deposit shall be repaid otherwise than by an account payee cheque / draft / online, if amount of such loan or deposit is Rs. 20,000 or more.
- **To provide relief to the low-income groups** and facilitate easier conduct of business operations in such areas proposal to raise S.269SS 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 them by its members. **WEF 1-4-2023**

Relief to start-ups in carrying forward and setting off of losses
Extension of date of incorporation for eligible start-up for exemption

- S.79 restricts carrying forward & set off of losses in cases of companies (other than PSI) if at least 51% shareholding (as on the last date of PY) remains same with the company on the last date of the PY to which the loss belongs.
- **Relaxation provided for eligible start-up as referenced in S.80-IAC** 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.
- **Additional condition is only if loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.**
- To align this period with 10 years period in S.80-IAC(2) proposed to amend the proviso to S.79(1) 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 10 years beginning from the year in which such company was incorporated.**
- S.80-IAC deduction of 100% of profits with one of conditions being incorporated before 1-4-2023 **now extended to 1-4-2024**



Agnipath Scheme, 2022

- **Agniveer Corpus Fund** is defined as a Fund in which 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 scheme will be administered and the Fund will be maintained under the aegis of Ministry of Defence (MoD) with the following features –

  (i) Each Agniveer contributes 30% of his monthly customized Agniveer Package to the individual's Agniveer Corpus Fund. Further Government will contribute a matching amount to the 'Agniveer Corpus Fund' and pay to the subscriber interest as approved from time to time on the contributions standing in his account.

  (ii) On completion of the engagement period of four years, Agniveers will be paid one time **'Seva Nidhi' package**, which shall comprise of their contribution including interest thereon and matching contribution from the Government equal to the accumulated amount of their contribution including interest.

- To allow deduction from computation of total income of Agniveer, any contribution made by him or CG to his Agniveer Corpus Fund account and to exempt from tax payment received by Agniveer, or nominee, number of amendments proposed

- New **clause 10(12C)** to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.

Agnipath Scheme, 2022

- New **section 80CCH** to the Act to provide that an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after the 1st day of November, 2022, shall be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income.
- Proposed to define 'Agnipath scheme' as a scheme for the enrolment in Indian Armed Forces introduced by the Central Government, and 'Agniveer Corpus Fund' as a fund defined in para 2(c) of Agnipath Scheme notified by the Central Government.
- **New sub-clause to S.17(1)** to provide that the contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in section 80CCH shall be considered as salary of that individual. A corresponding deduction of the same has been provided as mentioned above.
- Proposed to provide in new tax regime of S.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]. **From AY 23-24**

Conversion of Gold to Electronic Gold Receipt and vice versa*

- Pursuant to the announcement in the Union Budget 2021-22 about Gold Exchange, SEBI has been made the regulator of the entire ecosystem of the proposed gold exchange.
- Accordingly, 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).
- In order to promote the concept of Electronic Gold, it is proposed to exclude the **conversion of physical form of gold into EGR** and vice versa by a SEBI registered Vault Manager from the purview of **'transfer'** for the purposes of Capital gains
- Changes made to S.47, S.49 (cost of acq.), S.2(42A) (holding period)

Facilitating certain strategic disinvestment

- To facilitate further strategic disinvestment, 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 51% 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).
- It is also proposed to amend S.72AA of the Act to allow carry forward losses and unabsorbed depreciation 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. From AY 2023-24 onwards

Increasing threshold limit for co-operatives to withdraw cash without TDS

- S.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 shall, at the time of payment of sum in cash, deduct 2%, if aggregate of amount in cash during the year exceeds one crore rupees.
- However, in case of a recipient who is a non-filer tax is to be deducted at the rate of 2% on any sum > Rs. 20 lakh but not exceeding Rs. 1 crore and 5% on sum > Rs. 1 crore in aggregate during the FY.
- 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. WEF 1-4-2023

Tax Incentives to International Financial Services Centre

- Proposed to amend clause (b) of the Explanation to clause (viiad) of S.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.

- Income earned by the IFSC Banking Unit investments is taxed as capital gains, interest, dividend under S.115AD of the Act. 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. S.10(4E) to be amended to also provide exemption to any income distributed on the offshore derivative instruments, entered into with an offshore BU of an IFSC. 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 u/S.115AD.

- Proposed to amend the definition of “Specified Fund”, “Resultant Fund” and “Investment Fund” to include the reference of IFSCA (Fund Management) Regulations, 2022.

C. Widening and Deepening of Tax Base/Anti Avoidance

#	Title	Sections Affected
1	Extending deeming provision under section 9 to gift to not-ordinarily resident	S.9(1)(viii)
2	Removal of exemption of news agency under S.10(22B)	S.10(22B)
3	TDS and taxability on net winnings from online games	S.194BA, S.115BBJ
4	Tax avoidance through distribution by business trusts to its unit holders	S.56(2)(xii)
5	Limiting the roll over benefit claimed under section 54 and section 54F	S.10(12C), S.80CCH, S.17(1)
6	Increasing rate of TCS of certain remittances	S.206C(1G)
7	Preventing misuse of presumptive schemes under section 44BB and section 44BBB	S.44BB, S.44BBB
8	Preventing permanent deferral of taxes through undervaluation of inventory	S.142, S.153, S.295
9	Defining the cost of acquisition in case of certain assets for computing capital gains	S.55
10	Removal of exemption from TDS on interest on listed debentures to a resident	S.193
11	Special provision for taxation of capital gains in case of Market Linked Debentures	S.50AA
12	Prevention of double deduction claimed on interest on borrowed capital for acquiring, renewing or reconstructing a property	S.48
13	Rationalisation of exempt income under life insurance policies*	S.10(10D), S.56(2)(xiii)
14	Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC	S.45(5A)

Extending deeming provision under section 9 to gift to not-ordinarily resident

- Finance (No. 2) Act, 2019 inserted S.9(1)(viii) Act to provide that the any sum of money exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India shall be income **deemed to accrue or arise in India**. Sum of money is referred to in sub-clause (xviia) of clause (24) of section 2 of the Act.
- The above was an anti-abuse provision, as certain instances were observed where gifts were being made by persons residents in India to non-residents and were claimed to be non-taxable in India by such non-residents.
- What about **resident but not ordinarily resident?** ☺️ Proposed to amend clause 9(1)(viii) to extend this deeming provision to sum of money thousand rupees received by a not ordinarily resident, without consideration from a person resident in India. **From AY 2024-25 and onwards**

Removal of exemption of news agency under S.10(22B)

- S.10(22B) provides exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news subject to condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.
- Exemption available to news agencies under clause (22B) of S.10 is proposed to be withdrawn from AY 2024-25.
- Proposed to insert fourth proviso to S.10(22B) so as to provide that nothing contained in S.10(22B) shall apply to any income of the news agency, of the previous year relevant to the AY beginning on or after the 1st day of April, 2024.

TDS and taxability on net winnings from online games

"It is also seen that in recent times, there has been a rise in the users of online games. There is a need to bring in specific provisions regarding TDS and taxability of online games due to its different nature, being easily accessible vide the Internet and computer resources with a variety of playing options and payment options."

(i) amend S.194B and 194BB of the Act to provide that deduction of tax under these sections shall be on the aggregate of the amounts exceeding 10k during FY and to include "gambling or betting of any form or nature whatsoever"

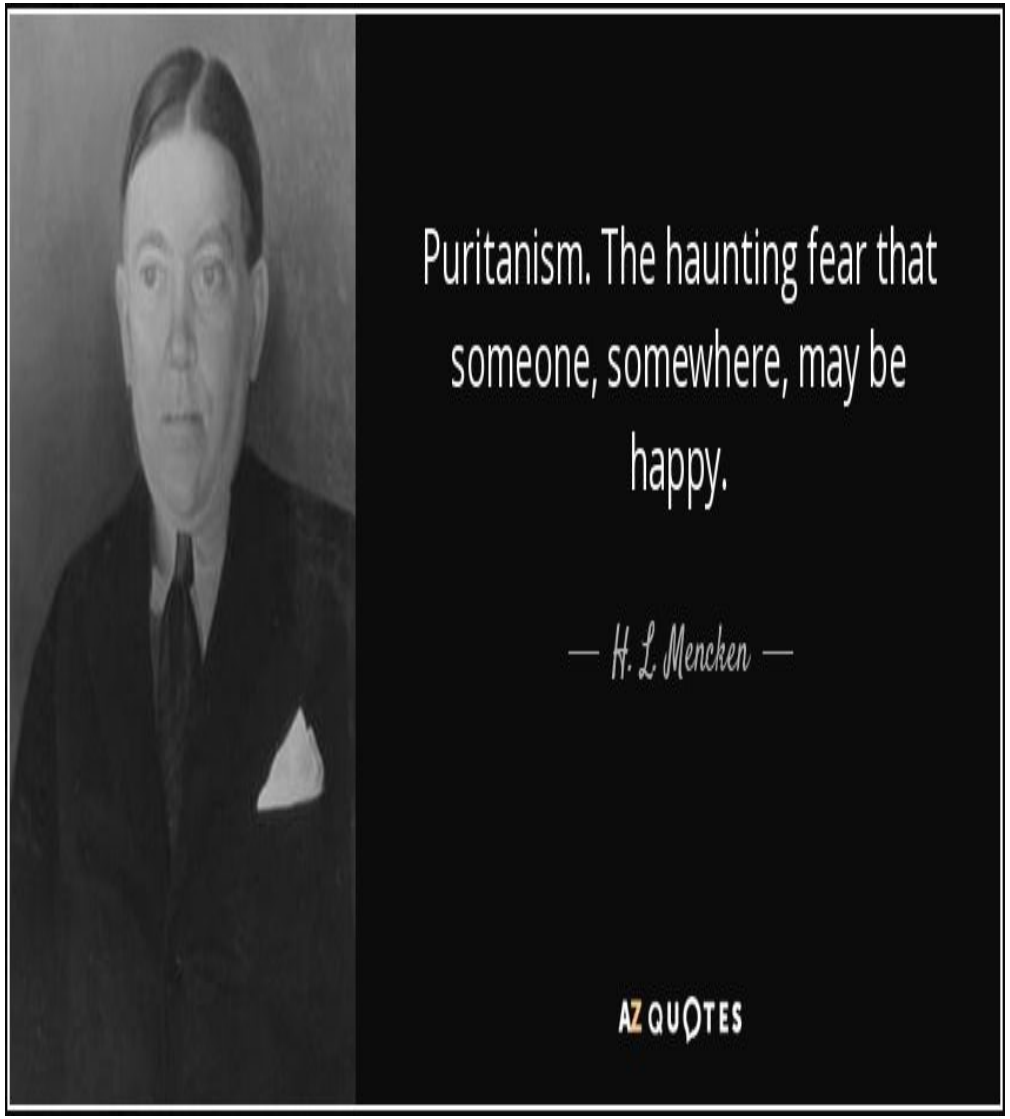
(ii) insert a new **S.194BA** in the Act, with effect from 1st July 2023, to provide for **TDS on net winnings in the user account at the end of the FY**. Net winnings shall be computed in the prescribed manner.

(iii) in a case where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;

(iv) to provide definition of "computer resource", "internet", "online game", "online gaming intermediary", "user", "user account" in S.194BA;

(v) to insert a new section 115BBJ in the Act with regard to tax on winnings from online games to provide for rate of tax **@ 30%**

(vi) to provide the **definition** of "computer resource", "internet", "online game" in the proposed section 115BBJ.



Tax avoidance through distribution by business trusts to its unit holders

- **Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT)** [commonly referred to as **business trusts**] were introduced in FA 2014 and taxability is as per S.115UA . Business trusts distribute sums to their "unit holders" under categories of Interest, Dividend, Rental Income or *Repayment of Debt.*
- Dividend and rental income are pass-through for business trust and taxable in the hands of the unit holder. However, distributions made by the business trust to its unit holders which are shown as repayment of debt, is actually an income of unit holder but which does not suffer taxation either in the hands of business trust or in the hands of unit holder. Thus, proposed to make such sum received by unit holder taxable in his hands. However, provision is also proposed for a situation when the sum received by unit holder represents redemption of units held by him. **Consequential Amendments are:**

(i) **S.56(2)(xii)** to provide that income chargeable to income-tax under the head "income from other sources" shall also include any sum, received by a unit holder from a business trust, which-

(a) is not in the nature of income as referred to in 10(23FC) or 10(23FCA); and

(b) is not chargeable to tax under 115UA(2) of the Act;

(ii) insertion of a proviso to S.56(2)(xii) to provide that where the sum received is for redemption of units, it shall be reduced by the cost of acquisition of the units to the extent such cost does not exceed the sum received.

(iii) insertion of S.115UA(3A) to provide provisions of sub - sections (1), (2) and (3) of this section, shall not apply in respect of any sum referred to in S.56(2)(xii)

(iv) insertion of 2(24)(xviic) to provide income shall include any sum referred to in clause (xii) of sub-section (2) of section 56 of the Act.

Limiting the roll over benefit claimed under section 54 & 54F

- In order to prevent HNI's purchasing very high-value residential houses "defeating the very purpose of these sections" this, it is proposed to impose a limit on the maximum deduction that can be claimed by the assessee under S.54 and S.54F to Rs.10 crores.
- 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.
- Proposed tro insert a proviso to provisions of 54(2) and 54F(4), for the purpose of deposit in the Capital Gains Account Scheme, shall apply only to capital gains or net consideration, as the case may be, upto rupees 10 Crores. From AY 2024-25 onwards

Increasing rate of TCS of certain remittances

206C(1G) Proviso	Current	Proposed
For education (if remitted out loan from a financial institution u/S 80E)	0.5% of amount in excess of Rs.7 lakhs	No change
For education (other than above) or for medical treatment	5% of amount in excess of Rs.7 lakhs	No change
Overseas tour package	5% without any threshold limit	20% without any threshold limit
Any other case	5% of the amount or aggregate of the amounts in excess of Rs.7 lakhs	20% without any threshold limit

Bottomline: So the widely used LRS remittances TCS @ 20%?!!!

Preventing permanent deferral of taxes through undervaluation of inventory

“In order to ensure that the inventory is valued in accordance with various provisions of law”

Amending S.142 of the Act relating to Inquiry before assessment to ensure the following:-

(i) To enable AO to direct assessee to get the inventory valued by a **cost accountant**, nominated by the Pr. Chief. Comr or PC or Commr. in this behalf. Assessee is then required to furnish the report of inventory valuation in the prescribed form etc etc.

(ii) To provide expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Commr. in accordance with the prescribed guidelines **and that the expenses so determined shall be paid by the Central Government**.

(iii) To provide that except where the assessment is made under section 144 of the Act, **assessee will be given an opportunity of being heard** in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.

(iv) To **define “cost accountant”** to mean a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

(v) To amend S.153 of the Act, so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.

(vi) To amend S.295 of the Act, so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain. **From AY 2023-2024 onwards.**

Preventing misuse of presumptive schemes under section 44BB and section 44BBB

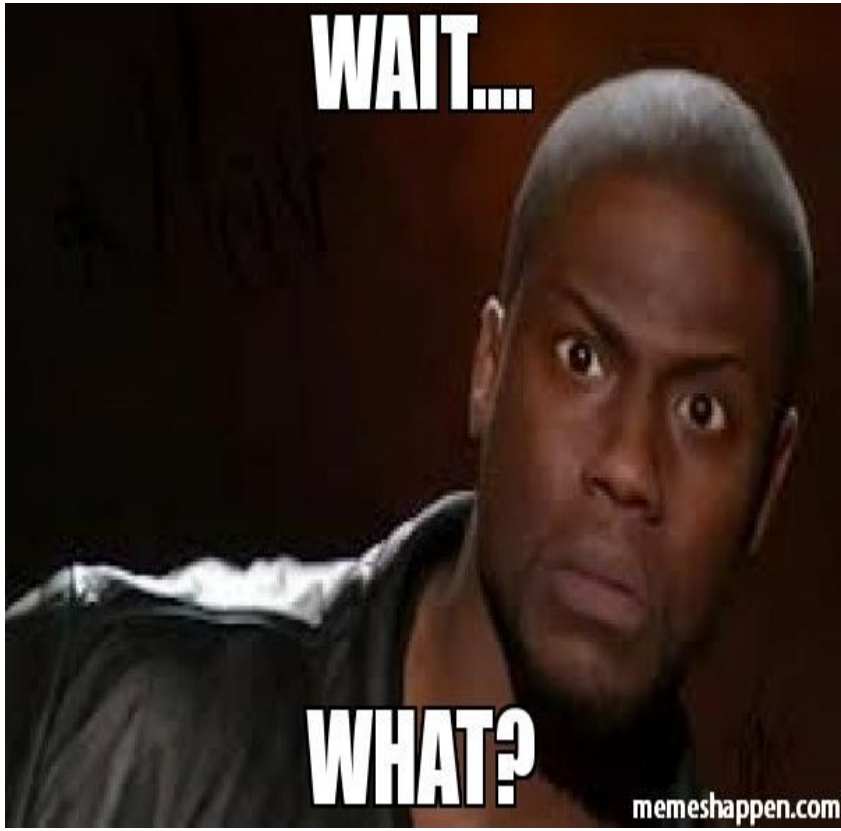
- S.44BB and S.44BBB are presumptive schemes in case of non-resident assessee engaged in the business of providing services or facilities in connection with the prospecting for, or extraction or production of, mineral oils (44BB) and engaged in the business of civil construction or the business of erection of plant or machinery or testing/commissioning thereof in connection with a turnkey power project approved by the Central Government (44BBB).
- It is seen that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years.
- *"Conceptually, if assessee is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting off of losses computed as per books of account with income computed on presumptive basis"*
- To avoid such misuse, it is proposed to insert a new sub-section to section 44BB and to section 44BBB of the Act to provide that notwithstanding anything contained in subsection (2) of section 32 and sub-section (1) of section 72, **where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.** From AY 2024-25.

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

- Existing S.55 of the Act, inter alia, defines the 'cost of any improvement' and 'cost of acquisition' for the purposes of computing capital gains.
- *"However, there are certain 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 not clearly defined as 'nil' in the present provision. This has led to many legal disputes and the courts have held that for taxability under capital gains there has to be a definite cost of acquisition or it should be deemed to be nil under the Act. Since there is no specific provision which states that the cost of such assets is nil, the chargeability of capital gains from transfer of such assets has not found favour with the Courts."*
- Proposed to amend the provisions of 55(1)(b)(1) and 55(2)(a)(1) to provide that the 'cost of improvement' or 'cost of acquisition' of **a capital asset being any intangible asset or any other right** (other than those mentioned in the said sub-clause or clause, as the case may be) shall be 'Nil'. From AY 2024-25 onwards.

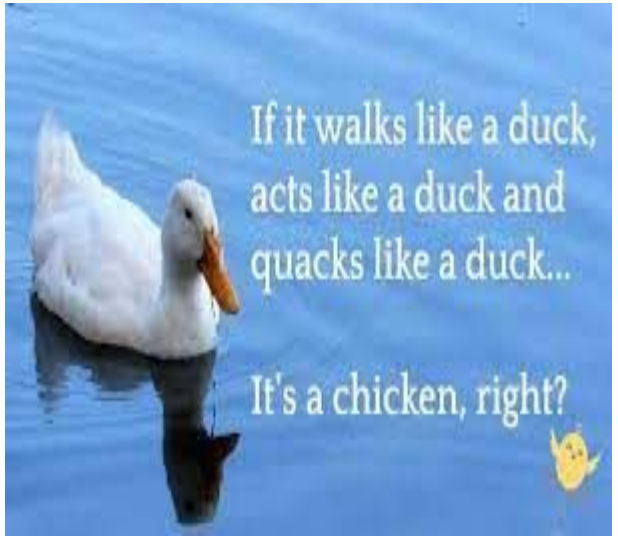
Removal of exemption from TDS on payment of interest on listed debentures to a resident

- S. 193 of the Act provides for TDS on payment of any income to a resident by way of interest on securities.
- Proviso provides exemption from TDS in respect of payment of interest on certain securities. Clause (ix) of proviso provides that no TDS in case of any interest payable on any security issued by a company, where such security is in demat form and listed
- **It is seen that there is under reporting of interest income by the recipient due to above TDS exemption**. Proposed to omit clause (ix) of proviso to S.193. From 1-4-2023.



Special provision for taxation of capital gains in case of Market Linked Debentures

- 'Market Linked Debentures' are listed securities which are *"currently being taxed as longterm capital gain at the rate of 10% without indexation. However, these securities are in the nature of derivatives which are normally taxed at applicable rates. Further, they give variable interests as they are linked with the performance of the market."*
- CG from the transfer or redemption/maturity of these securities as STCG at applicable rates, new **S.50AA** to treat full value of the consideration on transfer/redemption/maturity of **"Market Linked Debentures"** as reduced by the cost of acquisition of and the expenditure incurred in connection with transfer, as CG arising from the transfer of a short term capital asset.
- Also proposed to define **'Market linked Debenture'** as a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a Market Linked Debenture by SEBI. From AY 2024-25 onwards.



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

"It has been observed that some assessees have been ***claiming double deduction of interest paid on borrowed capital for acquiring, renewing or reconstructing a property"*** **[!!!]**

Firstly, claimed as deduction from income from house property under S.24 and in some cases the deduction under other provisions of Chapter VIA

Secondly while computing CG on transfer this same interest also forms a part of cost of acquisition or cost of improvement under S.48 of the Act.

In order to prevent this double deduction, it is proposed to insert a proviso after clause (ii) of the section 48 to provide cost of acquisition or cost of improvement shall NOT include the amount of interest claimed under S.24 or Chapter VIA. From AY 2024-25 onwards

Rationalisation of exempt income under life insurance policies

- *"over the years it has been observed that several high net worth individuals are misusing the exemption provided under clause (10D) of section 10 of the Act by investing in policies having large premium contributions (as it is acting as an investment policy) and claiming exemption on the sum received under such life insurance policies."*
  - FA 2021: ULIPs having premium payable exceeding Rs 2.5L have been excluded from S.10(10D) but all other kinds of life insurance policies are still eligible for exemption irrespective of the amount of premium payable
- Proposed to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. This income shall be taxable under the head "income from other sources".
- Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier.
- The proposed provision shall apply for policies issued on or after 1st April, 2023. There will not be any change in taxation for polices issued before this date.
  - Amend 10(10D), insert 56(2)(xiii), amend 2(24)(xviid)

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

- S.45(5A) provide that on the CG arising to an assessee (individual and HUF), from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), **the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued**. **Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in 'cash'.**
- It has been noticed that the taxpayers are inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax under sub-section (5A) of section 45.
- Accordingly, it is proposed to amend the provisions of sub-section (5A) of section 45 so as to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by a cheque or draft or by any other mode. From 2024-25 onwards

D. Improving Compliance and Tax Administration

#	Title	Sections Affected
1	Introduction of the authority of Joint Commissioner (Appeals)	S.10(22B)
2	Rationalisation of appeals to the Appellate Tribunal	S.253
3	Provisions related to business reorganisation	S.170A
4	Amendments in consequence to new provisions of TDS	S.271C
5	Assistance to authorised officer during search and seizure*	S.132
6	Provisions relating to reassessment proceedings	S.149, S.151
7	Alignment of timeline provisions under section 153 of the Act	S.153
8	Modification of directions related to faceless schemes and e-proceedings	
9	Extension of time for pending rectification appls under Interim Board of Settlement	S.245D(9)
10	Reducing the time provided for furnishing TP report	S.92D
11	Rationalization of provisions of Prohibition of Benami Property Transactions Act, 1988	
12	Penalty for furnishing inaccurate statement of financial transaction	S.285BA

Introduction of the authority of Joint Commissioner (Appeals)

- **A new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand**. Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.
  - Substitute erstwhile Section 246

Rationalisation of appeals to the ITAT

- S.271AAB, S.271AAC and S.271AAD were amended to allow CIT(A) to pass Order under these Sections. Appeal against such Orders are now allowed by amending S.253(1) to include these Orders.
- S.263 amended to enable Principal Commr. and Chief Commr. to pass an Order of Revision. Appeal against such Orders are now allowed by amending S.253(1) to include these Orders.
- S.253(4) allows cross-objections to be filed in ITAT by respondent in appeal from CIT(A). Now Act amended to allow cross-objections to ALL appeals filed to ITAT. **This will include final assessment Order passed by AO pursuant to DRP!**

Provisions related to business reorganisation

- S. 170A substituted to provide that notwithstanding anything contained in S.139, in a case of **business reorganisation**, where prior to the date of order of the Tribunal or the High Court or Adjudicating Authority, any return of income has been furnished for any AY, by an entity towhich 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 prescribed. This would also enable modification of the returns filed by the predecessor wherever required
- There was no provision of the procedure to be followed by the Assessing Officer after the modified return is furnished by the successor entity. It is now proposed that, if proceedings of assessment/reassessment for relevant AY have been completed on the date of furnishing of modified return, the AO shall pass an order modifying the total income of the relevant AY in accordance with the order of the business reorganisation and taking into account the modified return so furnished.
- Where proceedings of assessment/reassessment for the relevant AY are pending on the date of furnishing of modified return, the AO shall pass an order assessing or reassessing the total income of the relevant AY in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

Amendments in consequence to new provisions of TDS

- Proposed to amend **S.271C(1)(b)** which levies penalty for failure to deduct tax and insert two new subclauses providing reference to the first proviso to S.194R and S.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. WEF 1-4-23.
- Further, in consequence insert S.194BA (online gaming) in the Act, it is proposed to insert a new sub-clause u/S 271C and S.276B providing reference to S.194BA(2) WEF 1-7-23.

Assistance to authorised officer during search and seizure

- Proposed to amend relevant provisions to provide that during the course of search the authorised officer, **may requisition services of any other person** as approved to assist him for the purposes of the search. Similarly, in during and post search enquiries, the authorised officer **may make reference to any person** registered who shall estimate the fair market value of the property in the manner prescribed and submit a report of the estimate to the authorised officer within 60 days. WEF 1-4-2023

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

Provisions relating to reassessment proceedings

- **Proposed to insert a proviso in S.149** to provide that in cases **where a search under section 132** is initiated or a search for which the last of the authorization is executed or requisition is made under section 132A, **after the 15th March of any FY** a period of fifteen days shall be excluded for the purpose of computing the period of limitation for issuance of notice under S.148 and the **notice so issued shall be deemed to have been issued on the 31st day of March of such FY.**
- Proposed to insert another proviso in the section 149 of the Act to provide in cases where info deemed to be with AO emanates from a statement recorded or docs impounded under summons or survey on or before the 31st day of March of a FY, in consequence of, a search initiated or last of authorization executed under S.132 or requisition u/S 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 u/S 148 and SCN issued under clause (b) of S.148A in such case shall be deemed to have been issued on the 31st day of March of such FY. It is also provided that impounding or recording of the statement in consequence of search or search itself should be before 31st March only. Only extension has been provided for the time consumed in the procedure for issuance of notice under section 148 or 148A.
- **S.151(ii)** was resulting in 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 an amendment has been proposed to provide that specified authority under S.151(ii) shall be PCC or PDG or CC or DG.
    - Further, proposed to be inserted to provide that while computing the period of 3 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.

Alignment of timeline provisions under section 153 of the Act

1. It has been proposed that the **time available for completion of assessment relating to the assessment year commencing on or after the 1st day of April, 2022 shall be twelve months from the end of the assessment year in which the income was first assessable.**
2. Consistent with the above, the time available for completion of assessment proceedings in the case of an updated return is also proposed to be increased to 12 months from the end of the financial year in which such return is furnished.
3. FA 2021 allowed S.264 Revision by Principal CC and CC. However, time line u/S.153 of the Act under sub-sections (3), (5) and (6) to pass an order under S.92CA by the TPO does not refer to the orders so passed by PCC or CC. Proposed to amend that S.153 amended to provide that the provision of the said sub-section (3), (5) and (6) shall also be applicable to order u/S 263 or 264 passed by PCC or CC r PC or Commr.

Alignment of timeline provisions under section 153 of the Act

5. Vide Finance Act, 2021 provisions of S.147 of the Act relating to re-assessment were amended providing that search assessments were to be carried out under S.147 of the Act. However, S.147 do not provide for abatement or revival of any assessment proceedings pending on date of search u/S.132 or requisition u/S.132A. As a result, the information available in a search, which has a bearing on pending scrutiny proceedings may not be effectively used due to the limitation of such proceedings.

6. Further, even if the last of the authorizations have been executed in the relevant search case, the seized material etc. are transferred to the AO only after some time. Further, the AO needs to carry out investigation and gather evidence. Therefore, there is a need to amend the provisions so as to allow the AO to conduct proper scrutiny of the case on the basis of seized material and investigation made and align the dates of limitation for completion reassessment proceedings for all the AYs under scrutiny consequent to a search u/S 132 or 132A.

7. **New 153(3A) to be inserted** in the Act to provide that where an assessment/reassessment pending on date of initiation of search u/S.132 or S.132A, period available for completion of assessment/reassessment under said sub-sections (1), (1A), (2) and (3) of said section **shall be extended by 12 months** in a case of assessee where such search is initiated u/S.132 or requisition u/S. 132A or in the case of an assessee to whom any money, bullion, jewellery etc or in case of an assessee to whom books of account or documents seized or requisitioned pertains to.

8. Furthermore, consequent to the introduction of sub-section (1A) of section 153 of the Act vide Finance Act, 2022, it is proposed to insert reference to sub-section (1A) in sub-sections (3), (4), (6) as well as in first proviso to S.153 Expln. 1.

Modification of directions related to faceless schemes and e-proceedings

- Express power to amend or modify the directions related to faceless and e-proceedings, upon expiry of the relevant time period was not available. Now it is!

#	Section	Scheme	Timelimit to issue directions
1	135A	E-Verification Scheme, 2021	31.3.22
2	245MA	E-Dispute Resolution Scheme, 2022	31.3.23
3	245R	E-Advance Ruling Scheme, 2022	31.3.23
4	250	Faceless Appeal Scheme, 2021	31.3.22
5	274	Faceless Penalty Scheme, 2022	31.3.22

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

"In this regard, grievances have been received from the stakeholders regarding extension of time available to the IBS under the Act, to pass rectification/ amendment orders. As the pending applications only relate to rectification or amendment of mistake apparent from the record, it is proposed that the time-limit available to IBS for passing such orders may be extended in order to dispose the pendency and to avoid any further litigation.

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."*

Amendment retrospective from the 1.2.2021

Reducing the time provided for furnishing TP report

- S.92D(3) amended to provide 10 days to furnish TP report. Maybe extended to 30 days.
  - Earlier was 30 days minimum to furnish TP report

Rationalization of the provisions of the Prohibition of Benami Property Transactions Act, 1988 (the PBPT Act)

- S.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 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.
- Under existing provisions of S.2(18) of the PBPT Act, the 'High Court', for the purpose of filing appeal against the order of the Adjudicating authority, have been defined. S.2(18) of the PBPT Act to modify the definition of 'High Court' by inserting a proviso jurisdiction of any HC Court or if Govt is aggrieved party, jurisdiction of office of Initiating Officer. WEF 1-4-2023

Penalty for furnishing inaccurate statement of financial transaction or reportable account

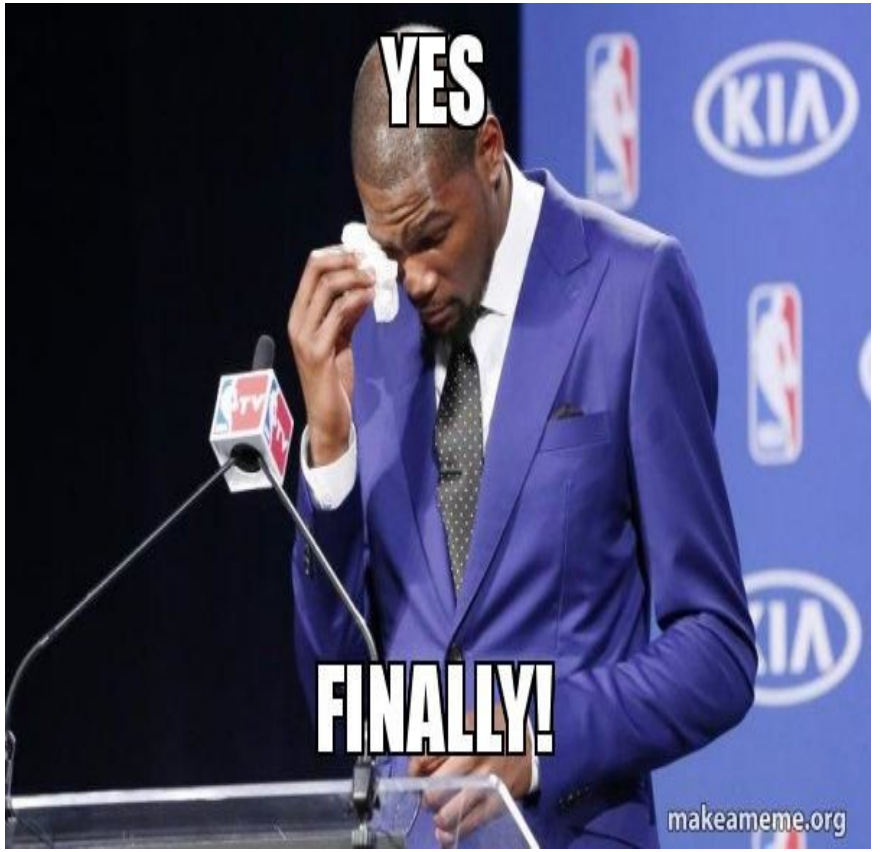
- S.285BA makes it mandatory for a person responsible for registering, or, maintaining books of account etc of any **specified financial transaction** or any reportable account as may be prescribed, under any law for the time being in force, to furnish a statement in respect of such specified financial transaction to the prescribed income-tax authority. Further, S.271FAA provides for penalty for furnishing inaccurate statement of financial transaction or reportable account.
- **Self-certifications by reportable persons and account holders** are mandated under the Rule 114H of the Income-tax Rules, 1962 for different purposes. This includes cases where new accounts are opened (to certify the country of tax residence), cases involving curing of indicia for pre-existing accounts (to certify the country of tax residence) and cases of entities to certify whether they are Passive Non-Reporting Financial Entities. However, there is **no penal provision for the submission of a false self-certification** which in turn leads to furnishing of an incorrect statement under section 285BA. **Therefore, there is a need to introduce a provision for penalizing false self-certification in the Act.**
- S.285BA(2) inserted to 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 said section. Further, the 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.
- It is clarified that the income-tax authority prescribed which shall levy the said penalty in the S.271FAA is the prescribed authority u/S.285BA(1)

E. Rationalisation of Provisions

#	Title	Sections Affected
1	Excluding NBFC from restriction of interest deductibility	S.94B
2	Bringing the non-resident investors within S. 56(2)(viib) to eliminate tax avoidance	S.56(2)(viib)
3	Providing clarity on benefits and perquisites in cash	S.28(iv), S.194R
4	Rationalisation of the provisions of Charitable Trust and Institutions	S.10(23C), S.11, S.12A…
5	Facilitating TDS credit for income already disclosed in the return of income of past year	S.155(20), S.244A
6	Set off and withholding of refunds in certain cases	S.241A
7	Tax treaty relief at the time of TDS under section 196A of the Act	S.196A
8	TDS on payment of accumulated balance due to an employee	S.192A
9	Specifying time limit for bringing consideration against export proceeds into India	S.10AA
10	Removal of certain funds from S.80G	S.80G(2)
11	Relief from special provision for higher rate of TDS/TCS for non-filers of ITRs	S.206AB, S.206CCA
12	NBFC Categorization	S.43B, S.43D
13	Rationalization of valuation of residential accommodation provided to employees	S.17
14	Clarification regarding advance tax while filing Updated Return	S.140B(4)

Excluding non-banking financial companies (NBFC) from restriction on interest deductibility

- S.94B of the income tax act contains provisions relating to the deduction of interest expenditure incurred by an Indian company or a PE of a foreign company
- Inserted by FA 2017 to implement BEPS Action Plan to address profit shifting by way of excess interest deductions. [Thin Cap Rules!]
- S.94B(3) excludes certain companies that are engaged in the business of banking or insurance from its scope. **NBFC's added to this exclusion**. From AY 2024-25 onwards



Bringing the non-resident investors within S.56(2)(viib) to eliminate the possibility of tax avoidance

- S.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'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the**
- Clause (viib) of sub section (2) of section 56 of the Act was inserted vide FA 2012 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 is not applicable for consideration (share application money/ share premium) received from non-resident investors.
- It is proposed to include consideration received from non- resident also under S.56(2)(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. **From AY 2024-25 onwards**
- **Bottomline: Expect litigation around startup funding by NR's and valued via DCF**

Providing clarity on benefits and perquisites in cash

- S.28(iv) now **applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.”** AY 2024-2025 onwards
- **Similar change to S. 194R of the Act by FA 2022** provides for TDS on benefit or perquisite provided to a resident arising from business or exercise of a profession via Explanation S.194R(1) to require to deduct whether the benefit or perquisite is in cash or in kind or partly in cash and partly in kind. WEF 1-4-2023.
- Bottomline: Doesn’t provide clarity, provides for more litigation!

Rationalisation of the provisions of Charitable Trusts

Rationalisation of the provisions of Charitable Trusts

1. Depositing back of corpus and repayment of loans

- **S.10(23C) third proviso Explanation 1 and S.11(1)(d) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified.**
- Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of S.10(23C) and S.11(a) and (b). However, when it is invested or deposited back, into one or more modes specified in S.11(5) maintained specifically for such corpus, from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.
- Application from loans and borrowings shall not be considered as application for charitable However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.
- Itt has come to the notice that application from corpus or loan or borrowings have already been claimed as application prior to 01.04.2021. Hence, allowing such amount to be application again as investment or reposting back in corpus or repayment of loan or borrowing will amount to double deduction.
- It was also noted that, a trust may invest or deposit back the amount in to corpus or repay the loan after many years of application from the corpus or loan and claim such repayment of loan or investment/depositing back in to corpus as application for charitable or religious purposes. Availability of indefinite period for the investment or depositing back to the corpus or repayment of loan will make the implementation of the provisions quite difficult.

Rationalisation of the provisions of Charitable Trusts
1. **Depositing back of corpus and repayment of loans (contd..)**

- It is proposed to provide that **application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid.**
- **It is further proposed to provide that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes.**
- It is also proposed to provide that where the application from corpus or loan does not satisfy the following conditions as laid out in provisions, the repayment of loan or investment/depositing back in to corpus of such amount will not be treated as application.
  - Application not in the form of corpus donation to another trust
  - Application to be made in India,
  - Application should not violate 13(1)(c) directly or indirectly benefitting any person in S.13(1)
  - Application allowed in year it is actually paid,
  - Carry forward/set-off excess application not allowed
  - Application where payments made in excess of Rs.10k cash not allowed
- From AY 2023-24 onwards

Rationalisation of the provisions of Charitable Trusts
2. Treatment of donation to other trusts
3. Removal of roll-back provisions

- At least 85% of income of the trust or institution should be applied during the year for the charitable or religious purposes to ensure bare minimum application for charitable or religious purposes. Trusts or institutions are allowed to either apply mandatory 85% of their income either themselves or by making donations to the trusts with similar objectives. If donated to other trusts or institutions, the donation should not be towards corpus to ensure that the donations are applied by the donee trust or institutions. **Thus, every trust or institution under both the regimes is allowed to accumulate 15% of its income each year.**
- *"Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%."*
- **It is proposed that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation.**
- Now the trusts and institutions under the second regime are required to apply for provisional registration before the commencement of their activities and therefore there is no need of roll back provisions provided in second and third proviso to sub-section (2) of section 12A of the Act. **With a view to rationalise the provisions, it is proposed to omit the second, third and fourth proviso to sub-section (2) of section 12A of the Act. WEF 1-4-2023**

Rationalisation of the provisions of Charitable Trusts
4. Combining provisional and regular registration in some cases

- It has also been brought to the notice that trusts and institutions under both the regimes are facing the following difficulties:
  - Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.
  - Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.
- **It is proposed to allow for direct final registration/approval in such cases.** To achieve this, following amendments are proposed:
  - Trusts and institutions under S.10(23C) or S.12 regime who have commenced activities will apply only for provisional registration under different clauses of the Act
  - Such application shall be examined by Pr.Cr. or Commr as per procedure provided and where satisfied about the objects and genuineness of activities and compliance of requirements provided in law, **registration or approval in such cases shall be granted for 5 years.**
  - Such Order granting or rejecting such applications **within 6 months** calculated from the end of the month in which such application was received.
- WEF 1-10-23

Rationalisation of the provisions of Charitable Trusts
5. Specified violations u/S.12AB and S.10(23C) fifteenth proviso

- It has come to the notice that in some cases the form furnished by the trusts for provisional approval/registration and for re-registration/approval are defective and since the process of registration/approval/provisional registration/approval is automated, registration has been granted by the CPC.
- **At present the approval/registration and the provisional approval/registration of the trusts can be cancelled by the PCIT/CIT for certain specified violations**. It is proposed to,
  a) insert clause (g) in Explanation 2 to the fifteenth proviso of S.10(23C) to provide that the "specified violation" shall also include the case where the application referred to in the first proviso is not complete or it contains false or incorrect information.
  b) insert clause (g) in Explanation to S.12AB(4) to provide that "specified violation" shall also include the case where the application referred to in 12A(1)(ac) is not complete or it contains false or incorrect information. **WEF 1-4-23.**
- **Bottomline: Harsh much?!**

Rationalisation of the provisions of Charitable Trusts
6. Trusts not filing the application in certain cases

- **Instances have come to the notice where certain trusts and institutions have NOT applied for the regular registration after taking the provisional registration. This will result in the following unintended consequences:**
  a) Once a trust enters into no exemption regime, it is allowed to exit on payment of tax at the rate of MMR on its accreted income (difference between the fair market value of assets and liabilities).
  b) By not applying for re-registration/approval or registration/approval, the trust gets an easy route to exit without payment of the tax on accreted income.
- A trust or institution may voluntarily wind up its activities or dissolve or merge with non-charitable institution or convert into non-charitable organization. **In order to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allowed the trusts and institutions having built up corpus/wealth through exemptions being converted into non-charitable organisation with no tax consequences, a new Chapter XIIEB consisting of Sections 115TD, 115TE and 115TF was inserted in FA 2016.** This chapter seeks to impose a **levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a noncharitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation.**
- S.115TD to be made applicable if any trust or institution under the first or second regime fails to make an application in accordance with provisions. Upon violation of these, it shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which such period expires.
- It is further proposed to amend 115TD(5)(ii) to provide principal officer or trustee of the specified person and the specified person shall also be liable to pay the tax on accreted income within 14 days end of PY in a case referred to in 115TD(3)(iii).
- It is also proposed to insert S.115TD Explanation (i)(c) to provide that date of conversion shall also mean the last date for making an application for registration or for approval in a case referred to in S.115TD(3). **From AY 2023-24 and onwards**

Rationalisation of the provisions of Charitable Trusts
7. Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

- Due date for furnishing Form 9A and Form 10 is same as the due date of furnishing RoI. Trusts are also required to furnish audit report in Form 10B/10BB one month before the due date for furnishing RoI.
- The auditors are required to report the details of Form 10/9A in the audit report. Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report the same.
- **It is proposed to provide for filing of Form No. 10A/9A at least two months prior to the due date specified under S.139(1) for furnishing the return of income for the previous year.**
- Necessary amendments in this regard are proposed in:
  - clause (c) of Explanation 3 to third proviso of S.10(23C)
  - clause (2) of Explanation 1 sub-section (1) of S.11
  - clause (c) of S.11(2) of the Act
- From AY 2023-24

Rationalisation of the provisions of Charitable Trusts
8. Denial of exemption where return of income is not furnished within time

- S.139 amended by FA 2022 provides for updated return to be filed within 2 years from end of AY.
- **This resulted in unintended consequences** of allowing exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 will be available to the trusts where they furnish updated return of income.
- **Accordingly, it is proposed to clarify that these exemptions will be available only if the return of income has been furnished within the time allowed <u>under sub-section (1) or subsection (4) of section 139 of the Act</u>.**

Facilitating TDS credit for income already disclosed in the return of income of past year

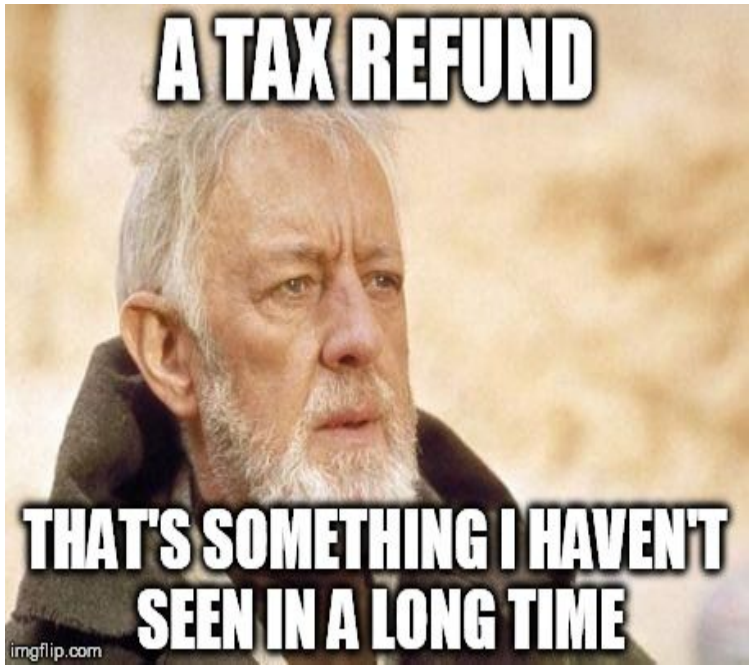
- Tax is deducted by deductor in year in which income is actually paid to the assessee. However, following accrual method, the assessee may have already disclosed this income in earlier years in their RoI.
- **TDS mismatch results since corresponding income has already been offered to tax by assessee in earlier years, however, TDS is only being deducted much later when actual payment is being made.**
- 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 RoI may have lapsed. This results in difficulty to the assessee in claiming credit of TDS
- **New S.155(20) proposed to address this difficulty**

Facilitating TDS credit for income already disclosed in the return of income of past year

- Where any income has been included in the return of income furnished by an assessee under S.139 of the Act for any AY ("relevant AY") and tax has been deducted at source on such income and paid to the credit of CG Government in subsequent FY, in such a case assessee **can make application in the prescribed form** to AO within 2 years from end of FY in which such tax was deducted at source. Then AO shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant AY.
- **Further provided that S.154** shall apply and the period of 4 years specified in S.154(7) shall be reckoned from end of FY in which such tax has been deducted. Further, credit of such TDS shall not be allowed in any other AY.
- **Amendment proposed in S.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. WEF 1-10-23.

Set off and withholding of refunds in certain cases

- S.241A deals with withholding of refund in certain cases. Where refund becomes due u/S 143(1) and notice for assessment is issued u/S 143(2) the AO may withhold such refund till the date of such assessment being made, if he is of the opinion that the grant of refund is likely to adversely affect the revenue. Such withholding can be done after recording the reasons for doing so and with the prior approval of the PC or Commr., and applicable to AY's on or after 2017-18.
- S.245 deals with set off of refunds against tax remaining payable. It provides that where refund is found to be due to any person, the AO may, in lieu of payment, set off part or whole of the refund against any sum remaining payable by such person, after giving him an intimation in writing regarding the proposed action.
- **Proposed to integrate the two sections by substituting section 245 and making S.241A inapplicable WEF 1-4-2023**
- Further, as the amendments proposed under section 245 would have an impact on cases referred to in sub-section (1A) of section 244A, i.e., where refund due to the assessee is required to be withheld by the AO under sub-section (2) of the proposed section till the date of the making assessment/reassessment, it is proposed to amend sub-section (1A) of section 244A by inserting proviso that in case of an assessee where proceedings for assessment or reassessment are pending, the additional interest shall not be payable to the assessee under this sub-section, for the period beginning from the date on which such refund is withheld by the Assessing Officer, in accordance with and subject to provisions of sub-section (2) of section 245, till the date on which the assessment/reassessment pending, is made.
- However, the proposed amendment shall not impact the existing position with regard to all other types of interest, except additional interest under sub-section (1A) of section 244A, payable to the assessee as required under the Act. WEF 1-4-2023



Tax treaty relief at the time of TDS under S.196A of the Act

- S.196A of the Act provides for TDS on payment of certain income to a non-resident or foreign company @ 20%. The income is required to be in respect of units of a Mutual Fund under 10(23D) or from the specified company referred to in the Explanation to 10(35)
- Treaty rate may be lower than 20%! So now treaty benefit can be availed via new proviso to S.196A which allows lower of 20% or treaty rate. WEF 1-4-2023

TDS on payment of accumulated balance due to an employee

- S.192A TDS on payment of accumulated balance due to an employee under the EPF Scheme, 1952 requires TDS of 10% of the taxable component of the lump sum payment due to an employee. Further, no deduction of tax is to be made where the amount of such payment or the aggregate amount of such payment to the payee is less than fifty thousand rupees.
- Second proviso to S.192A provides that recipient without PAN, TDS deducted at the maximum marginal rate. Now it has been restricted to 20% similar to 206AA in case of no PAN recipients (many lower-wage employees were seen to fall in this category). WEF 1-4-2023

Specifying time limit for bringing consideration against export proceeds into India

- **S.10AA** provides 15-year tax benefit for unit in SEZ which manufacture or produce articles or things or provide any services on or after 01.04.2005. The deduction is available for units that begin operations before 01.04.2020, which has been extended to 30.09.2020 through TOLA.
- **Proposed to insert Proviso S.10AA(1)** to provide that no deduction under the said section shall be allowed to an **assessee who does not furnish a return of income** on or before the due date specified under S.139(1).
- **Proposed to insert new sub-section S.10AA(4A)** to provide that the deduction under S.10AA of the Act shall be available for such unit, if the proceeds from sale of goods or services is brought into, India in *convertible foreign exchange*, within **6 months** from end of PY or, within such further period as the RBI may allow in this behalf. Such proceeds deemed to have been received if credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of RBI.
- **Proposed to substitute clause (i) of Explanation 1 of S.10AA** to define the term "convertible foreign exchange" and give reference to new sub section (4A) in definition of "Export Turnover".
- **Consequential amendment in sub-section (11A) of S.155 of the Act**, to insert section 10AA to allow the AO to amend the assessment order later where the export earning is realized in India after the permitted period. From AY 2024-25 onwards.

Removal of certain funds from section 80G*

- Section 80G of the Act, inter alia, provides for the procedure for granting approval to certain institutions and funds receiving donation and the allowable deductions in respect of such donations to the assessee making such donations.
- It has been observed that there are only three funds based on names of the persons in the said section. In order to remove such funds, it is proposed to omit sub-clauses (ii), (iiic) and (iiid) of clause (a) of sub-section (2) of section 80G of the Act. From AY 2024-25 onwards

Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns

- Section 206AB of the Act provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, section 206CCA of the Act provides for special provision for higher TCS for non-filers of income-tax returns.
- The provisos exclude a non-resident from the definition of specified person, if the non-resident does not have a PE in India.
- **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. Hence, in order to provide relief in such cases, it is proposed to amend the definition of the "specified person" in sections 206AB and 206CCA of the Act 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. WEF 1-4-2023

Non-Banking Financial Company (NBFC) categorization

- S.43B and S.43D of the Act currently use two erstwhile categories of NBFC namely, **Deposit taking Non-Banking Financial Company** and **Systemically Important Non-Deposit taking Non-Banking Financial Company**. Such classification for non-banking financial companies is **no longer followed by the Reserve Bank of India** for the purposes of asset classification.
- 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”. From AY 2024-2025 onwards

Rationalization of provisions related to the valuation of residential accommodation provided to employees

- S.17(2) “perquisite” inter alia includes value of rent-free accommodation or value of any concession in the matters of rent provided to employees by the employer. The employer may be either Central/State Government or other than that, with different methodologies of valuation of perquisites for the two categories of employers.
- However, methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of IT Rules 1962 while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanations to the clause (2) of section 17.
- In order to rationalize this provision by prescribing a uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers, it is proposed to amend sub-clauses (i) and (ii) of clause (2) of section 17 of the Act. 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 the value of any accommodation provided to the assessee by his employer at a concessional rate.
- 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.
- 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. **From AY 2024-25 onwards**

Clarification regarding advance tax while filing Updated Return

- FA introduced S.139(8A) enabling the furnishing of an **updated return** by taxpayers up to two years from the end of the relevant AY subject to fulfilment of certain conditions as well as payment of **additional tax**. For the determination of the amount of additional tax on such updated return S.140B was inserted in the Act.
- S.140B(4) provides for the computation of interest under section 234B 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 implied that interest was payable only on the difference of the assessed tax and advance tax. Further, the sub-clause (i) of the clause (a) also provides advance tax which has been claimed in earlier return of income shall be taken into account for computing the amount on which the interest was to be paid.
- In order to clarify the provisions of the S.140B(4), an amendment has been proposed in the said sub-section 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. WREF 1-4-2022.

F. Ease of compliance

#	Title	Sections Affected
1	Ease in claiming deduction on amortization of preliminary expenditure	S.35D
2	Increasing threshold limits for presumptive taxation schemes	S.44AD, S.44ADA
3	Extending the scope for deduction of tax at source to lower or nil rate	S.197(1) – S.194LBA
4	Omission of certain redundant provisions of the Act	S.88, S.10(23BBF) (23EB) (26A) (41) and (49)
5	Decriminalisation of section 276A of the Act	S.276A
6	Extension of exemption to Specified Undertaking of Unit Trust of India (SUUTI) and providing for alternative mechanism for vacation of office of the Administrator	UTI Repeal Act, 2002

Ease in claiming deduction on amortization of preliminary expenditure

- S.35D provides for amortization of certain preliminary expenses incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc.
- Provides that the work in connection with the preparation of feasibility report or project report etc. **would need to be carried out either by the assessee himself or by a concern which is approved by the Board.**
- Proposed to **remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board**. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

Increasing threshold limits for presumptive taxation schemes

- U/S. 44AD of the Act, for eligible business, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% the total turnover or gross receipts, a threshold limit of **3 crore rupees** will apply.
  - **Business of plying, hiring or leasing goods carriages**
- U/S. 44ADA of the Act, for professions referred to in sub-section (1) of S.44AA of the Act, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts, a threshold limit of **75 lakh rupees** will apply.
  - **Legal, medial, engineering, architecture, accountancy, technical consultancy or interior or any other notified profession**
- From AY 2024-2025 and onwards

Increasing threshold limits for presumptive taxation schemes

- Section 194LBA of the Act, inter-alia, provides that business trust shall deduct and deposit tax at the rate of 5% on interest income of non-resident unit holders.
- Some cases rate of deduction may be required to be **reduced** due to some exemption, for ex: exemption under section 10(23FE) of the Act allowed to notified Sovereign Wealth Funds and Pension Funds.
- **But S.197 does not allow certificate of lower deduction u/S 194LBA to be obtained. Proposed to amend S.197(1) to fix this** to provide that the sums on which tax is required to be deducted under section 194LBA shall also be eligible for certificate for deduction at lower rate. W.e.f 1.4.23

Decriminalisation of section 276A of the Act

- **S.276A of the Act makes provision for prosecution with rigorous imprisonment up to two years in the case of a person, being a liquidator** who fails to give notice in accordance with sub-section (1) of section 178, or fails to set aside the amount as required by subsection (3) of the said section or parts with any of the assets of the company or the properties in contravention of the provisions of the said section.
- It is noted that Liquidator working under IBC 2016 law. Further, it has been the stated policy of the Government to decriminalise minor offences as a step towards improving ease of business.
- It is proposed to amend S.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. WEF 1-4-2023

Thanks!

vvikram@saprlaw.com

http://www.saprlaw.com