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From President's Desk...

Dear Professional Colleagues and Readers,

Today, I wish to share a story of a great economist…. Esther Duflo, is a French-American economist who was awarded the Nobel Prize in Economics in 2019, for their experimental approach to alleviating global poverty. You all must be wondering why we are discussing the story of an overseas economist. But I am sure, once you will read their Indian connection, of hers you will feel proud.

Born on October 25, 1972, in Paris, she received her undergraduate degree in history and economics from École Normale Supérieure in Paris, and her Ph.D. in economics from the Massachusetts Institute of Technology (MIT) in 1999. She married her fellow Indian economist Abhijit Banerjee, While She spends much of her time at MIT, she is actively involved in research projects around the world, particularly in developing countries. Her work has taken her to India, Kenya, Ethiopia, and other countries, where she has collaborated with local researchers and policymakers to design and test anti-poverty interventions.

She did extensive research on developing economics to understand the problem of poverty and inequality. She is known for her use of Randomized Controlled Trials (RCTs) to evaluate the effectiveness of anti-poverty interventions. By using RCTs test at different interventions and for different policies, Duflo tried to identify the most effective ways to alleviate poverty and improve the lives of the poor.

She has authored numerous academic papers and books, including "Poor Economics" and "Good Economics for Hard Times," both of which she co-wrote with her husband Abhijit Banerjee.

Duflo has received numerous honors and awards for her research, in addition to the Nobel Prize in 2019 along with her husband Mr. Banerjee. She was awarded the most outstanding economist in the United States under the age of 40.

Further, I would like to take this as an opportunity to announce certain upcoming events:

This year association has extended its foot-steps overseas. We are organizing a public program on zoom for Indian Diaspora on 18th March 23. Speaker CA Manoj Shah will be explaining various provisions of FEMA and Direct Tax applicable to the Indian Diaspora. I am sure, our community overseas will get an answer to their question and will appreciate the efforts of our association for our selfless contribution to society.

We have already announced Ramat-ji-Ramjat for members of our association. I am happy to announce, we have got an overwhelming response with more than 300 of our members with their family have registered. Please stay tuned to your respective local group.

Events in retrospect:

We successfully organized a public program for new property buyers, their rights and capital gain provisions jointly with Mulund KVO Samaj. Approx 100 people took advantage of the same.

First time ever, we have successfully conducted a campus placement program at Swami Vivekanand Collage, Chembur. Approx 7 recruiters and ~ 30 jobseekers met each other and understood each other's requirements.

Thank you all….. Always in Gratitude

CA Amit Chheda

March 1, 2023

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SHOW SOME TRUST, MADAME FM

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FROM THE DESK OF CHAIRMAN

In my earlier communication of July 2022 "Is it Overkill", I had referred to making of complicated and tough revenue laws, which may be at times unnecessary, to curb menace of revenue leakages. This year also in the budget for 2023, in the Finance Bill, various provisions are proposed to tight the noose around taxpayers, or simply with a view to have higher tax collections. TDS/TCS provisions and provisions related to taxation of public charitable trusts have seen a lot of expansion in last few years and this year is also not an exception.

Dictionary meaning of "charity" means, '*generosity and helpfulness especially toward the needy or suffering*', *and people who take time out from their businesses, family etc. and serve needy people, must be given softer treatment, rather make them to suffer and load them with unnecessary stricter compliances and complicated laws.*

As a tax professional, there was always a feeling with respect to stricter compliance and complicated substantive tax laws, that the attitude of Government has always been to punish all taxpayers if they are not able to catch a handful of non-compliers. This feeling has never subsided and continues to bug the mind. I am sure many of you all will share the same feeling. It is quite possible that many charitable entities, in the guise of charity will be involved in unlawful activities, it is also necessary to govern where public money is involved, that is not deniable but making all charitable organisations suffer is not solution. In fact many a times, thinking of Government that certain transactions lead to revenue leakages may not be correct. In fact saving of tax by such institutions legitimately will in fact help use of such funds for furtherance of the charitable objects.

India is a country of charity and charitable institutions where so many social / economical / educational upliftment is carried out by such organisations and which directly or indirectly help the country to grow. It will not be wrong to say that these institutions have done, by helping needy and people with sufferings and their upliftment, what was required to be done by government.

If these institutions stand for people in their trying times, government needs to stand by such institutions for all the times. Instead, all such charitable organisations are made to suffer undue hardships resulting from mindless laws showing bureaucratic mindset of law makers.

After the presentation of the budget, representatives of around 250 public charitable trusts and non-profit institutions have demanded repeal of the some of the amendments in the Finance Bill 2023, e.g. one which proposes that that application out of corpus or a loan before April 1, 2021, shall not be allowed as application for charitable or religious purposes even when such amount is put back into corpus or the loan is repaid. It is argued that this is in order to avoid double deductions. Further, application out of corpus shall be allowed only if the amount taken from the corpus is put back into the corpus or the loan is repaid within five years from the application out of the corpus or loan. "In our opinion, it would be wrong to assume that in every case, expenditure out of loans/borrowings before 01.04.2021 has been claimed as application of income U/s 11(1)," said Senior Advocate Firoze Andhyarujina. Another proposed amendment that the trusts discussed and wanted modifications/clarifications is that, under the Finance Bill 2023, if one charitable organisation donates money to another charitable organisation, only 85% of such donations will be considered as "application of income" for the donor charitable organisation. Recently, several experts and representatives of the charitable institutions and trusts met under the umbrella of Association for Protect of Public Trusts and Charities (APPTC) at Indian Merchants' Chamber in Mumbai to discuss the issue. They will soon approach the finance minister with a white paper and memorandum, seeking repeal or modifications in the proposed amendments. Noshir Dadrawala, CEO, Centre for Advancement of Philanthropy (CAP), said the amendments proposed are detrimental to thousands of charitable institutions across the country. "While there is a visible ease of doing business, there should also be ease of doing charity. This is the change that is needed. The charitable organisations supplement the government's efforts in the welfare and development space," said Dadrawala.

Charitable institutions have said that these amendments will prove to be a major setback for purely grant-making organisations including corporate foundations and intermediary organisations which work with implementing agencies at the grassroots level. [TOI Report]

The crux of the matter is that thrusting impractical conditions for compliances and allowing deductions under the law will result in discouraging various charitable organisations to do good work and small charities will be hit hardest. There are other ways to catch erring organisations and the government can always utilise its vigilance network for the same. It is rightly said that the recent changes in last few years have taken away ease of doing charity. The Government needs to be more trusting as far as charitable institutions are concerned as they carry out noble work which goes long way to create social harmony and overall upliftment of people. Show some trust, Madame FM.

Thank you all..... Always in Gratitude

CA Ketan Rambhia

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PERSONAL TAXATION: "DECODED - NEW REGIME VS OLD REGIME".

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As per recently proposed Finance Bill, 2023, "Personal Income Tax" under "Direct Taxation" seems to be primarily benefitting our "Hard – working Middle Class". In this article we aim to put forward ananalys is of proposed changes in the tax rates applicable to Individuals in the Union budget presented by our Hon'ble Finance Minister along with the comparison between old regime and new regime.

For analysis purpose, this topic has been segregated into following sub – topics:

a. Revised Slab Rates.

b. Increase in limit of Rebate.

c. Standard deduction for "Income from Salary".

d. Reduction in highest surcharge rate.

e. Other major changes.

f. Comprehensive example

Now let us understand this above listed sub – topics in depth.

a. Revised Slab Rates:

- **Provision:**

  Under Old regime – The slab rates are unaffected (Slab rates are as summarized below).

Before Changes		After Changes	
Total Income	**Tax Rate**	**Total Income**	**Tax Rate**
Up to Rs. 2,50,000	Nil	Up to Rs. 2,50,000	Nil
Rs. 2,50,000 to Rs. 5,00,000	5%	Rs. 2,50,000 to Rs. 5,00,000	5%
Rs. 5,00,000 to Rs. 10,00,000	20%	Rs. 5,00,000 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%	Above Rs. 10,00,000	30%

Under new regime – The number of slabs has been reduced from 6 to 5 slabs (Slab rates are as summarized below).

Before Changes		**After Changes**	
Total Income	**Tax Rate**	**Total Income**	**Tax Rate**
Up to Rs. 2,50,000	Nil	Up to Rs. 3,00,000	Nil
Rs. 2,50,000 to Rs. 5,00,000	5%	Rs. 3,00,000 to Rs. 6,00,000	5%
Rs. 5,00,000 to Rs. 7,50,000	10%	Rs. 6,00,000 to Rs. 9,00,000	10%
Rs. 7,50,000 to Rs. 10,00,000	15%	Rs. 9,00,000 to Rs. 12,00,000	15%
Rs. 10,00,000 to Rs. 12,50,000	20%	Rs. 12,00,000 to Rs. 15,00,000	20%
Rs. 12,50,000 to Rs. 15,00,000	25%	Above Rs. 15,00,000	30%
Above Rs. 15,00,000	30%		

- **Example:** A person having annual total income of Rs. 9,00,000, following table shows tax calculation under both regimes:

Particulars	**As per old regime**	**As per new regime (Before changes)**	**As per new regime (After changes)**
Total Income	Rs. 9,00,000	Rs. 9,00,000	Rs. 9,00,000
Tax liability (excluding HEC)	Rs. 92,500	Rs. 60,000	Rs. 45,000
% of tax liability to total income	**10.27%**	**6.67%**	**5%**

- **Analysis:** As we can clearly observe that tax liability under old regime and that of new regime (after changes) there is tax saving of **5.27%** (10.27% - 5%) and due to changes in slab rate under new regime net result is of reduction of tax liability by**1.67%** (6.67% - 5%).

  Note: the above table does not consider the Standard Deduction and Chapter VIA deduction which have been discussed further in this Article.

b. Increase in limit of Rebate.

- **Provision:**

  Under Old regime – There have been no changes made in rebate i.e., those with income up to Rs. 5,00,000 are not require to pay any tax.

Under new regime – The rebate limit has been increased from Rs. 5,00,000 to Rs. 7,00,000 i.e., now those having income up to Rs. 7,00,000 are not require to pay any tax.

- **Examples:**

Case – I: A person having annual total income of Rs. 5,00,000/-, following table shows the rebate calculations under both regimes.

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Total Income	Rs. 5,00,000	Rs. 5,00,000	Rs. 5,00,000
Tax liability	Rs. 12,500	Rs. 12,500	Rs. 10,000
Less: Rebate u/s 87A	**Rs. 12,500**	**Rs. 12,500**	**Rs. 10,000**
Tax payable (excluding HEC)	Nil	Nil	Nil

Case –II: A person having annual total income of Rs. 7,00,000/-, following table shows the rebate calculations under both regimes.

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Total Income	Rs. 7,00,000	Rs. 7,00,000	Rs. 7,00,000
Tax liability	Rs. 52,500	Rs. 32,500	Rs. 25,000
Less: Rebate u/s 87A	**Nil**	**Nil**	**Rs. 25,000**
Tax payable (excluding HEC)	Rs. 52,500	Rs. 32,500	Nil

- **Analysis:** As per above elaborated examples, it can easily be understood that amendment provides taxpayer an additional tax-free income of Rs. 2,00,000.

c. Standard deduction for "Income from Salary”.

- **Provision:**

Under Old regime – There is no change in standard deduction i.e., standard deduction allowed in income from salary is to the extent of Rs. 50,000/-.

Under new regime – Earlier there was no leisure of standard deduction for salaried person under the new regime, although as per the changes proposed, standard deduction to the extent of Rs. 50,000/-is allowed from income from salary.

- **Example:** A person having salaried income of say Rs. 10,00,000/-, following table shows the "Income from Salary" calculations under both regimes.

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Gross Salary from employer	Rs. 10,00,000	Rs. 10,00,000	Rs. 10,00,000
Less: Standard deduction 16(ia)	**Rs. 50,000**	**Nil**	**Rs. 50,000**
Income from salary	Rs. 9,50,000	Rs. 10,00,000	Rs. 9,50,000
Tax payable (excluding HEC)	Rs. 1,02,500	Rs. 75,000	Rs. 52,500

- **Analysis:** As amendment provides standard deduction of Rs. 50,000 & due to revised slab rates there's reduction in tax liability by Rs. 22,500 (75,000 – 52,500).

d. Reduction in highest surcharge rate. (Applicable to New Regime).

- **Provision:** The highest rate of surcharge has been reduced from 37% to 25%. The summary of modifications has been summarized below:

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Total Income exceeding Rs. 50 Lakhs but does not exceed Rs. 1 Crore.	10%	10%	10%
Total Income exceeding Rs. 1 Crore but does not exceed Rs. 2 Crore.	15%	15%	15%
Total Income (excluding dividend income, 111A income, 112 income & 112A income)# exceeding Rs. 2 Crore but does not exceed Rs. 5 Crore.	25%	25%	25%
Total Income (excluding dividend income, 111A income, 112 income & 112A income)# exceeding Rs. 5 Crore.	**37%**	**37%**	**25%**

# Surcharge on Long – Term Capital gain, Short – Term Capital gain & dividend has been capped to 15%.

- **Example:** A person having total income of Rs. 5,50,00,000/-, following table shows the calculation of surcharge calculation.

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Total Income (after deductions)	Rs. 5,50,00,000	Rs. 5,50,00,000	Rs. 5,50,00,000
Tax Payable as per slab rates	Rs. 1,63,12,500	Rs. 1,62,37,500	Rs. 1,62,00,000
Applicable surcharge	37%	37%	25%
Add: Surcharge	Rs. 60,35,625	Rs. 60,07,875	Rs. 40,50,000
Tax Payable	**Rs.2,23,48,125**	**Rs. 2,22,45,375**	**Rs. 2,02,50,000**

- **Analysis:** As per above elaborated example, it is easy to understand that High net – worth person having income in excess of Rs. 5.5 Crore, the tax liability has been reduced by around Rs. 20 Lakhs.

e. Other major changes:

- **Amendment in section 54 & 54F:** The deduction upon sale of any long term – capital asset on purchasing of new residential house property has been capped up to Rs. 10 Crores.
- **Amendment in section 44AD & 44ADA:** The limit for presumptive taxation scheme i.e., for business & professions has been increased from Rs. 2 Crore & Rs. 50 Lakhs to Rs. 3 Crore & Rs. 75 Lakhs respectively.
- **Conversion of Physical gold into EGR (Electronic Gold Receipt):** As the definition of asset has been amended by including EGR. It is also clarified that capital gain shall not be attracted on mere conversion of physical gold to EGR & vice versa.
- **Deduction under section 80CCH:** A new section has been introduced under chapter VI – A "Deduction from Gross Total Income" which is available under both schemes i.e., old as well as new regime of taxation, provided a person deposited an amount "***Agniveer Corpus Fund***" to the extent of amount deposited under the said scheme.
- **New regime to be a default regime:** As per amendment new regime is to be considered as default regime i.e, for availing benefits under old regime it seems to be that we're require to file an additional form. Earlier we are required to file an additional form for availing benefit under new regime.

f. Comprehensive example:

For an example, a person having a salary income of say Rs. 12,00,000 p.a. and having saving bank interest of Rs. 10,000. Below is the tax computation under both regimes.

Particulars	As per old regime	As per new regime (Before changes)	As per new regime (After changes)
Gross Salary	Rs. 12,00,000	Rs. 12,00,000	Rs. 12,00,000
Less: Standard deduction u/s 16(ia)	Rs. 50,000	Nil	Rs. 50,000
Income from salary (A)	Rs. 11,50,000	Rs. 12,00,000	Rs. 11,50,000
Income from other sources (Saving Bank Interest) (B)	Rs. 10,000	Rs. 10,000	Rs. 10,000
Gross Total Income (C =A+B)	**Rs.11,60,000**	**Rs. 12,10,000**	**Rs. 11,60,000**
Less: Deduction under Ch VI – A			
U/S - 80C	Rs. 1,50,000	Nil	Nil
U/S – 80D	Rs. 25,000	Nil	Nil
U/S – 80TTA	Rs. 10,000	Nil	Nil
Total deductions (D)	**Rs. 1,85,000**	**Nil**	**Nil**
Total Income (E = C – D)	**Rs. 9,75,000**	**Rs. 12,10,000**	**Rs. 11,60,000**
Tax Liability (as per slab rates) (F)	Rs. 1,07,500	Rs. 1,17,000	Rs. 84,000
Add: Health and educational cess @ 4% (G)	Rs. 4,300	Rs. 4,680	Rs. 3,360
Tax Payable (H = F + G)	**Rs. 1,11,800**	**Rs. 1,21,680**	**Rs. 87,360**
% of tax payable to gross total income (H/C*100)	9.64%	10.06%	7.53%

Note – As per above examples, we can clearly observe that tax payable under new regime is only 7.53% despite of no deductions allowed as compared with new regime i.e, 9.64%.

As per above detailed discussion, it's clearly evident that new regime has lower impact on our pocket from our total income earned.

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PROPOSED AMENDMENTS TO INCOME TAX ACT, 1961 THROUGH FINANCE BILL, 2023 - BUSINESS INCOME :

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The finance minister presented the Budget 2023 in the parliament, while the economy was getting back and trying to recover from the havoc caused globally by the pandemic. The Budget was well received across, for aiming to attempt GDP growth, fiscal prudence and boosting consumption, a tight rope walk indeed.

There are few amendments which are clarificatory in nature, few aimed to rationalize certain provisions, while few others are a part of the socio economic welfare measures.

In this article, I have tried to analyse the proposed amendments in provisions relevant in calculating business income.

These are proposed to take effect from F.Y. 2023-24 (i.e. A.Y. 2024-25) unless otherwise specifically stated, subject of course, to passing of the Finance Bill by both the houses of the Parliament and assent by the President.

Section 28 Providing clarity on benefits and perquisites in cash

Section 28 of the Act provides for income that shall be chargeable to income-tax under the head 'Profits and gains of business or profession'. Clause (iv) thereof brings to tax the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

❖ The need for an amendment proposed in Section 28 cannot be adequately understood without making reference to Section 194R newly introduced by the Finance Bill 2022.

❖ To keep it crisp, Section 194R mandates TDS on the value of benefits or perquisites, whether convertible into money or not, arising from business or the exercise of a profession. The wordings are imported from clause (iv) of section 28. The explanatory memorandum to Finance Bill 2022 also clarified the intention of the legislature, to trace the value of such benefits or perquisites, like free tour packages, distribution of free samples, etc, which hitherto escaped the tax net on account of non-reporting of the same in the absence of TDS mandate on said payments / expenses.

❖ Clause (iv) was introduced in Section 28 through the Finance Act 1964 and the Circular no 20D dated 7th July 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind. Therefore, the intention of the legislation while introducing this provision was also to include benefit or perquisite whether in cash or in kind. However, there have been host of decisions, including the landmark supreme court decision in CIT Vs. Mahindra and Mahindra (2018) 93 Taxmann.com 32(SC), in the context of clause (iv) of Section 28, holding that, considering the language used therein, the benefits which are purported to be charged under Section 28(iv) could only be those in kind.

- The Circulars issued to clarify provisions of Section 194R required TDS even in case of monetary benefits or perquisites. The said Circulars have stirred controversy in view of the decisions referred to above.

- Finally, to set at rest the controversy, legislature thought it prudent to simply amend clause (iv) of Section 28. It is therefore proposed that the benefits or perquisites shall be chargeable to tax as business income, whether convertible into money or not, or in cash or kind or partly in cash and partly in kind, arising from business or the exercise of a profession.

- This seemingly simple amendment would rather have far-reaching consequences which, probably, were neither envisaged nor expected, so to say, transactions pertaining to waiver of loan, albeit on capital account, may be unintendedly covered under the ambit of Section 28(iv). Even availing interest free loans could possibly attract Section 28(iv). It would be an ironical situation for an assessee to be made to pay tax on the value of benefit derived by waiver of loan. Further, in all extremities, can it be said that, owing to this amendment, all the business transactions could be tested from an Arm's Length Price perspective?

- What the courts have to say on the new law and the consequences it will have, only time will tell.

Section 35D : Ease in claiming deduction on amortization of preliminary expenditure

Section 35D of the Act allows deduction in respect of certain specified preliminary expenses like preparation of feasibility report, preparation of project report, legal charges, etc, incurred either during the pre-commencement stage of business or after commencement in connection with the extension of business undertaking or setting up a new unit.

- The deduction in respect of certain expenses is allowed if the work in connection with the specified activities is carried out either by the assessee himself or by a concern which is approved by the Board.

- There are numerous guidelines laid down by the Board for granting approval under section 35D(2)(a) like consideration of competence and expertise to render consultancy services, experience of at least one year in the field of consultancy services, etc. The form of application for approval is also exhaustive.

- In order to simplify the process of claiming deduction, the condition of approval by the Board is done away with. Instead, a procedural liability is proposed to be cast upon the assessee to furnish a statement containing the particulars of expenditure sought to be claimed, within the prescribed period and in the prescribed form and manner.

Section 43B and Section 43D : Non-Banking Financial Company (NBFC) categorization

- Section 43B (da) of the Act provides, that any sum payable by an assessee as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company shall be allowed as deduction on payment basis. The same can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

- Section 43D of the Act provides for taxability of interest income in relation to certain categories of bad or doubtful debts earned, inter alia, by deposit-taking Non-Banking Financial Companies and Systemically Important Non-Deposit taking Non-Banking Financial Company. It provides that the said interests shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

- Section 43B and section 43D of the Act currently use two erstwhile categories of NBFCs namely, Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Such classification for non-banking financial companies is no longer followed by the Reserve Bank of India for the purposes of asset classification.

- In view of the above, it is proposed to amend Section 43B and Section 43D of the Act, to include 'such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette, so as to align the classification of NBFCs with that done by the RBI.

Section 43B : Promoting timely payments to Micro and Small Enterprises

Section 43B of the Act provides for deduction in respect of certain expenses, which are otherwise allowable, to be allowed only on actual payment.

- In order to promote timely payments to micro and small enterprises, it is proposed to include payments made to such enterprises within the ambit of section 43B of the Act. At the cost of repetition, it may be noted that, payments made to micro and small enterprises only are covered. Payments made to medium enterprises are not covered within the ambit of Section 43B.

- The extended time limit for making such payments is not the due date for filing of return of income (ROI), unlike other payments covered under Section 43B, but the due date stipulated under Section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 (MSME Act).

- It may be worth mentioning here that, provisions of Section 23 of MSME Act, override the provisions of Income tax Act and provide that, interest paid to MSME is disallowed, regardless of the time of payment. Now, with the proposed amendment, other payments of any sum shall be liable for disallowance if not paid within the prescribed due date.

- Section 43B does not provide for any allowance, but disallows certain expenses, payments for which are made beyond the due date for filing ROI. Therefore, on an analysis of the provisions of Section 43B, one may argue that, payments to MSME made beyond the due date of MSME Act, but within the same financial year in which the expenses are incurred, can still be claimed in the same year and shall not be affected by the amended provision. To put it differently, it seems that the rigours of the proposed amendment shall only apply to payments outstanding as on 31st March, if the same are paid beyond the time limit as per MSME Act.

- Further, expenses which are disallowed in the year during which they are incurred, due to non-payment within the time allowed, can be claimed in the subsequent year when the same are actually paid.

- With this amendment, even defaults in payments made by micro enterprises to small enterprises shall be covered, which would not go with the government's intent behind introduction of this provision.

- An even more serious issue is that, the provisions of Section are proposed to apply to micro and small enterprises as defined in the MSME Act. An apparent meaning is that the applicability is irrespective of whether the enterprises are registered as such under the MSME Act. This could lead to undesirable situations in the backdrop of the fact that, there are very few MSMEs registered as such under the MSME Act. Further, it would lead to practical issues in identifying whether the payee entity fits in the definition micro or small enterprise as defined in the MSME Act. Clarifications on these aspects shall have to be awaited.

Section 44AD : Increasing threshold limits for presumptive taxation schemes

Section 44AD of the Act, contains a scheme of presumptive taxation for small businesses. This scheme applies to resident individual, HUF or a partnership firm other than LLP. One of the conditions to be eligible to opt the scheme is the turnover of the assessee does not exceed rupees two crores.

Likewise, Section 44ADA of the Act contains a similar scheme for professionals having gross receipts not exceeding rupees fifty lakhs.

- ❖ Sub section (1) of Section 44ADA of the Act provides for a presumptive income scheme for small professionals. This scheme applies to certain resident assessee (i.e., an individual, partnership firm other than LLP) who are engaged in any profession referred to in subsection (1) of section 44AA, and whose total gross receipts do not exceed fifty lakh rupees in a previous year. As per the provision, a sum equal to 50% of the gross receipts can be consider as the profits and gains from profession. If assessee has claimed to have earned higher sum than 50%, then that higher sum is taxable.

- ❖ Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds one crore rupees in any previous year. The limit is raised to ten crore rupees w.e.f FY 2020-21, where at least 95% of receipts/payments are in non-cash mode. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipts in profession exceeds, fifty lakh rupees in any previous year. Those opting for and fulfilling the conditions laid in the presumptive scheme are exempt from audit under this section.

- ❖ In order to enable higher number of assessee to claim the benefit of this simplified scheme of computing business income, it is proposed to increase the existing threshold limits as under:
  - o Turnover of Rs. 3 crores for business
  - o Gross receipts of Rs. 75 lakhs for profession
  - o It is additionally proposed to be provided that the benefit of enhanced limits shall be available only if receipts in cash are less than 5% of Turnover or gross receipts.

- ❖ It is to be noted here that, since the ceiling on the quantum of cash transactions is proposed to be imposed only for the enhanced turnover limit, assessees having turnover less than the existing limits of Rs. 2 crores (business) or gross receipts less than Rs. 75 lakhs (profession) can still claim the benefit of presumptive taxation scheme irrespective of the quantum of cash transactions.

- ❖ It is also clarified that, receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be receipts in cash.

- ❖ Consequent amendment is also proposed to Section 44AB by inserting proviso, that assessee would not be liable for tax audit u/s 44AB of the act if assessee opt for presumptive taxation scheme u/s 44AD or 44ADA of the act. And there is no amendment for changing threshold limit for tax audit.

Section 44BB & 44BBB : Preventing misuse of Presumptive Schemes

Section 44BB of the Act provides for presumptive scheme in the case of a non-resident assessee who is engaged in the business of providing services in connection with prospecting for, or extraction or production of, mineral oils.

- Section 44BBB of the Act provides for presumptive scheme in the case of a non-resident foreign company who is engaged in the business of civil construction, erection, testing or commissioning in connection with a turnkey power project approved by the Central Government.

- Needless to say, the Sections were introduced to simplify the tax regime for non-residents engaged in businesses specified therein. Sub-section (3) of Section 44BB and sub-section (2) of Section 44BBB provide relief to the assessee to offer income lower than that mandated in the respective sections, in case the assessee maintains books and has actually earned income lower than what is mandated to be offered.

- However, the Sections have been subject to misuse. Taxpayers opt in and opt out of presumptive scheme depending on the amounts of income actually earned, regardless of the fact whether they factually maintain books. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they opt for presumptive scheme and set off the brought forward losses from earlier years. This has led to tax evasion by misuse of the provisions, in contrast to the intent of the legislature.

- To avoid such misuse, it is proposed to insert a new sub-section to each of these sections section 44BB and to section 44BBB of the Act to provide that, where an assessee declares profits under presumptive scheme for any previous year then set off of unabsorbed depreciation and brought forward loss shall not be allowed to the assessee for such previous year.

Section 79 : Relief to start-ups in carrying forward and setting off of losses

Section 79 of the Act restricts carrying forward and setting off of losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change of more than 51% in shareholding.

- However, some relaxation has been given to eligible start-up in case of losses. The government through aims to empower start-ups to grow through innovation and design. And hence tax exemption under section 80 IAC has been provided. Wherein, entity is consider as start-up up to 10 years from the date of its incorporation.

- However, losses incurred, by an eligible start-up companies, during the period of 7 years beginning from the year of its incorporation are allowed to be carried forward and set against the income of subsequent years irrespective of changes in voting power, provided all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off.

- In order to align the provision for start-ups and give proper benefit across, it is therefore proposed to amend the proviso to sub-section (1) of section 79 of the Act so that the carried forward loss of eligible start-ups shall be considered for set off , if such loss has been incurred during the period of ten years beginning from the year in which such company was incorporated.

Conclusion

Some of the above proposals would benefit small tax payers, some would punish the defaulting tax payers. Nevertheless, the targeted impact of a tax proposal depends upon its effective implementation. In that sense, some of the provisions are yet to test the waters. We will have to wait and watch.

Any differing views/ comments on the article are welcome.

AMENDMENTS RELATING TO CAPITAL GAINS, TDS AND TCS

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Introduction

Union Finance Minister Nirmala Sitharaman presented the Union Budget 2023, the fifth budget of Modi 2.0 and the last full-fledged Budget before the general elections next year. The government has reaffirmed its commitment to the path of fiscal consolidation. Higher capex spend, a roadmap to reduce the fiscal deficit, and boosting consumption will provide a major leg-up to the economy, especially at a time when global growth has been hit hard by slowdown and recessionary fears. The budget has proposed amendments to the Income-tax Act, 1961, many with the aim to rationalise the provisions, providing clarifications and expanding the tax base. In this article, an attempt has been made to elaborate on proposed amendments pertaining to Capital Gains, TDS, and TCS related amendments.

Amendments relating to Capital Gain

1. Section 45 (5A): Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC

Present Position

As per the provisions of Section 45(5A), capital gains arising to individuals and HUF, by entering into a prescribed agreement for the development of a project, would be taxable in the year in which the designated authorities issue a certificate of completion for the whole or part of the project. The provisions also explicitly laid down the full value of the consideration (FMV) which would be subject to the tax, i.e. the stamp duty value ('SDV') of the land or building or both, pertaining to the owner's share in the project, on the date of issue of said certificate, plus the consideration received in cash, if any, by the owner.

Proposed Amendment

There was a misinterpretation that any amount of consideration that is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax under section 45(5A). It is proposed to clarify that FMV under Section 45(5A) of the Act, in a transaction involving the transfer of a capital asset under a joint development agreement ('JDA'), will be taken to be the stamp duty value of the share of the assessee in the capital asset, as increased by any consideration received in cash or by a cheque or draft or by any other mode.

This amendment will take effect from 1st April 2024 and shall accordingly, apply in w.e.f. assessment year 2024-25.

2. Section 2(42A), 47, 49: Conversion of Gold to electronic Gold Receipt and vice versa

Indians have always cherished Gold as an investment, for its ability to provide liquidity, safety, returns and act as a hedge against inflation. The country fulfills more than 90% of its gold demand through imports, which has a direct bearing on the country's current account deficit (CAD). To boost the holding of gold in digital form instead of physical form, the following amendments are proposed:

Sections	Proposed Amendments
Section 47 - Such conversions shall not be treated as transfer	It is proposed that the conversion of physical gold into Electronic Gold Receipts (EGR) or Electronic Gold Receipts (EGR) to physical gold, through a SEBI-registered Vault Manager, shall not be regarded as a transfer for the purpose of capital gains. Which means that no capital gain tax on such conversion of physical gold into EGR and vise-versa.
Section 49 - Cost acquisition in above cases	It is proposed that, in cases where physical gold was converted to EGR, the Cost of acquisition of EGR shall be the cost of physical gold in the hands of such person. Similarly, in cases where EGR was converted to physical gold, the Cost of acquisition of physical gold shall be the cost of EGR in the hands of such person.
Section 2(42A) - Holding Period	It is proposed that, in the case of EGR or physical gold being a capital asset, the holding period for the purpose of capital gain shall include the period for which the physical gold or EGR, was held by the assessee prior to conversion into EGR or physical gold, as the case may be.

It is further proposed to define the expressions “Electronic Gold Receipt” and “Vault Manager” to mean Electronic Gold Receipt and Vault Manager as defined in clauses (h) and (l) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Vault Managers) Regulations, 2021respectively.

This amendment will take effect from 1st April 2024 and shall accordingly, apply w.e.f. assessment year 2024-25.

3. Section 48: Prevention of double deduction claimed on interest on borrowed capital

Present Position

The amount of any interest paid on borrowed capital for acquiring or improving a property can, subject to certain conditions, be claimed as a deduction under the head "Income from house property" under section 24 of the Act. Further, while computing capital gains on the transfer of such property the said interest could also be claimed as a part of the cost of acquisition or cost of improvement under section 48 of the Act. ITAT Chennai Bench in case of Asst. CIT v. C. Ramabrahmam [2012] [27 taxmann.com 104], allowed the claim of the assessee to include interest paid on the housing loan for computation under section 48 even though said amount has already been deducted under section 24(b) while computing income from house property.

Proposed Amendment

In order to prevent this double deduction, it is proposed to insert a proviso after clause (ii) of section 48 so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA.

However, dispute as to the allowability of interest as a part of the cost of acquisition or cost of improvement of house property is not new. It is a very old issue and Courts and Tribunals have allowed interest paid while computing capital gains on the transfer of such property. Interestingly, no such restriction is proposed by Finance Bill if such interest is not claimed under section 24 or Chapter VIA. Therefore, one could take view that it indicates legislative intent of allowing interest which is not claimed under section 24 or chapter VIA, as part of the cost of acquisition or cost of improvements. However, the above view may be a subject matter of litigation.

This amendment will take effect from 1st April 2024 and shall accordingly, apply w.e.f. assessment year 2024-25.

4. Section 50AA: Market Linked Debentures

This is newly introduced section which provides for special provisions for the computation of capital gains in the case of Market Linked Debentures. It has been noticed that a variety of hybrid securities that combine features of plain vanilla debt securities and exchange-traded derivatives are being issued through private placements and listed on stock exchanges. Such securities differ from plain vanilla debt securities.

“Market Lined Debenture” (MLD) are defined as a security by whatever underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a MLD by Securities and Exchange Board of India (SEBI).

Present Position

MLD's are listed securities, therefore they are currently being taxed as a long-term capital gain at the rate of 10% without indexation if held for more than 1 year. However, these securities are in the nature of derivatives which are normally taxed at applicable slab rates. Further, they give variable interests as they are linked with the performance of the market.

Proposed Amendment

In order to tax the capital gains arising from the transfer or redemption or maturity of these securities as short-term capital gains at the applicable rates, it is proposed to insert a new section 50AA in the Act. The section provides for computation of such short-term capital gains as follows:

Computation of Capital Gains on transfer/redemption/maturity of MLD:-

Particulars	**Amt Rs.**
Full value of consideration	XX
Less:	
1. Cost of acquisition	(XX)
2. Expenditure incurred in connection with transfer/redemption (except STT)	(XX)
Short Term Capital Gains	**XX**

- **Taxation of MLD's acquired on or before 31.03.2023.**

Scenario 1:

It is to be noted that for existing MLDs acquired and transferred on or before 31.03.2023 and holding period is more than 1 year, the gains will be taxed as long-term capital gain at the rate of 10%.

Scenario 2:

If MLDs acquired on or before 31.03.2023 and transferred or matured after 01.04.2023, the gains will be taxed as Short-term capital gain in all cases. No grandfathering relaxation has been proposed in the Finance Bill 2023.

- **Can deduction under section 54F, etc. be claimed?**

Finance Act 2023 has not amended section 2(42A) defining Short-term capital assets or section 54F, etc with respect to MLD's. Therefore, if the holding period of MLD is more than 1 year, it will be interesting to explore the possibility of claiming benefits of reinvestment-based tax exemption under section 54F, etc available for long term capital assets. The Hon'ble Supreme Court in the case of V.S. Dempo Company Ltd. [2016] 74 taxmann.com 15 has agreed with the decision of the Bombay High Court in the case of ACE Builders (P.) Ltd. [2006] 281 ITR 210, wherein the High Court has observed that Section 50 of the Act which is a special provision for computing the capital gains in the case of depreciable assets and has limited application only in the context of mode of computation of capital gains contained in Sections 48 and 49 and would have nothing to do with the exemption that is provided by a totally different provision i.e. Section 54E of the Act. The legal fiction created by the statute under Sec.50 is only to deal with capital gain as short-term capital gain and not to deem the asset as a short-term capital asset. Therefore, it cannot be said that Sec.50 converts long-term capital assets into short-term capital assets. Hence, the benefit of Sec.54E is available to the assessee irrespective of the fact that the computation of capital gains is done either under sec.48 & 49 or u/s.50. Can we take similar view for MLD's as well?

This amendment will take effect from 1st April 2024 and shall accordingly, apply w.e.f. assessment year 2024-25.

5. **Section 54 and section 54F: Limiting deduction for reinvestment of capital gains into residential house property.**

Present Position

Presently there is no cap on the maximum amount of deduction that can be claimed under both the sections.

Proposed Amendment

It is proposed to limit the maximum deduction that can be claimed under sections 54 and 54F to Rupees 10 crores. Consequently, it is also proposed that the amount required to be deposited in the Capital Gains Account Scheme to claim deduction under sections 54 and 54F shall be restricted to Rupees 10 crores.

However, the following question emerges due to the proposed amendments:

- **Whether the limit of Rs. 10 crores would be applicable per co-owner basis or on the entire value of the property**?

Since deductions under sections 54 and 54F are available qua co-owners, the limit of 10 crores would be also available to each co-owner separately.

- **What would be the consequence in case the new property is transferred within 3 years of acquisition in terms of section 54(1)(i)?**

Section 54(1)(i) covers the situations *where capital gains are higher than the cost of the new residential house and that the new residential house is sold within 3 years of its purchase/construction, as the case may be, the cost shall be nil*. Let's understand with the help of an example:

Long Term Capital Gains on sale of old house	20 crores
Investment in New residential house	15 crores
Deduction availed u/s. 54	10 crores

Computation of Taxable Long-Term Capital Gains on sale of old house:

(In crores)

Particulars	As per Old provisions	After Proposed amendment
Long Term Capital Gains on sale of old house	20	20
Investment in New residential house	15	15
Deduction allowed u/s. 54	15	10
Taxable Long Term Capital Gains (A)	**5**	**10**

Now, the new residential house is sold within a period of 3 years for Rs. 16 crores.

Computation of Capital Gains on sale of new residential house:(In crores)

Particulars	As per Old provisions	After Proposed amendment
Sale Consideration	16	16
Cost of acquisition or improvement in terms of section 54(1)(i)	NIL	NIL
Taxable Capital Gains (B)	**16**	**16**
Total Capital Gains (A + B)	**21**	**26**

Effective capital gains as per old provision will be Rs. 21 cores, whereas after the proposed amendment effective capital gains will be Rs. 26 crores under the same situation. Therefore, there will be double taxation to the extent of Rs. 5 crores in the above example. Hence, appropriate amendments are required to rationalise the provisions of section 54.

This amendment will take effect from 1st April 2024 and shall accordingly, apply w.e.f. assessment year 2024-25.

6. Section 55: Cost of acquisition in case of certain assets

Present Position

As per section 55 of the Act, the cost of acquisition for intangible assets such as Goodwill of business or profession, or a Trademark or brand of business or profession, or right to manufacture, or produce or process any article, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours is defined as the amount of purchase price if acquired from the previous owner or NIL in any other case. Therefore, in the case of intangible assets/rights which are not covered by section 55, it was possible to argue that since there is no cost of acquisition, the same could not be taxed in view of the decision of the supreme court in the case of B. C. Srinivas Shetty 128 ITR 294.

Proposed Amendment

It is proposed that to define the 'cost of improvement' or 'cost of acquisition' of a capital asset being any intangible asset or any other right shall be 'Nil' other than those acquired from the previous owner for a consideration.

The term “any other rights” is wide and its scope has not been defined. It could include all kind of rights such as, TDR, FSI, personal rights, actionable claims or compensation, right to sue, voting rights, right to receive any capital assets, etc. By incorporating the term “any other rights”, the scope of section 55 is expanded drastically and requires deeper examination while dealing with the transfer of any kind of rights.

This amendment will take effect from 1st April 2024 and shall accordingly, apply w.e.f. assessment year 2024-25.

Amendments relating to TDS\TCS

1. Section 192A: Relief from Higher TDS on Payment of accumulated balance due to an employee from the Employees' Provident Fund (EPF) Scheme

Present Position

Tax is deductible at the rate of 10 percent of the taxable component of lump sum payment if withdrawal is above the threshold limit of Rs.50,000/- and other exemption conditions for withdrawal are not satisfied. However, if an employee fails to furnish PAN, then tax shall be deducted at Maximum Marginal Rate.

Proposed Amendment

It is proposed that, in case of failure to furnish PAN by the person, the tax will be deducted at the rate of 20% as per section 206AA of the Act. This amendment is a welcome relief for low-paid employees, who do not have PAN.

This amendment will take effect from 1st April 2023.

2. Section 193: Removal of exemption from TDS on payment of interest on listed debentures to a resident.

Present Position

Clause (ix) of the proviso to section 193 of the Act provides an exemption from deducting TDS in the case of any interest payable on any security issued by a company, where such security is in the dematerialized form and is listed on a recognized stock exchange in India.

Proposed Amendment

It is proposed to omit clause (ix) of the proviso to section 193 of the Act. Henceforth, Interest payable on listed securities in dematerialized form will also be liable for TDS. This amendment is being proposed to capture such transactions in 26AS.

The aforesaid amendment is proposed to be effective from 1st April 2023.

3. Sections 194B and 194BB: TDS on winning from lottery, crossword puzzle and horserace

Present Position

Section 194B of the Act provides that at the time of payment, tax is to be deducted on any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort if an amount exceeds Rs.10,000/-. TDS is to be deducted at the rates provides by Section 115 BB of the Act, i.e. @ 30% + SC + EC.

Similarly, Section 194BB of the Act provides for the deduction of tax at source on income from horse racing in any race course or for arranging for wagering or betting in any race course.

Proposed Amendment

Presently, it was observed that under both sections transactions were split below Rs.10,000/- to avoid TDS. Both sections are proposed to be amended so that, the deduction of tax under these sections shall be made if the amount or aggregate of the amounts exceeds Rs.10,000/- during the financial year.

Further, it is being proposed to include gambling or betting of any form or nature whatsoever within the scope of Section 194BB.

The aforesaid amendment is proposed to be effective from 1st April 2023.

Further, with effect from 1st July 2023, it is proposed to exclude online games from the preview of Section 194B, since a new Section 194BA is proposed to be introduced to cover online games.

4. Section 194BA: TDS on Winnings from online games

In India, the trend for online gaming is booming, especially among the youth, who are passionately pursuing it. From just playing it for fun to opting for it as a full-time career, the online gaming industry has come a long way. A large number of individuals participate in fantasy leagues, card games, online challenges, etc., which involve actual money. To cover this gaming business under the Income Tax Act, separate sections, i.e., 115BBJ and 194BA have been introduced in the Union Budget 2023.

Applicability of Section 194BA

Section 194BA states that if any person receives any income by way of winning from any online game during the financial year then the person responsible for paying such income shall deduct TDS from the net winnings at the end of the financial year. However, in a case where a user withdraws the amount during the financial year then the tax shall be deducted at the time of such withdrawal from the net winnings.

Also, in a case where the net winnings are partly in cash, partly in kind, or wholly in kind and the cash is not sufficient to meet the tax liability of deduction from net winning, then the person responsible for paying such income shall ensure that before releasing the winnings the tax has been paid in respect of the net winnings.

Rate of TDS under section 194BA

The payer shall deduct TDS at the rate of 30% from the net winnings of the user account. There is no threshold limit on the amount, and the tax will be deducted from the entire net winning amount.

An "Online Game" refers to a game that is available on the internet and can be played by a user via a computer resource or telecommunication device. The definition of net winnings is yet to be prescribed.

If any difficulty arises in giving effect to the provisions of new section 194BA, the Board may, with the prior approval of the Central Government, issue guidelines for the purpose of removing the difficulty. Every such guideline issued by the Board shall be laid before each House of Parliament and shall be binding on the income tax authorities and on the person responsible for the deduction of income tax on any income by way of winnings from an online game.

This amendment will take effect from 1st July 2023.

5. Section 194N: Enhancement of limit for Co-op. Societies from TDS on Cash Withdrawals from Bank

Present Position

Tax deduction at source (TDS) at the rate of 2% will apply if the withdrawal of all sums of money or an aggregate of sums of all withdrawals exceeds Rs. 1 crore from a particular bank in a financial year. However, if the recipient is a non-filer of income tax returns, 2% TDS is to be deducted for cash withdrawal between Rs. 20 lakhs to Rs. 1 crore and 5% TDS if aggregate withdrawal above Rs. 1 crore during the fiscal year.

Proposed Amendment

It is proposed to amend section 194N of the Act by inserting a new proviso to provide that where the recipient is a co-operative society, the aggregate cash withdrawal limit is relaxed to Rs. 3 crores.

The aforesaid amendment is proposed to be effective from 1st April 2023.

6. Section 194R: Certain Clarification on Deduction of tax on benefit or perquisite in respect of business or profession

Present Position

The Finance Act of 2022 introduced section 194R of the Income-tax Act, 1961, with the objective to widen the tax base by bringing benefits paid by taxpayers, whether convertible into money or not, to their distributors, agents, dealers, etc., arising from the business or profession.

In simple terms, the government aimed at plugging the tax leakage arising on account of transactions entered by taxpayers for marketing expenditure in the form of gifts, prizes, trips, etc., for dealers and distributors of their products. The taxpayers claimed the said expenditure as a deduction in their tax returns. However, since the said benefits or perquisites were in kind, the same were not necessarily reported as income by the recipients in their tax returns, leading to tax evasion.

Section 194R requires the taxpayer to deduct tax at 10% on the provision of 'benefit or perquisite', whether convertible into money or not, arising from business or profession to a resident. The section provides a threshold of INR 20,000 for applicability of the section, such that no tax is to be deducted if the aggregate value of benefits or perquisites provided to a single person during a financial year does not exceed INR 20,000.

Under the insertion of this section, certain clarifications were provided by the Central Board of Direct Taxes ('CBDT') vide Circular No. 12 dated 16 June 2022, and Circular No. 18 dated 13 September 2022, for the removal of difficulties in the implementation of provisions of section 194R of the Act. However, these clarifications triggered more questions than answers.

Proposed Amendment

It is proposed to clarify vide Explanation 2 of the section that tax needs to be deducted on any benefit or perquisite, whether in cash or in kind or partly in cash and partly in kind.

Rather than solving the issue of whether cash benefits can be covered within the purview of section 194R or not, the Finance Bill, 2023 proposes to expand the definition by bringing in cash benefits within the purview of taxable income. The said provision may now unsettle the settled questions, for instance as that held by the Supreme Court in the case of Mahindra and Mahindra [404 ITR 1 (SC)], where write-off of loan for capital assets was held as not taxable under section 28(iv). It was held that for the benefit to be taxable under section 28(iv) of the Act, the benefit should be received in some form, other than in cash. Therefore, cash benefits were not taxable u/s 28(iv) of the Act. Will such write-off of the loans now be taxable under section 28(iv) and subject to withholding tax under section 194R?

The aforesaid amendment is proposed to be effective from 1st April 2023.

7. Section 196A: DTAA benefits for TDS on Income in respect of units of non-residents

Present Position

The section provides for TDS at the rate of 20% on payment of income to a non-resident in respect of units of Mutual Fund specified in section 10(23D) of the Act or specified company referred to in explanation to section 10(35) of the Act. The section did not provide for considering tax treaty benefits while deducting TDS.

Proposed Amendment

It is proposed to allow the benefit of tax treaty at the time of TDS so that if the treaty provides a rate lower than 20%, TDS is made at that lower rate.

The aforesaid amendment is proposed to be effective from 1st April 2023.

8. Section 197: Certificate for deduction at a lower or nil rate

Present Position

The section provides for obtaining a certificate of tax deduction at a lower or nil rate for certain sections under TDS.

Proposed Amendment

It is proposed to extend the benefits of obtaining a certificate of lower or nil rate under section 197 to section 194LBA as well. Section 194 LBA of the Act provides that business trusts (such as REITs and InvITs) shall deduct tax at rates prescribed on income distributed to the unit holders.

The aforesaid amendment is proposed to be effective from 1st April 2023.

9. Section 206AB and 206CCA: Relief from higher TDS/TCS for certain non-filers of income tax return

Present Position

Section 206AB & 206CCA of the Income Tax Act, 1961 provide for deduction of tax or collection of tax at a higher rate in the case of non-filers of returns. These non-filers in these sections are referred to as "specified person".

The term Specified person covers the person who:-

a. has not filed a return of income for last one year and the return filing date for that year is over

AND

b. aggregate of TDS deducted and TCS collected for the year is Rs. 50,000/- or more

Non-residents with no permanent establishment in India are excluded from the definition of Specified person.

Proposed Amendment

The above definition of specified person has created hardship for certain persons who are not required to furnish the return of income but falls in the category of non-filers. Hence, in order to provide relief in such cases, it is proposed to amend the definition of the 'specified person' in sections 206AB and 206CCA to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

The aforesaid amendment is proposed to be effective from 1st April 2023.

10. Section 206C: Steep increase in TCS rates for certain remittances

Type of foreign remittances	Present Position	Proposed Amendment
For the purpose of any education which is out of loan from the financial institution as defined u/s 80E.	0.5% of the amount or the aggregate excess of Rs. 7lakh	No change
For the purpose of education other than above or for medical treatment	5% of the amount or the aggregate excess of Rs. 7lakh	No change
Overseas tour package	5% without any threshold limit	20% without any threshold limit
Any other case	5% of the amount or the aggregate excess of Rs. 7lakh	20% without any threshold limit

The above amendment will result in additional blockage of funds for foreign tours and traveling, buying foreign assets, investing abroad, etc. The TCS proposed in the budget seems to be steep, one will have to initially pay TCS and claim a refund in an income tax return at the end of the financial year.

This amendment will take effect from 1st July, 2023.

Conclusion:

The above amendments proposed are in line with the objectives highlighted by the Hon'ble Finance Minister towards reducing litigations, curbing loopholes, reducing the hardships faced by the taxpayer and penalising tax evaders. Though some amendments are at the cost of unsettling the existing law pronounced by the highest judicial forum. However, there are various capital gains and withholding tax provisions where clarifications were expected, which are still awaited. Overall, some amendments facilitate increased/ early collection of taxes for the government and others provide relief to the taxpayers by offering reduced tax rates/ compliances.

SUPER PREMIUM TAXATION, A NEED OR AN OBLIGATION?

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On February 1, 2023, the Hon'ble Finance Minister, Nirmala Sitharaman, presented the Union Budget of India for the FY 2023.

A key amendment that has been proposed, is removal of the words 'being a resident' from section 56(2)(viib) of the Income Tax Act, 1961 ('the IT Act'). Accordingly, it is proposed that the scope of taxation of unjustifiable premium (quantum of consideration being higher than FMV of shares of the company as determined in the valuation report) has now been extended to include both resident as well as non-resident investors.

Existing provision for taxation of super premium

Section 56(2)(viib) of the IT Act was inserted vide Finance Act, 2012, in order **to deter the generation and circulation of unaccounted money through subscription of shares of a closely held company,** at a **value** which is **higher than the Fair Market Value** ('FMV') of shares of such company.

By virtue of section 56(2)(viib) of the IT Act, it states that, where a company, **not being a company** in which the **public are substantially interested**, receives, in any previous year, from **any person being a resident**, any consideration for issue of shares that exceeds the face value of such shares, the aggregate **consideration received** for such shares as **exceeds the FMV of the shares** shall be **deemed to be the income of the concerned company** chargeable to tax **under the head Income from other Sources** for the relevant financial year.

Hence the applicability of the above is as summarized below:

1. Shares must be issued at premium to a resident (Issue price > Face value); and
2. Consideration should be greater than FMV (Issue price > FMV)

Both the above conditions need to be fulfilled for applicability of section 56(2)(viib) of the IT Act. Accordingly, in case, if answer to condition no. (1) is no, then even if answer to condition no. (2) is yes, there are no adverse tax implications under section 56(2)(viib) of the IT Act, and vice-versa.

Non-applicability of the said section:

- Company receiving consideration is a company in which public are substantially interested *(i.e., as defined under section 2(18) of the IT Act)*
- Consideration is received by a venture capital company or venture capital fund or other notified company
- **Consideration is received by a non-resident investor**

For the purposes of section 56(2)(viib) of the IT Act, FMV of shares shall be higher of the following:

A. As per the methods prescribed under Rule 11UA(2) of the Income Tax Rules, 1962 ('the Rules') which are

i. Book value Method (NAV) and

*ii. Discounted Cash flow method (to be obtained from a **category I merchant banker** registered with Securities and Exchange Board of India), or*

B. Any other value as may be substantiated by the company to the satisfaction of the Assessing Officer.

Therefore, pursuant to the above provision, in the event where the company receiving consideration upon issuance of fresh shares to the investors, being resident in India, at premium, which is not justifiable, then such unjustifiable premium would deemed to be the income of the concerned company u/s 56(2)(viib) of the IT Act, chargeable to tax under the head Income from other Sources for the relevant financial year.

Proposed amendments on taxation of super premium by expanding its scope to include non-residents

A. Interplay between proposed provision and Indian exchange control regulations ('FEMA')

The proposed amendment will have significant impact on the primary infusions where issuance of shares is being made by Indian companies to the entities which are incorporated outside India / individuals who are tax resident outside India. Further, it is to be noted that as it stands today a venture capital undertaking receiving funds from a specified investors is outside the purview of the angel tax provisions. **The proposed amendment restricts Indian companies from receiving consideration for issuance of shares at a price higher than its FMV as determined under the Rules.**

Further, it is pertinent to note that, from FEMA perspective, any consideration receivable by an Indian company from a non-resident investor against issue of shares, to be equal to or more than the FMV determined based on any internationally accepted pricing methodology. Accordingly, it can be said **that non-residents are expected to invest at a minimum valuation which is determined based on internationally accepted pricing methodology. There is no cap on the maximum amount that can be paid against acquiring shares of an Indian company.**

Thus, the combined reading of section 56(2)(viib) of the IT Act and FEMA regulations suggests that all the investments that are proposed to be made by non-resident investors in shares of the closely held company, would need to comply with relevant provisions of IT Act and FEMA regulations simultaneously.

However, it is to be noted that under the FEMA provisions, unlike under IT Act read with the Rules, methodology for determination of fair value has not been prescribed. Accordingly, there may be a situation wherein fair value under FEMA regulations and as per the provisions of IT Act (i.e., 11UA valuation) may differ.

Suppose fair value of a share computed under FEMA regulation is INR 100, whereas under FMV under IT Act is INR 80. Now, let's assume the shares are issued to foreign investors at INR 100. In such case, the tax department will seek to tax INR 20 (i.e.,100-80) as income in the hands of the recipient company.

Further, the proposed amendment is prone to litigation (including tax authorities rejecting fair valuation certificates provided by companies) as it has been a case with the startups in relation to angel tax in the past several years.

B. Interplay between provisions of sections 68 and 56(2)(viib) of the IT Act

The provisions of section 68 of the IT Act are an anti-avoidance measure requiring a taxpayer to furnish satisfactory explanations about the nature and source of any sum found credited in its books of account of the taxpayer on being requested by the Tax Authorities. Accordingly, where a taxpayer fails to provide satisfactory explanation on the nature and source of any sum credited in its books, the whole of such sum so credited would be considered as an income of the recipient company. On the application of the sections 68 and 56(2)(viib) of the IT Act, it may be contended by the revenue authorities that both anti-avoidance measures are being introduced with different objectives. **Further, none of these provisions override the other and thus, co-exist.** Thus, where the share consideration exceeding FMV is subjected to tax under section 56(2)(viib) of the IT Act and further revenue authorities are not satisfied with the explanation provided in respect of nature and source of the consideration received, provisions of section 68 of the IT Act may be applicable. In such a case, it would tantamount to double taxation of income which has been already subjected to tax under section 56(2)(viib) of the IT Act.

It is to be noted that, the proposed amendment moves evidently beyond the explicit purpose behind introduction of section 56(2)(viib) back in 2012, which was to curb the menace of money laundering in the system. **Considering that in case of subscription of shares by non-residents, typically the payment would have come from proper banking channels through an authorised dealer, with appropriate KYC documentation, the chances of money being laundered is remote.**

C. Interplay between provisions of section 56(2)(viib) and Transfer Pricing Provisions

Transfer Pricing provisions being specific anti-avoidance provisions are enshrined under Chapter X of the IT Act that inter-alia, provides for taxability of income in respect of international transactions to be computed having regard to arm's length price. Considering that the provisions of section 56(2)(viib) of the IT Act were not applicable to non-resident shareholders earlier, any share consideration received from them fell outside the ambit of the definition of 'income' under section 2 of the IT Act. **Pursuant to the proposed amendment, the transfer pricing provisions would consequently be applicable to the closely held company on receipt of excess share consideration from non-resident shareholders in accordance with section 92(1) read with section 2(24)(xvi) of the IT Act, thereby increasing compliance obligation of Indian companies.**

In a Nutshell

The proposed amendment does not effectively cater to solve the issues around money laundering from foreign sources. Rather it would not be harsh to say that the proposed amendment is contrary to the Government's initiative of ease of doing business as it increases compliance burden as well as potential litigation around fair valuation of shares, which in turn may affect the FDI inflows into India.

Further, in order to reduce various controversies as highlighted above, it is sought that the Finance Bill, 2023 provides necessary clarifications / reliefs to the various aspects around primary infusion by non-residents, thereby, not adversely impacting the FDI inflow into India.

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TAXATION OF CHARITABLE TRUSTS (AMENDMENTS IN MAKING)

CA Shanti Rambhia
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CA Shanti Rambhia

There was time in early sixties, when charitable trusts were promoted by Government to carry out human services particularly in the field of education, medical relief, and help to poor, help for natural calamities and so on. Due to these, some people who always think and work to find out the loopholes to save tax. Such people not in case of charitable trusts' taxation matters but almost in any field where they were able to find out some loopholes, they were making money to sale such loopholes. I would dare to say that some professionals were leaders in doing such work. In addition, the minority religions to increase their strength tried to make public trusts as their weapon to bring foreign funds by which cases of caste conversions were increasing which ultimately the Central Government, to plug the loopholes started curbing public charitable trust and particularly since 2014 started curbing hard the misuse of Charitable trusts. This has made it difficult for the genuine trust to run with a fear of tax liability. Some amendments made in past have unnecessarily increased the work of Department as well as of trustees without any benefit to anyone.

Apart from such harsh amendments, the two verdicts of the Supreme Court have added the most difficult situation for the major trusts particularly running hospitals and educational institutions Viz. are New Noble Education Society Vs. CCIT (2022) 143Taxman.com 276(SC) & ACIT (E) Vs. Ahmedabad Urban Development Authority & Others(2022)143 Taxman.com(SC).

Without going deep into the matter, our effort is to know what are the changes in Finance Bill 2023 in respect of taxation of Public Charitable trust by which the genuine trusts can comply with the provisions to save taxes and use the funds for the benefits of less fortunate people of the Nation.

Last year and earlier effective provisions are such that the corpus donations given by the trust to another trust are not eligible for deduction as application of income. The amount to be allied should be out of the total income of the same year. Even if the application of income is out of corpus donations received earlier to31-3-21, the same are not be eligible again as application of income. It is always to be understand that no double deduction of the same amount is allowed. It means the amount if spent out of the funds of the trust or out of the corpus donations and /or loans or borrowings received either earlier or during the year shall not be eligible for the claim for deduction at 85 % of the amount of income. This means if the amount out of the current income excluding corpus donations if the amount at 85 % is not spent then either option u/s. 11 (1)(a)Exp.(ii) or u/s. 11 (2) should be exercised else the income of the trust will get taxed.

In addition to these, in current year's budget a provision has been made that if a trust pays donations to the other trust, then the amount of such donations shall not be fully allowable as application income but only 85 % shall be eligible for such deduction. This it seems that many foundations established by CSR companies do not carry on their own activities but just donating the funds to other trusts who do carry out the activities. Though the certificates of the auditors are sought by the CSR companies to support that the amounts are genuinely spent for the activities allowed under CSR objects by the recipient trusts. The other reason is that there was misbehavior by certain companies made multilayer trusts to get 15% benefit u/s. 11(1)(a) soto plug such loophole the new provision of limiting 85% of donation income of eligibility has come. This change of allowing 85 % of donations is effective from 2024-25 assessment year. This change will affect a most to the CSR companies who mainly spent the funds via voluntary contributions since on such contributions 15% accumulation benefit is indirectly lost. This will also curb of forming multilayer trusts by same group.

The law is that the corpus funds need to be either spent for the capital expenditure to create an asset or be deposited in the various modes of investments allowed u/s. 11(5) subject of course to provisions of Charity trust in the State. However, no time limit is fixed for such investment to be made u/s.11 (5) items. It means there should be reasonable time by which such investments be made. It was also not included in the income if corpus donations applied for expenses in India (not out of India) and there after withdrawn to be invested u/s. 11 (5) items. However, in the current finance bill the provision is made effective from 2023-24 A.Y. as regards time limit that the corpus donations amounts should be invested or deposited in five years from the end of the year in which the said amount has been received by the trust. This provision is subject to certain terms the amount which is claimed to be applied should not be the amount given to other trusts and nor even persons covered by section 13(1) should have been given any benefit. Secondly TDS provisions should be correctly followed as well as Section 40A(3) provisions of Income tax also have to be adhered to properly i.e. payments of application of income to be made by account payee cheques or through bank transactions if the amount is more than Rs. 10,000/-

This finance bill also proposes that the corpus donations need to be deposited or invested in the entities allowed under section 11 (5) of the income tax Act, 1961 subject of course the provisions for investment by trusts in Charity laws of the states.

The trusts are under Section 11(1) (a)Exp. (ii) and u/s. 11(2) given option to spend the shortfall in the application of income for the year either in the next year or in five years subject to certain conditions. For this purpose, the trusts are supposed to file the applications with the department either in form 9A or inform 10 as the case may be, by the due date applicable to file the return of income. However, there was change in law since 2018-19 A.Y. to file these applications by one month earlier to due date of filing the return of income. Again, in this finance bill the provision to amend the due date for filing these forms 9A & 10 by two months earlier to due date of filing the return of income. These shall put the trusts in awkward position because unless the books are ready to get audited, the amount to be declared in the application would be difficult to decide.

In the finance Bill 2023, with effect from 1-4-23 a new clause to explanation to Section 12AB (4) is added by which registration under new Section 12AB could be cancelled if the applicant trust has given wrong particulars of information in the application filed by it. This is in addition to other violations viz. i) application of income on wrong objects, ii) income from business not incidental to objects, iii) spending of income on private religious purposes, iv) income spent for the benefit of particular religious community or caste, v) activities carried out are not genuine and are not carried out in accordance with the objects and vi) there is no default in any other law of the land by the trust.

With effect from 1-4-2021, the new trusts required to apply for provisional registration of the trust u/s. 12AB within one month of starting activities of the new Trust. Such Provisional registration was granted for three years subject to other conditions are fulfilled as required.

As per the same law, the trusts who have been granted provisional registration, have to apply for regular registration either within six months prior to completion of the period provisional registration or within six months of starting the activities by the said trust. Due to this ambiguity, the new trusts were finding it difficult to fulfill the conditions firstly because if the trust has started the activities then it has to file both the application i.e. for provisional as well as regular registration. Secondly, due to application for provisional registration was to be made one month earlier to beginning of previous year, the trusts were losing exemption u/s. 11 for the first year. Therefore, now it has been provided with effect from 1-4-2023 in the Finance Bill to overcome this difficulty that if the trust has started the activities then it has to apply only for regular registration. However, if no activity has been started then such trust will have to apply for provisional registration one month earlier to beginning of the previous year. The CIT then pass the order to accept or reject the application for registration within six months from the end of the month in which application is made for registration. Applications u/s. 10(23C) as well as for u/s 80-G shall also be treated as per above amendments.

There has been an amendment in section 115TD (3)(iii) as and from A.Y.2023-24 that if the trust which is provisionally registered but has not applied for regular registration then it will be presumed that the such trust is getting converted to non-eligible registration entity in which case it shall be liable to pay Exit tax under said section which shall have to be paid within fourteen days from the end of the year.

The trusts which are registered u/s. 12A or 12AA earlier to 1-4-2021 and which have not renewed their registration under amended provisions as per Section 12AB and voluntarily wind up their activities or merge with non-charitable institutions then such trust shall also be liable to tax at maximum marginal rate on their accreted income.

Government at one hand make provisions to promote charity by making CSR law in Corporate Sector so that with the support of the funds the charitable activities in India may increase. On the other hand the provisions like controlling accumulation etc. are brought in the law due to which people would not be interested in doing social work, which is normally done without any remuneration but is done on humanity ground by the trustees.

The law as made by parliament is rarely accepted in plain language by the intelligent people and they try to find out the loopholes and twist law for the selfish interest by which whole purpose of making the law is lost. But one must understand there are intelligent people in government to who shall always try to plug the loopholes by which the law goes on being complicated and difficult and ultimately law bound people only suffers and culprits somehow get out of clutches of law.

One would have to think twice before forming a charitable trust as not only it will be difficult to manage the trust but trustee would find it difficult to get the proper advice to run the trust without incurring tax liability and to face prosecutions too. May we hope that genuine trusts shall not be punished unnecessarily in amending the trust laws for mischievous minds.

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INDIRECT TAX PROPOSALS

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As per section 1(2) of The Finance bill 2023, section 2 to 122 shall come into force from 01/04/2023. The GST proposals are contained in sections 128 to 144. From the Tax Research Unit letter issued along with Finance Bill, 2023 it is evident that all the proposed amendments in GST will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with legislature, unless stated otherwise.

AMENDMENTS IN THE CENTRAL GOODS AND SERVICE TAX ACT:

- **Amendment to Section 10 of The CGST Act pertaining to Composition levy:**

  Section 10 deals with the provisions for composition scheme for small taxpayers.

  Existing position: The current provisions do not allow tax payers opting to pay GST under composition scheme to supply goods or services through e-commerce operators.

  Proposed: A relief is sought to be given to such small taxpayers by allowing them to supply goods through e-commerce operators and still enjoy the benefits of the composition scheme. It is pertinent to note that still supply of services through e-commerce operator is not eligible under composition scheme.

- **Amendment to Section 16 of The CGST Act:**

  Sec. 16 provides for eligibility and conditions for availment of ITC

  Amendment to second proviso to Section 16(2) :

  Existing position: In cases where recipient fails to pay amount of invoice along with tax to the supplier within 180 days from the date of issue of invoice, the same is added to his output tax liability. Vide notification 14/2022-CT dated 05/07/2022, Form GSTR 3B was amended to provide separate row in Table 4B for giving details of ITC reversal on account of non-payment to suppliers beyond 180 days.

  Proposed: An amendment is proposed to align the method of reversal of ITC as per this proviso with the GST rule 37 and Form GSTR 3B with the section.

  Amendment to third proviso to Section 16(2):

  Existing position: The third proviso to Section 16(2) provides for reclaim of any ITC that has been reversed due to non-payment within 180 days to the supplier, when such payment is made. Currently the proviso does not specify to whom the payment should be made to.

  Proposed: The reclaim of ITC is sought to be allowed when the payment is made **to the supplier**.

- **Amendment to Section 17 of The CGST Act:**

  Sec. 17 provides for reversal of ITC in cases where goods or services are used partly for effecting taxable supplies and partly for exempt supplies.

  Amendment to Explanation to Section 17(3) pertaining to transactions to be included in value of exempt supplies for reversal of ITC:

  Existing position: Schedule III transactions are excluded from the definition of "exempt supply" for the purpose of calculation of reversal of ITC as per Section 17(3), except for sale of land or building.

  Proposed: It is proposed to include in the definition of "exempt supply" for the purpose of reversal of ITC, Supply of warehoused goods to any person before clearance for home consumption in addition to sale of land and building.

  Amendment to Section 17(5) pertaining to blocked credits:

  Existing position: There is no specific provision in GST law to restrict the ITC of goods and service used for carrying out activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

  Proposed: It is proposed to insert new clause (fa) in Section 17(5) to restrict the ITC of goods or services or both received by a taxable person which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act. 2013.

- **Amendment to Section 23 pertaining to the cases where registration is not required:**

  Existing position: Section23providesforcertainexemptionstorequirement for GST registration. However, the current drafting of Section 23 does not account for over lapping provisions of Section 22 for regular registration and Section 24 for compulsory registration.

  Proposed: A person not liable to register under Section 23 (being a person exclusively engaged in supply of exempt or Non-GST supplies or an agriculturalist) need not register under GST even if it satisfies conditions of compulsory registration u/s 24 or turnover threshold u/s 22.

- **Amendment to Section 37 pertaining to furnishing of details of outward supplies.**
- **Amendment to Section 39 pertaining to furnishing of returns.**
- **Amendment to Section 44 pertaining to Annual return.**
- **Amendment to Section 52 pertaining to Collection of Tax at source.**

  Existing position: Till date there was no time limit specified within which the returns specified under respective sections can be filed if the same are not filed within due dates.

  Proposed: The Sections are amended to provide the maximum time limit of 3 years from the due dates of the returns within which the returns in GSTR 1, GSTR 3B, GSTR 9, GSTR 8 can be filed. Further, The Central Government is empowered to allow any registered person or class of persons to furnish the said returns even after expiry of said period of 3 years subject to conditions & restrictions.

- **Amendment to Section 52 pertaining to refund of tax.**

  Existing position: 90% refund is granted on provisional basis for zero-rated supplies after excluding the amount of ITC provisionally accepted

  Proposed: The proposed omission brings Section 54(6) in line with the current return filing system so as to provide that refund of 90 % on provisional basis shall be granted on the entire amount.

- **Amendment to Section 54 pertaining to interest on delayed refund.**

  Existing position: Section provides for payment of interest on delay in issue of refund from the date immediately after the expiry of 60 days from the date of receipt of application u/s. 54 till the date of refund.

  Proposed: The procedure to claim such interest is not provided in the CGST Act or Rules. This is sought to be corrected by inserting the power to prescribe the procedure, conditions and restrictions to claim such interest.

- **Amendment to Section 122 pertaining to penalty for certain offences:**

  Existing position: There is no specific penalty for offences committed by E-commerce operator.

  Proposed: It is proposed to be prescribe penalty on E-commerce operator of higher of Rs. 10,000/- or an amount equivalent to the amount of tax involved, had such supply been made by a registered person other than a person paying tax under section 10 for following offences :

  -allows supply by unregistered person other than exempted from registration.

  -allows inter supply by a person who is not eligible.

  -Fails to furnish correct details in the TCS statement of outward supply of goods effected by a person exempted from obtaining registration.

- **Amendment to Section 132 pertaining to punishment for certain offences:**

  Existing position: Presently, prescribed 12 categories of offences involving amount of Rs. 1 crore or more may trigger imprisonment.

  Proposed: The three clauses are sought to be deleted are :

  (g) obstructing or preventing any officer in the discharge of his duties under GST Act

  (j) tampering with or destroying any material evidence or documents

  (k) failure to supply any information which a person is required to supply under this Act or the rules made there under or supply of false information.

  Deletion of these three clauses means such offences are proposed to be decriminalized (no imprisonment).

- It Is proposed that only offence mentioned in clause (b) i.e. issues any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of ITC or refund of tax will be punishable for imprisonment upto 1 year plus fine in case Tax sought to be evaded in more than 1 crore but less than 2 crore.

- Thus, except clause (b), all the offence will be punishable with imprisonment if tax evaded is more than 2 crore (The limit is raised from present limit of Rs. 1 crore).

- **Amendment to Section 138 pertaining to compounding of offences :**

Existing position: there are seven offences i.e., clauses (a) to(f) and clause (l) of Section 132(1) for which compounding is allowed only once.

Proposed: Following two offences are proposed to be added in the list

- Knowingly deals with goods which are liable for confiscation

- Knowingly deals with services which are supplied in contravention of law.

Further it is proposed to exclude the persons involved in offences relating to issue of invoices without supply of goods or services or both from the option of compounding. It is further proposed to reduce the compounding amount from range of '50% to 150%' to range of '25% to 100%'.

- **Insertion of Section 158A related to Consent based sharing of information furnished by taxable person:**

Proposed: It is proposed that the data uploaded by a taxpayer for generation of e-invoices, e-waybills, the data uploaded in his registration, GSTR-1, GSTR-3B, GSTR-9 or other data as maybe specifically prescribed shall be shared with any other system by the Government only after obtaining consent of the supplier and recipient involved. The Section further seeks to provide that no action shall lie against the Government and GST portal from any liability that arises consequent to sharing of such information.

- **Amendment to Schedule III to pertaining to supplies which are outside the scope of GST**

Existing position: Following supplies were brought in this list from 01.02.2019

- Supply of goods of from non-taxable territory to another non-taxable territory without entering into India

- Supply of warehoused goods before home consumption

- Supply of goods by endorsement of title document after they are dispatched from outside India before clearance for home consumption

Proposed: Now it is proposed that these supplies will be part of Schedule III with retrospective date from 01/07/2017. However, any GST that has already been paid on such supplies shall not be refunded by the Government.

AMENDMENTS IN THE INTEGRATED GOODS AND SERVICE TAX ACT:

- **Substitution of Section 2(16) of The IGST Act related to definition of 'Non taxable online recipient':**
Existing position: Person located in non-taxable territory and supplying OIDAR services is required to pay IGST on OIDAR services supplied to Government, Local authority, Government authority, an individual, or any other person not registered in relation to any purpose other than commerce, industry or any other business or profession.

Proposed: Any unregistered person, including the Government and Government entities, shall be covered by the definition of “non-taxable online recipient”, irrespective of the end use of the service.

- **Amendment to Section 2(17) of The IGST Act related to definition of 'Online information and database access or retrieval services':**

  Existing position: Definition of 'Online information and database access or retrieval services' was restricted to include such services the nature of which renders the supply essentially automated and involving minimum human intervention.

  Proposed: The scope of OIDAR services as a whole has been expanded by removing the conditions of services being "essentially automated and involving minimal human intervention".

- **Amendment to Section 12(8) of The IGST Act related to Place of supply of services where location of supplier and recipient is in India:**

  Existing position: Where the location of supplier and recipient is in India, the place of supply of service by way of transportation of goods to place outside India is the destination of the goods.

  Proposed: By deleting the proviso, the default place of supply, i.e. the location of the registered recipient or the place of hand over of goods to the transporter in case of unregistered recipient, shall be applicable in all cases of transportation of goods.

AMENDMENTS IN THE CUSTOMS ACT, 1962:

- **Amendment to section 25 related to Power to grant exemption from duty:**

  Existing position: Through the Finance Act 2021, with effect from 28/03/2021, conditional exemptions were generally valid up to 31st March falling immediately after 2 years from the date of granting or varying any exemption unless it is effective till a specified date or exemption is withdrawn before 2 years. Further exemptions already in force on the date of enactment of the Finance Bill, 2021 will come to an end on 31/03/2023 if not extended specifically.

  Proposed: As per proposed amendment to Section 25, validity of 2 years will not apply to exemption notifications issued in relation to the followings: -

  - To multilateral trade agreements,
  - Obligations under international agreements, treaties, conventions etc,
  - UN agencies, diplomats, international organizations, privileges of constitutional authorities,
  - Schemes under Foreign Trade Policy,
  - Central government schemes having a validity of more than 2 years,
  - Re-imports, temporary imports, goods imported as gifts or personal baggage,
  - All other duties of customs except basic custom Duty.

- **Insertion of sub section (8A) to section 127C related to procedure on receipt of an application for settlement of cases:**

  Existing position: Importer/ exporter has option to settle the adjudication with Custom authorities, during the pendency of any proceedings, through the route of Settlement Commission. Presently there is no time limit to pass the order.

  Proposed: Now it is proposed that the Settlement Commission order shall be passed within 9 months from the last day of the month in which application is filed. If order is not passed within such time limit, then it is proposed that adjudication shall continue as if no such application is made. For pending applications, 9 months' time limit will be considered from the date of enactment of the Finance Bill 2023.

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EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Wednesday, 7th, February, 2023	Program Committee	Analysis of Direct Tax Proposal Analysis and Impact of Budget Proposals on Capital Market and Other Sectors	CA Nitin Maru Mr. Anand Shah	450+ participants

Alternative Investment Funds &
Portfolio Management Services

Next Generation
Trading &
Investing
Experience
MAKE

Professional Excellence
C.V.O.
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EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
11th Sat., 17th Fri., 18th Sat., 24th Fri., 25th Sat. Feb 2023	Capital Market Committee	Technical Analysis Workshop	Kunal Rambhia CMT, CFTe, CFA, CIRA, CAIM, MBAFund Manager @ The Streets, Guest Speaker @ TickerTape, Analyst @ CNBC & ET Now	12+ participants
24th February 2023	Study Circle Committee	Lecture Meeting on Recent Case Laws in Direct Taxes	Adv Paras S Savla	52+ participants
24th February 2023	Member & Recreation Committee	Campus Interview Drive at VES COLLEGE OF ARTS, SCIENCE & COMMERCE, Chembur		30+ students

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TECHNICAL ANALYSIS MENTORSHIP PROGRAM

Events In Retrospect

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
23rd February 2023 to 24th February 2023	Students Committee	Panel Discussion- Corporate and Big4 Work Culture	CA Amit Haria [CFO Shemaroo Entertainment] & CA Ritesh Dedhia [Associate Partner-PwC LLP]	110+ participants
		Corporate Etiquettes- Present yourself with confidence	Mr. Adrian Rosario [Corporate Personality Trainer]	
		Burning Issues in GST Assessments	CA Nihar Dharod [Partner, Shah and Savla LLP]	
		Audit reports- Common Errors and Precautions to be taken	CA Parin Gala [Audit Partner, Ankit Parin & Associates]	
		Group Discussion on Assorted Case Studies under Income Tax Act.		
		Presentation on Assorted Case Studies under Income Tax Act	CA Raj Chheda [Senior Consultant at Cyril Amarchand Mangaldas]	

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Events In Retrospect

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Sunday, 29th, January, 2023	50 Year Celebrations Committee	Home Buyers - Rights under RERA and Income Tax Provisions	CA Ashwin Shah and CA Nilesh Dedhia	150+ participants