Finance ~~Bill~~ Act 2021

A detailed analysis

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Finance Bill 2021

- Finance Bill 2021 : Remember?
  - **Memorandum : 42 topics, 79 clauses**
- **Finance Act, 2021**
  - Amendments broadly grouped into **22 topics!**
    - Modified, inserted many sections!
- **All the FA 2021 amendments are covered in this presentation**

#	FINANCE ~~BILL~~ ACT 2021: IMPORTANT AMENDMENTS ✅
1	New re-assessment regime
2	Goodwill not depreciable
3	Slump sale amendment
4	Transfer of capital asset on dissolution & reconstitution of Partnership
5	Board for Advanced Ruling (BAR)
6	Discontinuance Settlement Commission
7	Taxability of interest on funds when income is exempt
8	Rationalisation of tax audit in certain cases (S.44AB)
9	S.44ADA not to apply to LLP and HUF
10	Belated/Revised Return dates
11	“Liable to tax”
12	Section 2(19AA), S.72A: Facilitating strategic disinvestment
13	Rationalization of MAT provisions
14	Curative amendment – S.115AD
15	PAN-Aadhar –Insertion of S.234H
16	Performance of Verification Unit functions
17	Exemption to DFI income
18	Taxation of proceeds of high premium ULIP
19	Sovereign Wealth & Pension Fund amendments
20	Incentives for IFSC units
21	Exemption for NR investors and Category-III AIF [S.10(23FF)]
22	ROI Due date for spouse of a partner u/S.5

#	FINANCE ACT 2021 AMENDMENTS
23	Faceless ITAT
24	Dispute Resolution Committee
25	Section 194Q: TDS on purchase of goods
26	Charitable corpus application & exemption limits
27	Advance tax installment for dividend
28	Employee PF contribution deposited by employer
29	TDS/TCS on non filers at higher rates
30	Time limit for completing assessments
31	Equalisation Levy
32	Circle rate for S.43CA, 56(2)(x)
33	Provisional attachment of fake invoices
34	TDS exemption on dividend to business trusts
35	Processing of returned income & Notice u/s 143(2)
36	Rationalisation of withholding made to FIIs

#	FINANCE ACT 2021 AMENDMENTS
37	S.80EEA: Interest on loan for house property
38	S.80-IBA: Incentives for affordable rental housing
39	Exemption for LTC Cash scheme
40	Section 80-IAC: Startup amendments
41	Section 2(48): Zero coupon bonds by Infra debt fund
42	Tax neutral conversion of UCB to Banking Company
43	Mismatch in taxation of income from overseas retirement fund
43	IDS amendment
44	Adjudicating authority under PBPT Act
45	Relaxation from filing return (for some!)
46	Section 142(1)(i) notice
47	Scope of VsV scheme

Rationalisation of various provisions

1. Income escaping & search assessments : Memorandum

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act …

Similarly, information is also received from other law enforcement agencies. *This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act.*

Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or or those who have not disclosed the correct amount of total income.

Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven*.*

In view of above, there is a ***need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases****.*

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system ***would result in less litigation*** *and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued.*

Rationalisation of various provisions
New reopening regime : Salient features

1. S.147 allows the Assessing Officer to assess or reassess or re-compute *any income escaping assessment for any assessment year* (called relevant assessment year).

2. Before such assessment or reassessment or re-computation, a notice is required to be issued under S.148 of the Act, which can be issued **only when there is information with the Assessing officer** which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained.

3. It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year **in accordance with the risk management strategy** formulated by the Board **shall be considered as information** which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.

- Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new reopening procedure.
  - The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

Rationalisation of various provisions
New reopening regime : Salient features

6. A final objection raised by the CAG of India that the assessment in the case of the assessee for relevant AY has not been in accordance with Act **shall also be considered as information**

7. Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be **deemed that the Assessing officer has information** which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the 3 AY's immediately preceding the AY relevant to the previous year in which search is initiated or any material seized or survey is conducted.

8. New S.148A proposes that before issuance of notice the AO shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the AO shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The AO shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

9. Once reassessment has started the AO is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

Rationalisation of various provisions
New reopening regime : Time limits

- The time limit for issuance of notice u/S.148 is now in S.149 of the Act
- in normal cases, no notice shall be issued if 3 years have elapsed from the end of the relevant assessment year. Notice > 3 years from the end of the relevant AY can be taken only in a few specific cases.
- in **specific cases** where the AO has evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is **likely to amount to fifty lakh rupees** or more, notice can be issued beyond the period of 3 year but not beyond the period of 10 years from end of relevant AY
- Notice u/S.148 of the Act cannot be issued at any time in a case for relevant AY beginning on or before 1-4-2021, if such notice could not have been issued on account of being beyond time limit prescribed as they stood immediately before the proposed amendment.
- Where search or requisition is initiated or made on or before 31st March 2021, reassessments are to be carried out as per S.153A/B/C/D of the Act, aforesaid time limit shall not apply.
- Period of limitation for issue of S.148 notice, the time allowed to assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under S.148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the AO for passing order, about fitness of a case for issue of 148 notice, is < 7 days, the remaining time shall be extended to seven days.

Rationalisation of various provisions
New Reassessment regime: Points to ponder

- Retrograde step to throw out jurisprudence on the issue?
  - *Kelvinator* et al out of the window.
- Well-litigated and understood system unnecessarily *scrapped* instead of *modifying* (amendments with effect from 1st April 2021)
- Where is **"Reason to believe" which served as bulwark of legal protection for assessee's**
- **"Information" / "deemed to be information"**
  - Based on **"risk management strategy"** as prescribed by Board
  - From third parties
  - From search
  - From audit objection (specifically mentioned!)
- Old "Explanation 3" specifically modified to suit any issue to be raked up regardless of procedure followed during course of reassessment
- 3 years or 10 years:
  - **<u>10 years "likely to amount to</u> fifty lakh rupees"**
  - **"in the form of an asset" ?**

Rationalisation of various provisions
New Reassessment regime: Overview

Section	Title	Effect of Finance Bill 2021
S.147	Income escaping assessment	Substituted in entirety
S.148	Issue of notice where income has escaped assessment	Substituted in entirety
S.148A	Conducting inquiry, providing opportunity before issue of notice under section 148.	Inserted
S.149	Time limit for notice	Substituted in entirety
S.151	Sanction for issue of notice	Amended
S.151A	Faceless assessment of income escaping assessment	Amended
S.153A	Assessment in case of search or requisition	Amended to end 31-3-2021
S.153C	Assessment of income of any other person	Amended to end 31-3-2021

Rationalisation of various provisions
Presenting the new Section 147!

*"**147**. **If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may,** subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

*Explanation.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, **irrespective of the fact that the provisions of section 148A have not been complied with**"*

Issue of notice when income escaped assessment

S.148. *Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

Provided that no notice under this section shall be issued unless ***there is information with the Assessing Officer which suggests that the income chargeable to tax*** *has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

S.148

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned 47 under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April, 2021; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer ***shall be deemed to have information which suggests that the income chargeable to tax*** *has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.*

Explanation.3—For the purposes of this section, specified authority means the specified authority referred to in section 151.

Conducting enquiry, providing opportunity before issue of notice under Section 148

148A. *The Assessing Officer shall, before issuing any notice under section 148, —*

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

Time limit for notice

S.149*. (1) No notice under section 148 shall be issued for the relevant assessment year,—*

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless ***the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:***

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation in sub-section (1) shall be deemed to be extended accordingly.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

Sanction for issue of notice

S.151. *Specified authority for the purposes of section 148 and section 148A shall be,—*

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief

Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Assessment in case of search and requisition:

S.153. (1) *after the words, figures and letters "after the 31st day of May, 2003", the words, figures and letters "**but on or before the 31st day of March, 2021**"is inserted.*

Assessment of income of any other person

S. 153C. *(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021*

Income escaping & search assessments :

FB -> FA 2021: What changed?

- What is an “asset” referred to in the new Section 149?
- Ambiguous definition which will be used to increase the reassessment time limits. It can mean anything!

S.149(1)

Explanation.—For the purposes of clause (b) of this sub-section, “asset” shall include ***immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.***

Income escaping & search assessments :

FB -> FA 2021: What changed?

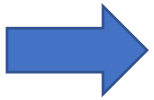
S.148 Explanation 2.—For the purposes of this section, where,—

…

(ii) a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April, 2021; or

….

*the Assessing Officer shall be **deemed to have information** which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated…..*



S.148 Explanation 2.—For the purposes of this section, where,—

…

*(ii) a survey is conducted under section 133A, **other than under sub-section (2A) or sub-section (5) of that section**, on or after the 1st day of April, 2021, in the case of the assessee; or*

…

*the Assessing Officer shall be **deemed to have information** which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated…..*

Following type of surveys excluded from the scope of *deemed information*

- Survey for verifying that tax has been deducted or collected at source in accordance with the provisions of sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII.
- Survey at any function, ceremony or event where, having regard to the nature and scale of expenditure incurred by an assessee.

In other words, AO cannot initiate re-assessment proceedings merely based on the survey conducted in the above two cases.

Income escaping & search assessments :

FB -> FA 2021: What changed?

- *Explanation to S.147.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice 46 subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with."*

Explanation to S.147.—For the purposes of assessment or reassessment or ***recomputation*** *under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.".*

Income escaping & search assessments :

FB -> FA 2021: What changed?

S.148 Explanation 1

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

S.148 Explanation 1

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned ***under section 132 or under section 132A*** *in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

In other words, in case of any unauthorized requisition it shall not be deemed AO has information

Rationalisation of various provisions
2. Goodwill not depreciable

- **Difference between the amount paid for the business and the net worth** is treated as goodwill.
- **Supreme Court, in the case of CIT vs. SMIFS Securities Ltd. [2012] 24 taxmann.com 222 (SC)/348 ITR 302 (SC),** felt that the Tribunal was justified in taking the view that the goodwill so ascertained is a depreciable asset in the light of Explanation 3(b) to section 32(1) of the Act as a right as "any other business or commercial rights of similar nature".
- Budget proposes **goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation.**
- In a case where goodwill is *purchased* by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act..
    - In case depreciation was obtained by assessee in relation to such goodwill prior to AY 2021-22, then the depreciation so obtained shall be reduced from the amount of the purchase price of the goodwill.

Rationalisation of various provisions
Goodwill amendments

- **S.2(11)(b)** excludes the term "goodwill" from the definition by expressly stating "not being goodwill of a business or profession," after the words "or commercial rights of similar nature.“
- **S.32** Consequential amendments have been made in section 32 of the Act dealing with depreciation by specifically inserting "not being goodwill of a business or profession,“ in clause (ii) and in Explanation 3, in clause (b) in sub-section (1) of this section.
- **S.50** amended to provide that in a case where goodwill formed part of a block of asset for AY beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the WDV of that block of asset and short term CG, if any, shall be determined in the manner prescribed.
- **S.55(2)(a)** substituted to provide a capital asset, being goodwill, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any rticle or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

(i)in the case of acquisition of such asset by the assessee by purchase from previous owner, means amount of the purchase price; and

(ii) in the case falling under 49(1)(i) to (iv) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be NIL

- **These amendments will take effect from 1st April 2021 and apply for AY 2020-2021 and subsequently.**

Goodwill amendments

FB -> FA 2021: What changed?

FB 2021 omission

- Finance Bill, 2021 amended above sections of the Income-tax Act but, **it does not propose any amendment to section 43 which defines the WDV of the block of assets**.
- Thus, **questions arose what would happen to the amount of goodwill which formed part of an existing block of assets.**
- Remember! Once an asset forms part of the 'block of assets', it loses its identity and deprecation is allowed on the whole block of asset. So, if an assessee has a block of intangible assets and in any previous year he has acquired the goodwill, which formed part of such block of assets, then how the depreciation shall be allowed on such block of assets?

Goodwill amendments

FB -> FA 2021: What changed?

FB 2021 omission

- Finance Act, 2021 makes the necessary amendments to **S.43(6)(c)** to provide that WDV of block of assets shall be reduced by the actual cost of goodwill falling within such block of assets.
- However, the actual cost of goodwill shall be first decreased by the:
  - Amount of depreciation actually allowed to the assessee for such goodwill before the Assessment Year 1988-89, and
  - **Amount of depreciation that would have been allowable to the assessee from the Assessment Year 1988-89 as if the goodwill was the only asset in the relevant block of assets.**
- The reduction shall, however, not exceed the closing WDV of intangible assets as on 31 March 2020.

Goodwill amendments

FB -> FA 2021: What changed?

An example: Math time!!

- VulcanTech ☺️ is a software business and **acquires on 7-4-2018** following intangibles
  - Goodwill worth 100 crores
  - Patents worth 25 crores
- 1 year later (7-4-2019) Vulcan **sold Patents alone** for 50 crores.
- What would be the closing WDV of the block of intangible assets for Vulcan as on March 31, 2021 in light of the FA 2021 goodwill amendment?

Goodwill amendments

FB -> FA 2021: What changed?

An example: Math time!!

WDV calculation	Value
FY 2018-19	
Intangible assets acquired on 7-4-2018	
- Goodwill	100cr
- Patents	25cr
Block of Intangible Assets (A)	**125cr**
Less: Depreciation for FY 18-19 @ 25% (B)	31.25cr
WDV on 31-3-2019 (C=A-B)	**93.75cr**
FY 2019-20	
Opening WDV	**93.75cr**
Less: Patents sold for 50cr	**(50cr)**
Less: Depreciation for FY 19-20 @ 25 %	**10.9375cr**
WDV on 31-3-2020	**32.8125cr**

Goodwill amendments

FB -> FA 2021: What changed?

An example: Math time!!

WDV calculation	Value
FY 2020-21 (Goodwill amendment applied!!)	
Opening WDV	32.8125cr
Less: Actual cost of goodwill included in block of assets as reduced by previous year depreciation(*)	**56.25cr (restricted to 32.8125cr)**
Less: Depreciation	0
WDV as of 31-3-2021	**0**

(*) Goodwill depreciation actually allowed	Value
Goodwill	100cr
Less: Depreciation allowed in FY 2018-19	25cr
Less: Depreciation allowed in FY 2019-20	18.75cr
Total	56.25cr

Rationalisation of various provisions
3. Slump sale amendment

- Slump sale in S. 2(42C) of the Act to mean transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to individual assets and liabilities in such cases.
- *Certain* judicial forums in few cases had held that IF there had been transfer otherwise than sale, then provisions of section 50B read with section 2(42C) of the Act were not applicable!
  - ITAT Mumbai Bench in the case of ***Oricon Enterprises Ltd. v. Asstt. CIT [2018] 171 ITD 231*** held that where the assessee had transferred its business division to its subsidiary against shares, same was not a 'slumpsale' but an 'exchange'; thus, S.50B of the Act would not apply.
  - *CIT vs. Bharat Bijlee Ltd. 365 ITR 258 Mumbai HC, Pr. CIT v. UTV Software Communication Ltd. [2019] 103 taxmann.com 12* etc

Rationalisation of various provisions
Slump sale amendment

- Essence of slump sale transaction is a lump-sum monetary consideration. Where the transfer of undertaking takes place not against monetary consideration, but against other assets, it amounts to 'Exchange' and not sale. Such exchange transaction does not fall within the ambit of slump sale, which necessitates a sale transaction at the first place. ***[CIT v. Bharat Bijlee Ltd.[2014] 46 taxmann.com 257 (Bombay)]***
- Areva T&D India Limited ("Areva") transferred its non-transmission/distribution business on a going-concern basis, to subsidiary Alstom Industrial Products Limited ("Alstom"), pursuant to a scheme of arrangement. Areva received Rs. 413 million in the form of fully paid up equity shares of Alstom as consideration for transaction on the basis of an independent joint valuation. Madras High Court held that, to bring the transaction within the definition of a slump sale, there should be a transfer of an undertaking as a result of the sale for lump sum consideration. Additionally, necessarily the sale should be by way of transfer of ownership in exchange of a price paid or promised or part paid and part promised and the price should be a money consideration. If there is no monetary consideration involved in the transaction, then it would be not possible to bring the transaction undertaken by Areva within the definition of the term 'slump sale' as defined under the IT Act. *[**Areva T&D India Ltd. v. CIT, Tax Case Appeal No. 673 of 2018.**]*

Rationalisation of various provisions
Slump sale amendment

- *In order to make the intention clear, it is proposed to amend the scope of the definition of the term "slump sale" by amending the provision of clause (42C) of section 2 of the Act so that all types of "transfer" as defined in clause (47) of section 2 of the Act are included within its scope.*
- Explanation to the said clause inserted to provide "transfer" shall have the meaning assigned to it in S.2(47).
- **These amendments will take effect from 1st April, 2021** and will, accordingly, apply in relation to the assessment year 2021-2022 and subsequent assessment years.

Slump sale amendment

FB -> FA 2021: What changed?

In section 50B of the Income-tax Act, (a) for sub-section (2), the following sub-section shall be substituted, namely:—

‘(2) In relation to capital assets being an undertaking or division transferred by way of such slump sale,—

(i) the “net worth” of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48;

(ii) Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.’;

S.50B Explanation (2)(aa) inserted namely:—

“(aa) in the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, nil;”.

Slump sale amendment

FB -> FA 2021: What changed?

- **CHANGE introduced in Finance Act, 2021 not in Finance Bill 2021!**
- Existing Section 50B does not contain any provision for the computation of the **full value of consideration** in relation to transfer of the undertaking under a slump sale.
- Finance Act 2021 has amended Section 50B(2) to provide that the **fair market value (FMV) of the capital assets (being an undertaking or division transferred by way of slump sale)** as on the date of transfer shall be calculated in prescribed manner and such FMV **shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset**.
- Further, a new clause in *Explanation 2* has been inserted to provide that the value of capital asset being goodwill, which has not been acquired by the assessee by purchase from previous owner, shall be taken as nil while computing net worth.

Slump sale	Value (INR)
Full value of consideration	A
Less: Expenses in relation to transfer	B
Net consideration	C (= A-B)
Less: Cost of acquisition i.e., net worth of undertaking	D
Capital Gain/Loss	E (= C-D)

Slump sale amendment

FB -> FA 2021: What changed?

Impact of Amendment :

- The language of amended provision **raises an ambiguity** whether it applies only to "slump exchange" or all types of "slump sale" including sale for monetary consideration.
- Note that amended Finance 2021 further provides that, for calculation of net-worth, the value of goodwill of business or profession acquired otherwise than by a purchase from previous owner will be considered as NIL.
- **My take:** this insertion of S.50B(2)(ii) has to apply for slump exchange reasons only because:
  - It reads *"full value of the consideration received or accruing as a result of the transfer of such capital asset"*. Read in tandem with S.2(42C) amendment they are trying to capture the fact that if there is a slump exchange and capital assets are transferred in exchange for slump transfer of undertaking, then FMV of capital assets received should be taken as full value of consideration for transferor capital gains
  - Also note that the calculation of "net worth" hasn't been disturbed (50B(2)(i))
  - Further, what if the FMV of the capital assets received were less than consideration received? And given self-generated goodwill market value ought to be NIL, this would lead to instances where deemed capital gains is less than actual consideration for transferor

Rationalisation of various provisions
4. Transfer of capital asset on dissolution or reconstitution

- The existing provisions of section 45 of the Act provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place.
- Further sub-section (4) of the said section, provides that the profits or gains arising from the transfer of a capital asset by way of ***distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise***, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.

Rationalisation of various provisions
Transfer of capital asset on dissolution or reconstitution

- Remember why S.45(3) and S.45(4) were introduced?
  - A long time ago(!)…one of devices used by assessee's to avoid Capital Gains tax was to convert an asset held individually into an asset of firm in which individual is a partner
  - The decision of ***Kartikeya V. Sarabhai vs CIT (156 ITR 509)*** held such a conversion falls outside scope of CG with rationale being consideration for transfer of personal asset is indeterminate being the right which arises to partner during subsistence of partnership to get his share in profits from tie to time and on dissolution to get value of share from net partnership asset
  - To block this escape route S.45(3) was introduced with Finance Act, 1987
- Conversion of partnership assets into individual assets on "dissolution or otherwise" also forms part of same scheme of tax avoidance. S.45(4) also introduced with FA 1987
- Refer CBDT Circular No.4995 dated 22.9.1987

Rationalisation of various provisions
Plugging S.45(4) issues

- New S.45(4) deals with "dissolution … ***or otherwise***" and reconstitution was not considered to fall under s.45(4)
  - ***G.H.Reddy & associates vs. ACIT (102 taxmann.399 Madras), National Company vs ACIT (TCA No 365 and 366 of 2009 dated 8th April 201 Madras HC)***
  - ***Vikas Academy vs ITO (TCA No.716 of 2015 dated 16th Sept. 2019 Madras HC)*** held assessee firm decided to reorganize business whereby couple of partners retired and fresh partners were inducted but assets & liabilities relating to business remained with firm, it was reconstitution of firm and no CG u/S.45(4)
- New S.45(4A) deals with profits arising from ***revaluation*** as well as ***receipt of capital asset*** by specified person in excess of credit in his capital account and subjects these profits to tax under the head Capital Gains
- **These amendments will be effective from the 1st April, 2021 and will apply to AY 2021-22 and subsequent assessment years.**

Transfer of capital asset on dissolution or reconstitution

General problems with dissolution or reconstitution

Where any partner receives any amount or property on account of dissolution or reconstitution of the firm, the tax implications is always controversial:

- Whether “dissolution of the firm or otherwise” includes reconstitution ?
- Whether consideration (in money or in kind) received by a partner from the firm could be said to be received on account of transfer of his interest in the partnership firm?
- Whether transfer of stock-in-trade or capital asset by a firm to its partners be treated as transfer for IT Act and if so is income from such transfer chargeable in the hands of firm and mechanism to compute the same?
- Where a firm does the re-valuation of asset or records self-generated asset and credits corresponding gain to the capital accounts of the partners, what is the tax treatment of the amount received by partner in excess of his/her capital account?

Transfer of capital asset on dissolution or reconstitution

S.45(4): Simple – till Finance Act 2020

S.45(4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets ***on the dissolution of a firm*** *or other association of persons or body of individuals (not being a company or a co-operative society)* ***or otherwise****, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.*

Transfer of capital asset on dissolution or reconstitution

S.45(4): Things get complicated!...Finance Bill 2021

S.45(4) *Notwithstanding anything contained in sub-section (1), where a* ***specified person*** *receives during the previous year any capital asset at the time of dissolution or reconstitution of the* ***specified entity****, which represents the balance in his capital account in the books of accounts of such specified entity at the time of its* ***dissolution or reconstitution,*** *then any profits or gains arising from receipt of such capital asset by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such capital asset was received by the specified person and notwithstanding anything to the contrary contained in this Act, for the purposes of section 48,—*

(a) fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset; and

(b) the cost of acquisition of the capital asset shall be determined in accordance with the provisions of this Chapter:

Provided that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

Explanation.—For the purposes of this sub-section,—

(i) “specified entity” means a firm or other association of persons or body of individuals (not being a company or a cooperative society);

(ii) “self-generated goodwill” and “self-generated asset” mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession;

(iii) “specified person” means a person who is partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society), in any previous year.

S.45(4A) *Notwithstanding anything contained in sub-section (1), where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity,* ***which is in excess of the balance in his capital account in the books of accounts of such specified entity at the time of its dissolution or reconstitution****, then any profits or gains arising from receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of such specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which such money or other asset was received by the specified person and notwithstanding anything to the contrary contained in this Act, for the purposes of section 48,—*

(a) value of any money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset; and

(b) the balance in the capital account of the specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition:

Provided that the balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

Explanation.—For the purpose of this sub-section, the expressions “specified entity”, “self-generated goodwill”, “selfgenerated asset” and "specified person" shall have the meaning respectively assigned to them in sub-section (4).

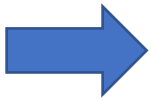
Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.45(4)

S.45(4A)

S.48(iii)



S.45(4)

S.9B

S.48(iii)

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

- **What was the need for Section 9B?**
- Section 9B creates a deeming fiction that the distribution of stock or capital asset by a firm to its partner is a *transfer*. ("deemed transfer")
- Overrules various judicial ruling which held that the *distribution, division or allotment of assets by a partnership firm upon dissolution or reconstitution* is nothing but a mutual adjustment of rights between the partners.
  - For ex: Apex Court in Malabar Fisheries Co. vs. CIT [1979] 2 Taxman 409 (SC)

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.9B – "Deemed" Transfer

'9B. (1) Where a specified person receives during the previous year any capital asset or stock in trade or both from a specified entity in connection with the dissolution or reconstitution of such specified entity, then the specified entity shall be deemed to have transferred such capital asset or stock in trade or both, as the case may be, to the specified person in the year in which such capital asset or stock in trade or both are received by the specified person.

(2) Any profits and gains arising from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the specified entity shall be—

(i) deemed to be the income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person; and

(ii) chargeable to income-tax as income of such specified entity under the head "Profits and gains of business or profession" or under the head "Capital gains", in accordance with the provisions of this Act.

(3) For the purposes of this section, fair market value of the capital asset or stock in trade or both on the date of its receipt by the specified person shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer of the capital asset or stock in trade or both by the specified entity.

(4) If any difficulty arises in giving effect to the provisions of this section and sub-section (4) of section 45, the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

(5) Every guideline issued by the Board under sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the assessee.

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.9B walkthrough

Applies: From AY 2021-2022, if ALL of the following conditions are satisfied:

- **Specified person** receives any capital asset, or stock in trade, or both
- The receipt is during previous year from **Specified entity** (Firm) and in connection **with the dissolution or reconstitution of Specified Entity**

Impact: If aforesaid conditions are satisfied, the following implications arise it shall be DEEMED that

- Specified entity has transferred such capital asset or stock in trade or both to the specified person("deemed transfer")
- Profits and gains arising on *deemed transfer* shall be deemed to be the income of such specified entity [section 9B(2)(i)];
- Income shall be chargeable to tax as income of the specified entity under the head "profits and gains of business or profession" or under "capital gains" as per provisions of the Act [section 9B(2)(ii)];
- **FMV of the capital asset or stock in trade** on the date of receipt by specified person shall be deemed to be full value of consideration for the specified entity [section 9B(3)].
- If any difficulty arises in giving effect to the provisions of this section and section 45(4), the CBDT may issue guidelines for the purposes of removing the difficulty [S.9B(4)/(5)].

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.9B "reconstitution" defined!

Explanation.— For the purposes of this section,—

*(i) "**reconstitution of the specified entity**" means, where—*

- *(a) one or more of its partners or members, as the case may be, of such specified entity ceases to be partners or members; or*
- *(b) one or more new partners or members, as the case may be, are admitted in such specified entity in such circumstances that one or more of the persons who were*
- *(c) partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or*
- *(d) all the partners or members, as the case may be, of such specified entity continue with a change in their respective share or in the shares of some of them;*

(ii) "specified entity" means a firm or other association of persons or body of individuals (not being a company or a co-operative society);

(iii) "specified person" means a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a co-operative society) in any previous year.'.

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.45(4) walkthrough

FA substituted S.45(4) as proposed to be substituted by the Finance Bill, 2021.

New 45(4) provides that where a **specified person** (say, partner) receives during the previous year any capital asset or money or both from a firm **in connection with the reconstitution** then any profit and gains arising from such receipt of money by specified person shall be deemed to be the income of the specified entity under the head "Capital Gains' of the previous year in which such capital asset or money or both were received by the specified person. Further, it also prescribes the formula to compute the profit and gains arising to the partner from such receipt of money or capital asset from the firm.

The profit and gains shall be computed in accordance with the following formulae:

A = B + C – D

A = Income chargeable to income-tax under this provision as income of the firm under the head capital gains

B = Value of money received by partner on the date of such receipt;

C = Fair market value of the capital asset received by the partner on the date of such receipt; and

D = Balance in the capital account (represented in any manner) of the partner in the books of accounts of the firm at the time of reconstitution.

(Where the value of A is negative, it shall be deemed to be nil)

Transfer of capital asset on dissolution or reconstitution

FB -> FA 2021: What changed?

S.45(4) walkthrough

While computing balance in the capital account of partner in books of accounts of Firm, increase in capital account due to the following **shall not be taken into account:**

- Revaluation of any asset;
- Self-generated goodwill (goodwill acquired without incurring any cost for purchase or which has been generated during the course of business or profession);
- Other self-generated assets.

Explanation 2 to Section 45(4) clarifies that when a capital asset is received by the partner from a firm in connection with the reconstitution, the provisions of the said section shall operate in addition to the provisions of section 9B.

S.48(iii) Cost-step up will be granted w. r. t. A above, to specified entity, in respect of undistributed capital assets, to be computed in a manner to be prescribed by rules.

Rationalisation of various provisions

5. Board for Advance Ruling ("BAR")

"As per past experience, the posts of Chairman and Vice Chairman have remained vacant for a long time due to non-availability of eligible persons. This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner"

- AAR to become BAR
- Pending applications moved to BAR
- Appealable to HC
- Not binding on Dept
- Each BAR will consists of two Dept Officers (at least CC level)

Rationalisation of various provisions
5. Board for Advance Ruling ("BAR")

- Points to ponder:
  - What is the purpose of only Dept officers in BAR? Why no legal officers?
  - Reasoning that it is tough to appoint retired Judges is illogical
  - Dept officers issuing ruling but not binding on Dept?!
    - Private Letter Ruling (PLR) system in the USA system to be followed
  - Appealable to HC as opposed to Writ makes it go into a legal logjam on admission?

Board for Advance Ruling ("BAR")

FB -> FA 2021: What changed?

Exclusion of Time limit for Completion of Assessment

- In the period allowed for completion of assessment or reassessment, certain time periods are excluded.
- When assessee approaches AAR,, the period to be excluded from limitation period shall commence from date on which AAR application is made and end with date on which the Order rejecting the application *or* the Advance Ruling (as the case may be!) is received by CIT/PCIT
- Finance Bill, 2021 proposed AAR shall cease to operate with effect from such date notified. And the Government has been empowered to constitute one or more BAR's (Board for Advance Rulings) for giving advance rulings on and after the notified date.
- Finance Act, 2021 has made consequential amendments to make the reference of Board for Advance Rulings along with AAR in Section 153.
    - While computing period of limitation, period to be excluded from the limitation period shall commence from the date on which an application is made before the AAR or BAR and end with the date on which the order rejecting such application or the Advance Ruling, as the case may be, is received by CIT/PCIT.
    - Similar amendments to S.153B (time-limit for completion of assessment in search, requisition cases).

Also, Finance Act 2021, changed in S.245Q(4) the reference from application filed **under this Section** to **under this Chapter**. Therefore, if any application is pending under Chapter XIX-B in respect of which Order u/S.245R(2) or S.245R(4) has not been passed before notified date, it shall be transferred to the BAR.

Board for Advance Ruling ("BAR")

FB -> FA 2021: What changed?

S. 153 *(ii) in Explanation 1,—*

(a) in clause (viii), for the words "Authority for Advance Rulings", the words "Authority for Advance Rulings or before the Board for Advance Rulings" shall be substituted;

(b) in clause (ix), for the words "Authority for Advance Rulings", the words "Authority for Advance Rulings or before the Board for Advance Rulings" shall be substituted;

S.153B*, in the Explanation,—*

(a) in clause (vi), for the words "Authority for Advance Rulings", the words "Authority for Advance Rulings or before the Board for Advance Rulings" shall be substituted;

(b) in clause (vii), for the words "Authority for Advance Rulings", the words "Authority for Advance Rulings or before the Board for Advance Rulings" shall be substituted;

S.245Q (4) *Where an application for advance ruling* ***under this Chapter*** *is made before such date as the Central Government may, by notification in the Official Gazette, appoint, and in respect of which no order under sub-section (2) of section 245R has been passed or no advance ruling under sub-section (4) of section 245R has been pronounced before such date, such application along with all the relevant records, documents or material, by whatever name called, on the file of the Authority shall be transferred to the Board for Advance Rulings and shall be deemed to be the records before the Board for Advance Rulings for all purposes.".*

Rationalisation of various provisions
6. Discontinuance of Settlement Commission

- ITSC wound down w.e.f 1st February 2021
- Interim Board to hear pending applications [3 members, each officer of rank of CC]
- Assessee may withdraw pending application within 3 months from date of commencement of Finance Act, 2021
  - Income tax authority before whom proceeding was pending will dispose of the case as if no application to ITSC was made
  - IT Authority cannot use material and other information produced by assessee before ITSC

Discontinuance of Settlement Commission

FB -> FA 2021: What changed?

- **Time-limit for completion of assessment on withdrawal of application filed before settlement commission**
  - FA 2021 inserted **fourth Proviso after Explanation 1 to Section 153 that if the assessee has exercised option to withdraw the application filed before Settlement Commission, period of limitation available to the AO for making an assessment, reassessment or recomputation after excluded time shall not be less than one year. If such period of limitation is less than one year, it shall be *deemed to have been extended to one year*.**
  - Similar amendments made to Section 153B (time-limit for completion of assessment in search or requisition cases). In such cases, the period shall stand extended to a minimum one year where assessee has exercised the option to withdraw the application filed before the Settlement Commission.
  - Amendment shall also apply for determining the period of limitation in following sections:
    - For determination the period of limitation for issue of notice for re-assessment under Section 149;
    - For filing of application for rectification of mistake apparent from record under Section 154;
    - For other amendments as specified in Section 155;
    - For payment of interest on refund under Section 244A.

Rationalisation of provisions

7. Taxability of interest on funds when income is exempt

- Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under **S.10(11) and S.10(12)**
- Accordingly, NO exemption shall be available for the interest income accrued during the previous year in the recognised and statutory provident fund to the extent **it relates to the contribution made by the employees over Rs. 2,50,000 in the previous year**. (Applicable from AY 2022-23)

Points to ponder:

- Hits high-income salaried people who use the Voluntary Provident Fund to earn tax-free interest (only 1% of total subscribers according to FM!)
- Remember 2016 budget? Interest accrued on 60% EPF tax proposal was dropped
- But this threshold unlikely to be rolled back as it won't affect those who contribute up to rs.20,833 a month to PF (basic salary 1.73 lakhs)
- Keep in mind new Wage Code from 1st April lays down basic salary must be at least 50% of total income and so basic salary rejig will lead to higher PF contrib.

Rationalisation of provisions
Taxability of interest on funds when income is exempt
FB -> FA 2021: What changed?

- Finance Act, 2021 **has added a second proviso to S.10(11) and S.10(12)** that if an employee is contributing to the fund BUT there is no contribution to fund by employer, then interest income accrued during previous year is taxable to extent it relates to the contribution made by employee in excess of Rs. 5,00,000 in a FY.

Amount contributed by assessee/employee during previous year	Is employer contributing?	Interest earned taxable?	How much of interest of employee contrib is taxable?
4,00,000	Yes	Yes	1,50,000
6,00,000	Yes	Yes	3,50,000
4,00,000	No	No	-
6,00,000	No	Yes	1,00,000
2,00,000	Yes	No	-
2,00,000	No	No	-

Removing difficulties faced by taxpayers
8. Rationalisation of tax audit in certain cases

- S.44AB requirement to get audited if total sales, turnover or gross receipts exceed one crore in previous year
  - One crore to five crores threshold if aggregate of receipts in cash <= 5% and aggregate of payments in cash <= 5%.
  - FB 2021 increases threshold to 10 crores

Removing difficulties faced by taxpayers
Section 44AB
FB -> FA 2021: What changed?

"Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash."

- So, the payment/receipt settled through a non-account payee cheque or non-account payee bank draft shall be included while computing 5% cash transaction limit under section 44AB.

Rationalisation of various provisions
9. Section 44ADA not to apply to LLP's

- LLP are required to maintain books of accounts in any case under LLP Act, hence 44ADA did not cover it. But there was ambiguity…..
- To make this position clear in the law., 44ADA(1) to be amended to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, not being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008

Rationalisation of various provisions
Section 44ADA
FB -> FA 2021: What changed?

- The Finance Bill (Lok Sabha) has further restricted the scope of section 44ADA. Now an HUF shall also not be eligible for presumptive taxation scheme under section 44ADA.
- Consequently, w.e.f. Assessment Year 2021-22, only a **resident Individual and a resident partnership firm** shall be eligible to compute the income under the said presumptive taxation scheme.
    - LLP, HUF, Company, AOP, BOI, etc. shall not be eligible to claim the benefit of Section 44ADA.

Section 44ADA

FB -> FA 2021: What changed?

In section 44ADA of the Income-tax Act, in sub-section (1), for the words *"in the case of an assessee, being a resident in India, who"*, the words, brackets, letter and figures *"in case of an assessee, being an individual, Hindu undivided family or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, who is a resident in India, and"* shall be substituted.

In section 44ADA of the Income-tax Act, in sub-section (1), for the words *"in the case of an assessee, being a resident in India, who"*, the words, brackets, letter and figures *"in case of an assessee, being an individual or a partnership firm other than a limited liability partnership as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, who is a resident in India, and"* shall be substituted.

Removing difficulties faced by taxpayers
10. Return dates…

- S.139(4) / (5) : Belated or revised return now be filed **3** months before the end of the relevant AY or before the completion of the assessment, whichever is earlier.
  - **Remember! Time for completing of assessment is proposed to be NINE MONTHS from the end of the assessment year** in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.
- S.139(1) Explanation 2 : The due date for filing of return of income for partners of a firm, which is required to furnish report referred to in section 92E (report from accountant for entering into international transaction or specified domestic transaction), shall be 30th November of the AY
- S.139(9) : Defective return – generic explanation added to allow Board to notify exceptions

Belated & Revised returns

FB -> FA 2021: What changed?

FB 2021 proposed amendments to S.139(4) and 139(5) w.e.f AY 2021-22, to provide that the belated and revised return can be filed at any time within three months prior to the end of the relevant AY or before completion of the assessment, whichever is earlier. FA 2021 redrafted "within" to "before"….same intent!

S.139

in sub-section (4), for the words "return for any previous year at any time before", the words *"a return for any previous year at any time within three months prior to"* shall be substituted;

in sub-section (5), for the words "he may furnish a revised return at any time", the words *"he may furnish a revised return at any time within three months"* shall be substituted;

S.139

in sub-section (4), for the words "return for any previous year at any time before", the words *"return for any previous year at any time before three months prior to"* shall be substituted;

(c) in sub-section (5), for the words "before the end", the words *"before three months prior to the end"* shall be substituted;

Return dates: Fee for default in furnishing Return

FB -> FA 2021: What changed?

Total income	Date of filing ITR	Fees (INR)
Not liable to income tax	-	
Any amount of income	On or before due date	Nil
Up to rs.5L	After due date	Rs.1,000
Above rs.5L	After due date but before Dec 31st of AY	Rs.5,000
Above rs.5L	After due date but between Jan-Mar of AY	Rs.10,000

Total income	Date of filing ITR	Fees (INR)
Not liable to income tax	-	
Any amount of income	On or before due date	Nil
Up to rs.5L	After due date	Rs.1,000
Above rs.5L	After due date but before Dec 31st of AY	Rs.5,000

- *Remember, in FB 2021 reduction of time-limit to file belated or revised RoI by 3 months!*
- *So, last date to file revised or belated RoI shall be 31st Dec. relevant AY.*
- *S.234F amended accordingly*

Rationalisation of various provisions
11. “Liable to tax”

- S.6, S.10(23FE), DTAA agreements all use “liable to tax”
- Newly inserted definition for “liable to tax” in S.2(29A)
- *The term “liable to tax” in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.*
- **Points to ponder:** defining DTAA terms?

Belated & Revised returns

FB -> FA 2021: What changed?

*The term "liable to tax" in relation to a person means that there is a **liability of tax** on **that** person under the law **of any** country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.*

*"Liable to tax", in relation to a person and with reference to a country, means that there is **an income-tax liability** on **such person** under the law **of that country** for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.*

“Liable to tax”

FB -> FA 2021: What changed?

- The definition proposed by FB 2021 caused confusion!! Did not specify nature of tax which shall be considered for this purpose. In absence of specific reference to ‘Income-tax’, it could be concluded that if person is paying any tax, he may be regarded as liable to tax in such country?
- So, the amendment provides that:
  - Liability shall be with reference to *a* country and
  - And there should be an income-tax liability.

Tax Incentives

12. Section 2(19AA), S.72A: Facilitating strategic disinvestment

- S.2(19AA) defines “demerger” and S.72A provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation, demerger, etc
- S.2(19AA) relaxed with Explanation 6 inserted to clarify the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if
  - such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; *and*
  - the resultant company is a public sector company on the appointed date indicated in the scheme approved by Government or Companies Act any other such Act governing the public sector company *and*
  - fulfils such other conditions as may be notified

Tax Incentives
S.2(19AA), S.72A: Facilitating strategic disinvestment

- S.72A(d) inserted to provide sub-section (1) of S.72A shall also apply in case of amalgamation of an erstwhile public sector company with one or more company or companies, IF
  - the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
  - the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.
- Insertion of proviso to S.7A(1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment

Amendment to Indian Stamp Act, 1899

FB -> FA 2021: What changed?

- In FB 2021, Indian Stamp Act, 1899 has also been proposed to be amended that stamp duty will not be levied if the following conditions were satisfied:
  - There is an instrument for transfer of a business or asset or right in any immovable property;
  - Transfer is made from a Government company, its subsidiary, unit or joint venture, to another Government company or to the Central Government or any State Government;
  - Reconstruction was done by **Strategic sale, Disinvestment, Demerger** or any other scheme
- Finance Act, 2021 has amended the Indian Stamp Act, 1899 to extend the waiver of the stamp duty even if transfer is made to the development financial institution established by any law made by the parliament.
- Further, the Stamp duty will not be charged under the Act if the Government companies under the following stages are transferred to another Government Company or to the Central Govt. or the State Govt.:
  - **Winding up, Closing, Striking-off, Liquidation, Shut down**

Transactions not regarded as transfer

FB -> FA 2021: What changed?

- Transfer of capital asset by Indian Infra Finance Co. to Institution established for financing infrastructure and development **(Section 47(viiae)**
- Transfer of capital asset under a plan approved by Central government **(Section 47(viiaf))**
  - Consequential amendments made to S.49 and amendment to S.56(2)(x) to not apply in respect of S.47(viiae) and (viiaf)

Removing difficulties faced by taxpayers
13. Rationalization of MAT provisions

- S.115JB(2D) inserted to provide that in cases where past year income is included in books during the previous year on account of an *APA* or a *secondary adjustment*, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable during the previous year
  - Provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.
- S.115JB ***Explanation 1(fb)(B)*** amended to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit <u>in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.</u>

Rationalization of MAT provisions

FB -> FA 2021: What changed?

S.115JB(2D) In the case of an assessee being a company, where there is an increase in book profit of the previous year due to income of past year or years included in the book profit on account of an advance pricing agreement entered into by the assessee under section 92CC or on account of secondary adjustment required to be made under section 92CE, the Assessing Officer shall, on an application made to him in this behalf by the asssessee, recomputed the book profit of the past year or years and tax payable, if any, by the assessee during the previous year under sub-section (1), in such manner as may be prescribed and the provisions of section 154 shall, so far as may be, apply and the period of four years specified in sub-section (7) of that section shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer:

Provided that the provisions of this sub-section shall apply only if the assessee has not utilised the credit of tax paid under this section in any subsequent assessment year under section 115JAA

Provided further that the provisions of this sub-section shall also apply to an assessment year beginning on or before the 1st day of April, 2020 and notwithstanding anything contained in any other provisions of this Act, no interest shall be payable to such assessee on the refund arising on account of the provisions of this sub-section.

Rationalization of MAT provisions

FB -> FA 2021: What changed?

- FA 2021 has inserted two provisos to the proposed S.115JB(2D)
- *First proviso* provides that the benefit of re-computation of book profit under section 115(2D) shall be available **only if the assessee has not utilised the MAT credit in any AY**. If such assessee has utilised MAT credit for payment of tax liability of any subsequent AY, he shall not be eligible to claim the benefit of Section 115(2D).
- *Second proviso*, is provided that the **assessee can make an application for re-computation of book profit for past years beginning on or before AY 2020-21**. Further, the assessee shall **not be eligible to claim the interest on the refund, if any**, arising to him on account of reduction in tax payable due to re-computation of profit of past years.

14. Curative amendment – S.115AD

FB -> FA 2021: What changed?

- S.115AD(1)(i) from Finance Act 2014 had a Proviso which read the income-tax calculated on interest u/S.194LD is to be at 5%
- Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('Amendment Act, 2020) inadvertently removed the Proviso
- CBDT had to issue Press Release dated 17-3-2021 saying Proviso continued!
  - Finance Act 2021 brought back the Proviso

15. PAN-Aadhar –S.234H

FB -> FA 2021: What changed?

- S. 139AA mandates every person, who is eligible to obtain Aadhaar, to quote Aadhar Number in ITR and the application for PAN allotment
- Further, every person who has been allotted PAN as on July 1, 2017, and who is eligible to obtain Aadhaar number, shall link his PAN with Aadhaar. In case of failure, the PAN allotted to the person shall be made inoperative after the notified due date.
    - **The due date for such linking had been extended on multiple occasions**
- FA 2021 has inserted a **new Section 234H** to levy a fee for default in intimating the Aadhaar Number. If a person is required to intimate his Aadhaar under Section 139AA(2) and fails to do so, fee, as may be prescribed, not exceeding Rs. 1,000 at the time of making such intimation.
- As per Rule 114AAA, where a person is required to furnish, intimate or quote his PAN, and his PAN has become inoperative, it shall be deemed that he has not furnished, intimated or quoted the PAN. Some consequences are:
    - S.206AA TDS and S.206CC TCS at higher rates.
    - Not able to file ROI. S234F will apply, interest u/S.234A, forfeiture of current year's losses, best judgment assessment?, penalty for concealment, prosecution for failure to furnish return of income etc.
    - A penalty u/S. 272B levied for non-compliance with S.139A requiring quote PAN in certain transactions

16. Performance of Verification Unit functions

FB -> FA 2021: What changed?

- The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 inserted S.144B to provide the manner in which faceless assessment under S.143(3) and S.144 best judgment assessment shall be conducted.
- The CBDT has been authorised to set up the following centres and units by specifying their respective jurisdiction.
  - National Faceless Assessment Centre (NFAC)
  - Regional Faceless Assessment Centres (RFAC)
  - Assessment Units (AU)
  - Verification Units (VU)
  - Technical Units (TU)
  - Review Units (RU).
- The Verification Unit shall perform the function of verification including *enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements, and such other purposes*
- Finance Act 2021 has provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the Act or under any scheme notified under this Act. The request for verification may also be assigned by the National Faceless assessment centre to such verification unit.

17. Exemption to DFI income

FB -> FA 2021: What changed?

- From AY 2022-23, FM said infrastructure needs professionally managed **Developmental Financing Institution (DFI)** to act as a provider, enabler and catalyst for infrastructure financing and said that a Bill would be introduced to set up a DFI.
- DFI is an institution promoted / assisted by Govt. to provide development finance to specific sub-sectors of economy with the emphasis on on long-term finance and on assistance for sectors where risks may be higher for private players.
- **Finance Act 2021 has inserted two new clauses (48D), (48E) to S.10 exempting DFI income**
- Exemption to Financial Institution: **S.10(48D) inserted** to grant exemption for any income accruing to an institution established for financing infrastructure and development. Institution to be set up under an Act of Parliament and notified by Govt.
    - Exemption for 10 consecutive AY's beginning from AY of setup
- Exemption to DFI: S.10(48E) is inserted to provide exemption to any income accruing to a DFI licensed by RBI. Exemption shall be available for 5 consecutive AY's beginning from DFI setup AY
    - Can be extended further 5 consecutive years subject to fulfilment of prescribed conditions

Rationalisation of various provisions
18. Taxation of proceeds of high premium ULIP

- S.10(10D) exempts **sum received under a life insurance policy in respect** of which premium payable for any of years during policy term does not exceed 10% actual capital sum assured.
- Under the Act, **there is no cap on the amount of annual premium being paid by any person during the term of the policy.**
- Now, exemption under this clause shall not apply with respect to any ULIP issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds 2.5 lakh rupees

Taxation of proceeds of high premium ULIP

FB -> FA 2021: What changed?

- Finance Bill proposed that income arising from such high-premium ULIPs are taxed under Section 112A and consequently amended definition of equity-oriented fund to cover the high premium ULIPs.
- Thus, the equity-oriented fund cover the ULIPs if such fund invests minimum 90% (in case of investments in other units listed on a recognised stock exchange) or 65% (in any other case) in equity shares of a domestic company.
- Finance Act, 2021 has inserted **second proviso to Section 112A** that minimum requirement of 90% or 65% is required to be satisfied **throughout the term of such insurance policy.**

Removing difficulties faced by taxpayers
19. Sovereign Wealth & Pension Fund amendments

- S.10 (23FE) provides for the exemption to Sovereign Wealth Funds and Pension Funds (SWF/PF) from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India.
  - This provision was introduced through FA 2020 to encourage investments of SWF and PF into infrastructure sector of India. Subsequent to enactment, a notification was also issued to enlarge the scope of infrastructure activities eligible for investments.
- Amendments proposed:
- Allowing Alternate Investment Fund (AIF) to invest up to 50% in non-eligible investments
- Investment through holding company
- Investment in NBFC IDF/IFC
- SWF/PF can take loan or borrowing for purpose other than making investment in India
- Commercial activity by SWF/PF permitted but not day to day operations of investee.

Removing difficulties faced by taxpayers Sovereign Wealth & Pension Fund amendments

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  - SWF/PF can take loan or borrowing for purpose other than making investment in India
  - Commercial activity by SWF/PF permitted but not day to day operations of investee.

Sovereign Wealth & Pension Fund amendments
Scope of investment exemption extended u/S.10(23FE)
FB -> FA 2021: What changed?

- Finance Act, 2021 has extended the relaxation with respect to further investment by the Category I or II AIF in any of the following entities:
  - Domestic holding company registered >= 01-04-2021 having a minimum 75% investments in infrastructure companies or
  - NBFC-IDF/IFC having minimum 90% lending to infrastructure entities.
- Further, amendment has been made to provide that exemption under this clause shall be calculated proportionately if the aggregate investment of holding company in Infrastructure Company or companies or IFC/NBFC-IDF is < 100%.

Tax Incentives
20. Incentives for IFSC units

- **Host of tax incentives for IFSC units announced**
- **Comprehensive tax amendment package** of providing for tax neutral transfer of investments from offshore funds to IFSC Alternative Investment Fund (AIF)
  - Corresponding amendments like provision for considering holding period and cost of previous owner and non-lapsing of losses at the investee entity level
- Tax exemption to the **investment division of foreign banks** located in IFSC.
- **Aircraft leasing activities in IFSC** : Tax holiday for capital gains for aircraft leasing companies, tax exemption for aircraft lease rentals paid to foreign lessors
- Tax exemption on income of non-resident on **transfer of non-deliverable forward contracts** entered into with offshore banking unit of IFSC
- **Location of fund manager in IFSC** of eligible investment fund would not constitute taxable presence in India for fund subject to conditions

Incentives for IFSC units

FB -> FA 2021: What changed?

- Finance Bill, 2021, had amended definition of specified fund u/S. 10(4D) to extend the benefit of exemption of this section to the **investment division of offshore banking unit**. The 'investment division of offshore banking unit' has been proposed to be defined as a unit which has been:
  - granted a certificate of registration as a Category-III AIF and is regulated under the SEBI (AIF) Regulations, 2012, made under the SEBI Act, 1992 or which has commenced its operations on or before the 31-03-2024; and
  - fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed.
- Under the SEBI (FPI) Regulations, 2019, FPIs can be registered under 2 categories only – Category-I FPIs and Category-II FPIs. Thus, reference of Category-III FPI under section 115AD was inadvertently made.
- FA 2021 has amended the definition of 'investment division of offshore banking unit' to provide that it should be granted registration as a Category-I Foreign Portfolio Investor under the SEBI (FPI) Regulations, 2019.
  - Thus, instead of taking registration as Category-III AIF under SEBI (AIF) Regulations, 2012, it shall be required to take registration as Category-I FPI.
- FA 2021 has **also amended definition of specified fund u/S.10(4D)** to provide that such fund can also be regulated under International Financial Service Centres Authority Act, 2019.

Incentives for IFSC units

Income from GDRs issued by Overseas Depository Bank situated in IFSC

FB -> FA 2021: What changed?

- Finance Act 2021 has amended the definition of GDRs to provide that they can be created by the Overseas Depository Bank in an IFSC as well.
- Also GDRs can be issued against issue of ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt is listed and traded on any IFSC.
- IFSC is also defined to provide that it shall have the same meaning as assigned to it in clause (q) of section 2 of the SEZ Act, 2005.

Incentives for IFSC units
NR Income leasing aircraft to IFSC Unit [S.10(4F)]
FB -> FA 2021: What changed?

- Finance Bill, 2021 inserted S.10(4F) to provide exemption in respect of income of NR by way of royalty on account of leasing of an aircraft to a unit located in IFSC subject to certain conditions.
- Finance Act 2021 made following changes to S.10(4F)
  - Exemption shall be available for both operating and finance lease charges
  - Condition of 'Unit of IFSC to be eligible for deduction under section 80LA' is removed
  - Meaning of 'aircraft' is defined in new Explanation

Incentives for IFSC units
Category I & II AIF under IFSC Act
FB -> FA 2021: What changed?

- Currently, S.115UB provides AIFs should be registered with SEBI and regulated under the SEBI (AIF) Regulations, 2012.
- However, AIF is located in an IFSC, it is regulated under the International Financial Services Centres Authority Act, 2019.
- Thus, Finance Act 2021 has made an amendment to Section 115UB to provide that Category-I and Category-II AIF can also be regulated under IFSCA Act, 2019.

21. Exemption for NR investors and Category-III AIF

FB -> FA 2021: What changed?

- Finance Act 2021 has made changes to S.10(23FF) to provide exemption to Category-III AIF as well.
  - Shall be entitled for the exemption only when is “specified fund” as defined under S.10(4D) Explanation (c)
  - And exemption available only to the extent of income attributable to units held by non-resident (not being PE of NR in India) in such specified fund.
- Further, it is provided that Section 10(23FF) shall apply even in cases the resultant fund received the shares of a company resident in India from wholly owned SPV of the original fund.
  - Consequential amendment made to S.47(via) and (viiac) Explanation to the definition of ‘relocation’
  - Meaning of ‘resultant fund’ also amended to provide that it can also be regulated under the International Financial Services Centres Authority Act, 2019.

22. ROI Due date for spouse of a partner u/S.5A

FB -> FA 2021: What changed?

- The Finance Bill (Lok Sabha) extends the due date for the filing of return of income by the spouse of the partner of a firm, if governed by the provisions of section 5A, to 30th November where such firm is required to furnish report under Section 92E.
  - S.5A requires equal apportionment of income (except salary) between spouses governed by the Portuguese Civil Code (Goa and Union Territories of Dadra & Nagar Haveli and Daman & Diu)
- Due dates of firm, its partners and spouses governed by S.5A
  - Firm is not liable for audit: 31st July
  - Firm is liable for audit: 31st October
  - Firm is liable for TP audit: 30th November

Phew! Let’s take a break….

Rationalisation of various provisions
23. Faceless ITAT

S.255(7) : The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing an appellate system with dynamic jurisdiction.

Provided that no such direction shall be issued after the 31st day of March, 2023.

Rationalisation of various provisions Faceless ITAT

(8) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (7), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply to such scheme or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

Provided that no such direction shall be issued after the 31st day of March, 2023.

(9) Every notification issued under sub-section (7) and sub-section (8) shall, as soon as may be after the notification is issued, be laid before each House of Parliament."

In order to ***impart greater efficiency, transparency and accountability*** *to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.*

In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, ***it is imperative that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme****. This will not only* ***reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources.***

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct ***that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.***

Such directions are to be issued on or before 31st March, 2023.

It is proposed that every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from 1st April, 2021 [clause 78]

Rationalisation of various provisions
24.Dispute Resolution Committee for small/medium taxpayers

- S.245MA :
  - DRC to be constituted for resolution of IT disputes between a taxpayer and Dept
  - Eligible applicant to notified
    - Not eligible if there is detention, prosecution or conviction under various specified Acts
  - Taxpayer can opt for resolving dispute in respect of **specified order**
  - Specified Order means an order including draft order as notified by Board and
    - Only disputes where returned income is **Fifty Lakh rupee or less (if there is a return) AND**
    - **Aggregate amount of variation proposed is Ten Lakh rupees or less**
  - Assessee can opt-out.
  - Exclusions: Order based on a search initiated u/S.132 or S.132A or survey u/S.133A or information received under an agreement in S.90/90A
  - Power to reduce or waive any penalty or grant immunity from prosecution.
  - E-resolution scheme to be notified
- **Point to ponder: Small disputes, not likely useful for corporates?**

Rationalisation of various provisions

25. Section 194Q: TDS on purchase of goods

- Only for Buyer whose **total sales, gross receipts or turnover from business exceeds rs.10cr** during the FY immediately preceding FY in which purchase of goods is carried out.
- TDS of 0.1% required if the purchase of goods by him from the seller is of the value or aggregate of such value **exceeding fifty lakh** rupees in the previous year
- Does NOT apply to
  - Transaction on which tax is deductible under any provision of the Act
  - Transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.
- If on a transaction TCS is required under S.206C(1H) as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.
- (No PAN, TDS becomes 5%)
- **These amendments will take effect from 1st July, 2021.**

Rationalisation of various provisions
26. Charitable trusts - application of corpus donations

"Instances have come to the notice where the these entities claim the ***corpus donations to be exempt and at the same time claim their application as part of the mandatory 85% application*** *from income other than such corpus."*

"Instances have also come to the notice where these ***entities take loans or borrowings and make application for charitable or religious purposes out of the proceeds of loans and borrowings. Such loans or borrowings when repaid, are again claimed as application****. This results in unintended double deduction"*

"Both these situations, at times, also result in ***paper loss which is claimed by the assessee as carry forward*** *resulting in unintended short application (less than 85%) in following years."*

Rationalisation of various provisions
Charitable trust - application of corpus donations

- **S.11(1)(d):** Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus
- Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11.
  - However, when it is invested or deposited back, into one or more of the forms or 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 previous year in which deposited back to corpus to extent of such deposit.

Rationalisation of various provisions Charitable trust accumulation / application

- **Explanation 4 below S.11(1):** Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of S.10(23C) , S.11(a)/(b)

  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.

- In S.10(23C) and S.11 for the computation of income required to be applied or accumulated during the previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed

- **Amendment w.e.f AY 2022-23 and subsequent years**

Rationalisation of various provisions Charitable trust accumulation / application

- **Points to ponder:** Overruled!
  - ***Institute of Banking Personnel Selection (2003) 264 ITR 110 (Bom. HC),***
  - ***CIT Vs. Rajasthan and Gujarati Charitable Foundation (SC) (Civil Appeal No. 7186 of 2014),***
  - ***DIT(E) v. M/s. Gem & Jewellery Exports Promotion Council (SC) SLP No. 13512 of 2011*** which had held that even in the case of Charitable Trust excess expenditure over income is to be allowed to be carried forward and set off against income of subsequent years

Removing difficulties faced by taxpayers Raising exemption limit u/S.10(23C)(iiiad/e)

S.10(23C)(iiiad) to read *"receipts of the person from such **university or universities or educational institution or educational institutions** do not exceed **five crore rupees**"*

S.10(23C)(iiiae) to read *"receipts of the person from such **hospital or hospitals** or institution or institutions do not exceed **five crore rupees**."*

Explanation inserted namely:—

*"Explanation.—For the purposes of sub-clauses (iiiad) and (iiiae), it is hereby clarified that if the person has receipts from university or universities or educational institution or institutions as referred to in sub-clause (iiiad), as well as from hospital or hospitals or institution or institutions as referred to in sub-clause (iiiae), the exemptions under these clauses shall not apply, if the **aggregate** of annual receipts of the person from such university or universities or educational institution or institutions or hospital or hospitals or institution or institutions, exceed five crore rupees; or";*

Removing difficulties faced by taxpayers
27. Advance tax installment for dividend income

- S.234C shortfall in advance tax payment liable to pay a simple interest at the rate of 1% per month for 3 months on the amount of shortfall calculated with respect to the due dates for advance tax installments.
- S.234C exclusions for cases where *accurate determination of advance tax liability is not possible due to the intrinsic nature of the income* such as :
  - Capital gains
  - S.2(24)(ix)
  - “PGBP” income when it arises under the head for first time
  - 115BBDA(1) income
- “the amount of dividend income” added to the exclusion list
  - Explanation 2 inserted to make sure said dividend income does not include deemed dividend u/S. 2(22)(e)

Rationalisation of various provisions
28. Payment by employer of employee contrib

- *"There is a distinction between employer contribution and employee's contribution towards welfare fund….Employee's contribution is employee own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measures of penalizing employers who misutilize employee's contributions."*
- Amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to **never have been applied** for the purposes of determining the "due date" under this clause;
- Amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and **deemed to never have been applied** to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

(From 1st April, 2021 applicable to AY 2021-21 and onwards)

Rationalisation of various provisions
12. Payment by employer of employee contrib

- Points to ponder
  - **CIT Vs. M/s. Industrial Security & Intelligence India Pvt. Ltd. [TCA. Nos.585 and 586 of 2015 dated 24.7.2015] overturned**
  - Deemed **"never to have applied"** – retrospectively applicable?
    - Against policy and also only curative provisions should be retrospective

Rationalisation of various provisions

29. TDS/TCS on non filer at higher rates

- Similar to no PAN higher TDS/TCS u/s 206AA and 206CC, to ensure filing of return of income by those who have suffered a threshold of TDS/TCS, S.206AB and S.206AC to be inserted
- **S.206AB** of the Act would apply on any sum or income or amount paid, or 206AB of the Act would apply on any sum/income/amount paid, or payable or credited, by a person to a **specified person**
  - Specified person excludes non-resident who does not have PE in India
  - Proposed TDS is *MAX(rate as per relevant provision, 2x rates in force, 5%)*
  - If S.206AA also applicable, TDS higher of s.206AB and s.206AA rates
- S.206CC similar provisions for TCS
- **These amendments will take effect from 1st July, 2021.**

Rationalisation of various provisions
TDS/TCS on non filer at higher rates

- **Specified person ?**
  - Person who has NOT filed the returns of income for both of the two AY years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected
  - And time limit for filing tax return under S.139(1) has expired for both these assessment years.
  - Aggregate of TDS and TCS in his case is >= Rs.50k in each of these two previous years.
  - **Specified person shall not include a non-resident who does not have a permanent establishment in India**

Rationalisation of various provisions
30. Reduction of time limit for assessment

- Time limit for completion of assessment proceedings may be reduced further by three months.
  - **Time for completing of assessment is proposed to be NINE MONTHS from the end of the assessment year** in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

Rationalisation of various provisions

31. Equalisation levy: A brief background

- EL was a new levy India rushed through based on OECD BEPS Action Plan 1 to tax digital transactions (ie income accruing to foreign e-commerce companies from India) via a levy which did a run around of the DTAA's.
  - In 2016, it started innocously with targeting only online advertisement (Google Tax)
- FA 2020 significantly expanded it including all non-resident e-commerce operators providing 'e-commerce supply or service.'
- EL to be levied on **online sale of goods or online provision of services or a combination of both, by non-resident (NR) e-commerce operators (ECO**), when online sale is made by a non-resident to a:
  - Person resident in India, irrespective of the IP address used
  - Person who uses IP address located in India, while ordering such goods or services
  - Non-Resident, pursuant to *Sale of advertisement*, which targets a customer resident in India or *Sale of data* collected from a person resident in India
- EL being charged at the rate of 2% on amount of consideration received by a non-resident 'e-commerce operator' from e-commerce supply/services (as against 6% introduced in 2016)

Rationalisation of various provisions
Equalisation levy – Finance Bill 2021

- **Explanation S.163:** EQ levy shall not include consideration which are taxable as royalty or fees for technical services in India (under Act or DTAA)
- **Explanation to S.164(cb):** "online sale of goods" and "online provision of services" shall include one or more of the following activities taking place online:
  (a) Acceptance of offer for sale;
  (b) Placing the purchase order;
  (c) Acceptance of the Purchase order;
  (d) Payment of consideration; or
  (e) Supply of goods or provision of services, partly or wholly
- **S.165A amended** to provide that consideration received or receivable from e-commerce supply or services shall include:
  (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods;
  (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.
- **Apply retrospective from 1st April 2020.**

Rationalisation of various provisions
Equalisation levy: Points to ponder

- Intra-group services ….. Major area of controversy
- IT Support provided by the foreign company to Indian co.
- Online database access provided by foreign group HQ to Indian company
- In-house portal of the global companies to buy services/goodies/branded products
- Online services such as on-call advisories, digital documents, software development support etc.
- **One part of the process is online then what?**
- EQ levy has also been referred to as 'discriminatory' by the US Trade Representative (USTR).
- **Bottomline:** FA 2021 doesn't help…basically all sale of goods, services by foreign entities will be taxed as EL

Removing difficulties faced by taxpayers
32. Increase in safe harbors for home buyers & real estate home sellers

- To boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers,
- **Increase safe harbour threshold from existing 10% to 20% under section 43CA**
  - The transfer of residential unit takes place during 12-11-2020 to 30-6-2021.
  - The transfer is by way of first time allotment of the residential unit to any person.
  - The consideration received as a result of such transfer **does not exceed Rs.2cr rupee**
- Consequential relief to buyers of these residential units by way of amendment in S.56(2)(x) by increasing the safe harbour from 10% to 20%.
- Circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.
- Amendments w.e.f 1st April 2021 and will apply to AY 2021-22 and subsequently

Rationalisation of various provisions
33. Provisional attachment for fake invoices

- S.281B which allows provisional attachment of any property
  - Prior approval required
  - 6 months
  - Assessee can furnish bank guarantee
- S.271AAD imposes penalty on person who causes such person to make false entry or omit entry from books of accounts
- Now, AO can exercise powers of S.281B during pendency of proceedings u/S.271AAD if amount of penalty imposable is *likely* > 2cr rupees

Removing difficulties faced by taxpayers
34. TDS exemption on dividend to business trusts

- Section 194 provides for deduction of tax at source (TDS) on payment of dividends to a resident.
- The second proviso to S.194provides that the provisions of this section shall NOT apply to such income credited or paid to certain insurance companies or insurers.
- Second proviso amended to further provide that the provisions of this section shall ALSO NOT apply to such income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.
  - Remember….in business trust hands dividend is exempt.

Rationalisation of various provisions
35. Processing of returned income & Notice u/s 143(2)

- **S.143(1)(a)(iv):** Allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.
- **S.143(1)(a)(v):** Allow 143 of the Act so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act, 2018.
- Reduce the **time limit for sending intimation under sub-section (1) of section 143 of the Act from one year to nine months** from the end of the financial year in which the return was furnished.
- Reduce time limit for issue of **notice under S.143(2) from six to three months from the end of FY** in which the return is furnished.

Removing difficulties faced by taxpayers
36. Rationalisation of withholding made to FIIs

- S.196D(1)(a) – TDS on income of FII on securities as referred to in 115AD(1)(a) at 20%
  - Now, DTAA rates can apply if lesser
- Points to ponder:
  - Reference made to *PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012) SC* decision to justify 20% is right and DTAA rate can't be applied unless specifically provided for as has been done by this amendment!

Tax Incentives
37. Section 80EEA: Interest on loan for house property

- S.80EEA of the Act provides deduction of interest on loan taken for a residential house property up to one lakh fifty-thousand rupees subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021. Further conditions that the stamp duty value of residential house property does not exceed forty-five lakh rupees and the assessee does not own any residential house property on the date of sanction of loan.
- Provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.
- Amendment w.e.f 1st April 2022 (AY 2022-23 and onwards).

Tax Incentives
38. Section 80-IBA: Incentives for affordable rental housing

- Deduction u/S. 80-IBA of the Act also to such rental housing project which is notified and fulfils prescribed conditions.
- Outer time limit for 31st March 2021 for getting the affordable housing project approved be extended to 31st March 2022 and same outer time limit be also provided for the proposed affordable rental housing project.
- Amendment w.e.f 1st April, 2022 (AY 2022-23 applicable)

Tax incentives
39. Exemption for LTC Cash scheme

- **S. 10(5)** provides for an exemption for the value of travel concession or assistance provided by an employer to employees and their family, subject to employee proceeding on leave to any place in India.
- However, considering the travel restrictions due to Covid 19, the Government, in October 2020 notified the **cash allowance scheme in lieu of LTC subject to conditions**. In this budget, the legislative amendments have been brought in
- An individual employee is required to fulfill certain conditions to avail the cash allowance scheme in lieu of LTC.
  - LTC option will be exercised for the block of 2018-2021.
  - Taxpayers must spend the specified sum on goods or services with GST rate of 12%+
  - Payment for such goods and services must be made via electronic mode only.
  - This expenditure must be made between 12 October 2020 till 31 March 2021.
  - The amount of exemption to not exceed ₹36,000 per person (individual employee including his family members) or 1/3rd of specified expenditure, whichever is less,

Tax Incentives
40. Section 80-IAC: Startup amendments

- **S.80-IAC** provides for a **deduction of an amount equal to 100% profits and gains derived from an eligible business by an eligible start-up for 3 consecutive AY's years out of 10 years** at the option of the assessee subject to total turnover of its business does not exceed rs.100cr. The eligible start-up is required to be incorporated on or after 1-40-2016 but before 1-4-2021.
- The existing provisions of the **S.54GB** of the Act provide for exemption of CG from transfer of a long-term capital asset, being a residential property, owned by the eligible assessee. The assessee is required to utilise the net consideration for subscription in the equity shares of an **eligible start-up**, before the due date of furnishing of return of income u/S139(1). Eligible start-up is required to utilise this amount for purchase of new asset within 1 year from date of subscription in equity shares. Benefit only when property transferred by 31st March, 2021.
- S.80-IAC to extend the outer date of incorporation to before 1st April, 2022;
- S.54GB to extend outer date of transfer of property from 31.3.2021 to 31.3.2022 (These amendments will take effect from 1st April, 2021)

Tax Incentives
41. Section 2(48): Zero coupon bonds by Infra debt fund

- S.2(48) definition of zero coupon bond, *as a bond issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank and in respect of which no payment and benefit is received or receivable before maturity or redemption.*
  - Required to be notified by the Central Government
- Infrastructure debt fund [notified by the CG under clause (47) of section 10 of the Act] to be allowed to issue zero coupon bonds
  - Corresponding amendments in S.2(48) and Rules 2F and 8B of Income-tax Rules
- Consequent amendment in S.194A(3)(x)!
- Amendment w.e.f 1st April, 2022 (apply for AY 2022-23 and subsequent)

Tax Incentives

42 S.47(vica) (vicb), S.44DB: Tax neutral conversion of Urban Cooperative Bank into Banking Company

- RBI allows voluntary transition of primary cooperative bank (UCB) into a banking company by way of transfer of A&L vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 on 27.9.2018
- Scope of business reorganization expanded to include conversion of a primary co-operative bank to banking company and deductions available u/S.44DB made applicable in relation to such conversion of PCB to the banking company.
- Transfer of a capital asset by the PCB to the banking company as a result of conversion shall not be treated as transfer u/S. 47. Allotment of shares of the converted banking company to the shareholders of the predecessor PCB shall not be treated as transfer.
- S.44DB and clause (vica) and clause (vicb) of section 47 of the Act amended w.e.f 1st April 2021 (AY 2021-22 and subsequent AY's)

Removing difficulties faced by taxpayers

43. Addressing mismatch in taxation of income from overseas retirement fund

- Mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries.
- At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India.
- New section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government

Rationalisation of various provisions
44. IDS amendment

- The **Income Declaration Scheme, 2016** contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to make payment of tax, surcharge and penalty as per the provisions of the Scheme. IDS commenced on 01.06.2016.
- Section 191 of the Finance Act, 2016 proviso is now amended so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a declaration made under the IDS shall be refundable to the specified class of persons <u>without payment of any interest.</u>

Rationalisation of various provisions
45. Adjudicating authority under PBPT Act

- Prohibition of Benami Property Transactions Act
  - Adjudicating authority under the Act shall be the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers 73 and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA)
  - Commence discharging functions from 1st July 2021

Removing difficulties faced by taxpayers
46. Relaxation from filing return (for some!)

- New section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-
  - The senior citizen is resident in India and of the age of 75 or more during the previous year;
  - He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;
  - This bank is a specified bank (will be notified)
  - Required to furnish a declaration to the specified bank.
- Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after Chapter VI-A and rebate u/S 87A Act.
- Amendment w.e.f 1st April 2021

Rationalisation of various provisions
47. Section 142(1)(i) notice

- S.142 provides for conduct of inquiry before assessment
- S.142(1)(i) gives AO authority to send notice to assessee who has not filed Return
  - Now prescribed income-tax authority can send notice
- Reasoning: With faceless assessment, it will allow for centralized issuance of notice

Rationalisation of various provisions
48. Scope of VsV scheme

- Settlement commission left out of scope of VsV scheme
- Definitions of Appellant (s.2(1)(a)), disputed tax (s.2(1)(j)), tax arrear (s.2(1)(o)) modified
  - Retrospective from 17th March 2020
- **Point to ponder:**
  - ***Abhishek Manu Singhvi vs. CBDT (WP 11176/2020) ?***
  - **Settlement Commission itself….is a thing of the past**

Thanks!

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