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ANALYSIS OF DIRECT TAX PROPOSALS

Finance (No. 2) Bill, 2024

PREFACE

This e-booklet highlights the key direct tax proposals put forth by the Honourable Finance Minister in her Union Budget 2024-25 on July 23, 2024. The e-booklet is compiled for private circulation amongst clients and professional colleagues only. It is not meant for general circulation and is under no circumstances an offer, invitation or solicitation of any kind. This e-booklet is intended to be a succinct overview of the proposals put forth and is neither to be construed as comprehensive nor as to render taxation, legal, economic or financial advice. This e-booklet should not be relied upon for taking any actions/ decisions on the contents of the e-booklet and proper professional/ legal advice should be sought.

Further, this e-booklet contains only the proposals and amendments as given in the Finance (No. 2) Bill, 2024, which may be modified before it receives the approval and assent of the Parliament and the President.

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Commonly used Abbreviations

AJP	Artificial Juridical Person
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
Benami Act	Prohibition of Benami Property Transactions Act, 1988
BMA	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
BOI	Body of Individuals
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
COA	Cost of Acquisition
DDT	Dividend Distribution Tax
DRP	Dispute Resolution Panel
EM	Explanatory Memorandum
ETF	Exchange Trade Fund
FA	Finance Act
FB	Finance (No. 2) Bill, 2024
FMV	Fair Market Value
FOF	Fund of Funds
FY	Financial Year
HUF	Hindu Undivided Family
IFOS	Income from Other Sources
IFSC	International Financial Service Centre
IFSCA	International Financial Service Centre Authority
InvIT	Investment Infrastructure Trust
ITA	Income Tax Act
ITAT	Income Tax Appellate Tribunal
JCIT(A)	Joint Commissioner of Income Tax (Appeals)
LDC	Lower Deduction Certificate

LLP	Limited Liability Partnership
LTCG	Long Term Capital Gains
NBFC	Non-banking Financial Companies
NR	Non Resident
PGBP	Profit and Gains from Business or Profession
PY	Previous Year
RBI	Reserve Bank of India
REIT	Real Estate Investment Trust
ROI	Return of Income
RSE	Recognized Stock Exchange
Rules	Income Tax Rules
S.	Section
SDT	Specified Domestic Transaction
SEBI	Securities and Exchange Board of India
SLP	Special Leave Petition
STCG	Short-term Capital Gains
TCS	Tax Collected at Source
TDS	Tax Deduction at Source
TP	Transfer Pricing
TPO	Transfer Pricing Officer
u/s.	under section

Rates of Income Tax

Individual, HUF, AOP, BOI and AJP

Basic Rates

There has been no change in the rates of income-tax applicable for Individual, HUF, AOP and AJP for AY 2025-26 (except for the assesses' opting for concessional tax rates u/s. 115BAC).

(I) The rates of income-tax for AY 2025-26 under the new regime, i.e. S. 115BAC is as follows:

The existing rates of income-tax for Individual, HUF, AOP and AJP as per S. 115BAC for AY 2025-26 is as follows:

Slab	Applicable rate of tax
Upto Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 6,00,000	5%
Rs. 6,00,001 to Rs. 9,00,000	10%
Rs. 9,00,001 to Rs. 12,00,000	15%
Rs. 12,00,001 to Rs. 15,00,000	20%
Above Rs. 15,00,000	30%

Proposed Amendment

The proposed revised rates of income-tax for Individual, HUF, AOP and AJP as per S. 115BAC for AY 2025-26 would be as follows:

Slab	Applicable rate of tax
Upto Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 7,00,000	5%
Rs. 7,00,001 to Rs. 10,00,000	10%
Rs. 10,00,001 to Rs. 12,00,000	15%
Rs. 12,00,001 to Rs. 15,00,000	20%
Above Rs. 15,00,000	30%

Rebate u/s. 87A

A resident Individual whose Total Income does not exceed Rs. 7,00,000 would be eligible to claim a rebate of an amount which is lower of Rs. 25,000 or 100% amount of income-tax.

If the total income exceeds Rs. 7,00,000 and the income-tax payable on such total income exceeds the amount by which the total income exceeds Rs. 7,00,000, the assessee shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on their total income, of an amount equal to the excess of the income-tax payable on such total income over the amount by which the total income exceeds Rs. 7,00,000.

Default Regime

New concessional tax regime shall be the default regime and the assessee who does not wish to be assessed u/s. 115BAC would have to opt out of the said regime.

Surcharge

For Individual, HUF, AOP, AJP:

Total Income	Income other than Dividend & Capital Gains covered u/s. 111A, S. 112 and 112A	Dividend & Capita Gains covered u/s. 111A, S. 112 and 112A
Upto Rs. 50 lakhs	Nil	Nil
Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10%	10%
Income exceeds Rs. 1 crore but does not exceed Rs. 2 crores	15%	15%
Income exceeds Rs. 2 crores but does not exceed Rs. 5 crores	25%	15%
Income exceeds Rs. 5 crores	25%	15%

For AOP consisting of only companies as its member:

Total Income	Applicable rate of surcharge
Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10%
Income exceeds Rs. 1 crore	15%

(II) The rates of income-tax for AY 2025-26 opting out of new regime, i.e. S. 115BAC is as follows:

(a) For every individual (other than those mentioned in b and c below), HUF, AOP, BOI, AJP:

Slab	Applicable rate of tax
Upto Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

(b) For resident individual, who is of the age of sixty years or more but less than eighty years at any time during the PY:

Slab	Applicable rate of tax
Upto Rs. 3,00,000	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

(c) For resident individual, who is of the age of eighty years or more at any time during the PY:

Slab	Applicable rate of tax
Upto Rs. 5,00,000	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

There has been no change in the amount of rebate u/s. 87A available to a resident Individual for AY 2025-26. An Individual whose Total Income does not exceed Rs. 5,00,000 would be eligible to claim a rebate of an amount which is lower of Rs. 12,500 or 100% amount of income-tax.

Surcharge

For Individual, HUF, AOP, BOI, AJP:

Total Income	Income other than Dividend & Capital Gains covered u/s. 111A, S. 112 and 112A	Dividend & Capita Gains covered u/s. 111A, S. 112 and 112A
Upto Rs. 50 lakhs	Nil	Nil
Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10%	10%
Income exceeds Rs. 1 crore but does not exceed Rs. 2 crores	15%	15%
Income exceeds Rs. 2 crores but does not exceed Rs. 5 crores	25%	15%
Income exceeds Rs. 5 crores	37%	15%

For AOP consisting of only companies as its member:

Total Income	Applicable rate of surcharge
Income exceeds Rs. 50 lakhs but does not exceed Rs. 1 crore	10%
Income exceeds Rs. 1 crore	15%

Our Comments

The Government has proposed amendments in rates in the new concessional tax regime to make it more attractive for the taxpayers to opt for the same by revising tax slabs.

The following chart shows the amount of savings due to revised rates in tax after considering proposed additional deduction of Rs. 25,000/- u/s. 16(ia) of ITA (Refer Chapter “Salary and Pension”):

Income (Rs.)	Tax rate	Tax on the highest income level under the slab (Rs) with cess (after additional) standard deduction	Tax with cess as per existing rates	Tax Savings
3,00,000	Nil	-	-	-
7,00,000	5%	-	-	-
10,00,000	10%	49,400	62,400	13,000
12,00,000	15%	79,300	93,600	14,300
15,00,000	20%	1,40,400	1,56,000	15,600
50,00,000	30%	12,29,800	12,48,000	18,200
1,00,00,000	30%	30,68,780	30,88,800	20,020
2,00,00,000	30%	67,96,270	68,17,200	20,930
5,00,00,000	30%	1,90,87,250	1,91,10,000	22,750
5,00,00,001 and above	30%	1,90,87,250 plus 39% of income above Rs. 5 crores	1,91,10,000 plus 39% of income above Rs. 5 crores	22,750

Companies

Domestic Companies

Basic Rate

There has been no change in tax rates in case of domestic companies. The rates of income-tax in case of domestic companies for AY 2025-26 are as follows:

Slab	Applicable rate of tax
(i) Where its total turnover or the gross receipt in the previous year 2022-23 does not exceed Rs. 400 crs;	25%
(ii) Companies covered by the provisions of S. 115BA (subject to conditions provided therein)	25%
(iii) Companies covered by the provisions of S. 115BAA (subject to conditions provided therein)	22%
(iv) Companies covered by the provisions of S. 115BAB (subject to conditions provided)	15%
(v) Other than those referred above	30%

Surcharge

There has been no change in surcharge rates in case of domestic companies. The rates of surcharge in case of domestic companies except such companies for AY 2025-26 whose income is chargeable to tax u/s. 115BAA or 115BAB of the ITA are as follows:

Total Income	Applicable rate of surcharge
Income exceeds Rs. 1 crore but does not exceed Rs. 10 crores	7%
Income exceeds Rs. 10 crores	12%

Where domestic company opt for concessional tax rate u/s. 115BAA or 115BAB of the ITA, then rate of surcharge for AY 2025-26 will be 10%.

Health and Education Cess

Health and Education cess remains same at the rate of 4% of the total of Income Tax and Surcharge.

Foreign Companies

Basic Rate

The rates of income-tax in case of foreign companies for AY 2025-26 has been proposed to reduce to 35% from 40%.

Surcharge

There has been no change in surcharge rates in case of foreign companies. The rates of surcharge in case of foreign companies for AY 2025-26 are as follows:

Total Income	Applicable rate of surcharge
Income exceeds Rs. 1 crore but does not exceed Rs. 10 crores	2%
Income exceeds Rs. 10 crores	5%

Health and Education Cess

Health and Education cess remains same at the rate of 4% of the total of Income Tax and Surcharge.

Firm and Local Authority

Basic Rate

There has been no change in tax rate of Firm and Local Authority. The rates of income-tax in case of firm and local Authority for AY 2025-26 shall be of 30%.

Surcharge

There has been no change in surcharge rate of Firm and Local Authority. The rates of surcharge in case of firm and local Authority for AY 2025-26 shall be of 12% on Income tax if total Income exceeds one crore rupees.

Health and Education Cess

Health and Education cess remains same at the rate of 4% of the total of Income Tax and Surcharge.

Co-operative society

Basic Rate

There has been no change in tax rate of Co-operative Society.

The rates of income-tax in case of co-operative society (not covered by S. 115BAD and S. 115BAE) for AY 2025-26 are as follows:

Slab	Applicable rate of surcharge
Upto Rs. 10,000	10%
Rs. 10,001 to Rs. 20,000	20%
Above Rs. 20,001	30%

The rates of income-tax in case of co-operative society covered by S. 115BAD and S. 115BAE for AY 2025-26 are as follows:

Slab	Applicable Rate of Tax
Co-op Societies covered by the provision of S. 115BAD (subject to the conditions provided therein)	22%
Co-op Societies covered by the provision of S. 115BAE (subject to the conditions provided therein)	15%

Surcharge

There has been no change in surcharge rates in case of co-operative society. The rates of surcharge in case of co-operative society AY 2025-26 whose income is not

covered u/s. 115BAD or 115BAE of the ITA are as follows:

Total Income	Applicable rate of surcharge
Income exceeds Rs. 1 crore but does not exceed Rs. 10 crores	7%
Income exceeds Rs. 10 crores	12%

Where co-operative society is covered by concessional tax rate u/s. 115BAD and 115BAE of the ITA, then rate of surcharge for AY 2025-26 will be 10%.

Health and Education cess

Health and Education cess remains same at the rate of 4% of the total of Income Tax and Surcharge.

Corporate Restructuring

Sunset of Angel Tax [S. 56(2)(viib)]

Background

S. 56(2)(viib) was inserted vide FA 2012 to bring to tax share premium (widely known as 'Angel Tax') on issue of shares to the extent not supported by FMV. "Fair market value" for the purposes of said section is required to be determined under Rule 11UA(2) of the Rules[1] (or as substantiated to the AO based on value of its assets, including intangible assets). At the time when this section was introduced, its provisions were applicable only to residents. Vide FA 2023, the provisions of this section were extended to issue of shares to non-residents as well. Further, vide notification dated September 25, 2023, Rule 11UA(2) was amended to bring under its ambit various methods of fair valuation when shares were issued to non-resident. These recent amendments were brought in order to streamline the dichotomy between the provisions of Foreign Exchange Management Act, 1999 and erstwhile Rule 11UA(2). Certain start-ups registered under Department for Promotion of Industry and Internal Trade (DPIIT) and venture capital undertakings were outside the preview of S. 56(2)(viib).

Proposed Amendment

It is now proposed to altogether remove angel tax from ITA and provide a sun-set clause for the provisions of S. 56(2)(viib) with effect from FY 2024-2025. As a result, any issue of shares at a premium that would take place after April 1, 2024 would not suffer rigours of justifying the premium u/s. 56(2)(viib).

Rationale of the Proposed Amendment

The EM suggests that in a move to bolster the Indian start-up ecosystem, boost the entrepreneurial spirit and to support innovation in the country, abolishment of Angel tax for all class of investors is proposed.

Our Comments

This is a welcome provision. The rationale for inserting S. 56(2)(viib) by the FA 2012 was to increase the onus of proof on closely held companies for funds received from shareholders as well as taxing share premium in excess of FMV. By abolishment of the said section, companies in which public are not substantially interested will be able to issue shares at a premium above the face value. It may be pertinent to add here, that the ouns u/s. 68 of the ITA will still have to be discharged.

In lieu of the proposed amendment, conflicts/hardships faced by the assessees due to conflicting requirements under various statues specifying different pricing methodology, would now be put to rest.

[1] A report from Merchant Banker was required in most cases.

Further, since the proposed amendment would apply prospectively, past litigation would continue before appellate forums, or one needs to evaluate basis facts to settle under Vivad se Vishwas Scheme.

Corporate Gifting [S. 47(iii)]

Background

S. 47 provides that certain transactions will not be regarded as transfer for the purposes of S. 45. S. 47(iii) specifies that any transfer of a capital asset under gift, will or an irrevocable trust would not be regarded as transfer. Presently, the provision applies to all assessees.

Proposed Amendment

The FB proposes to amend S. 47(iii) to exempt any transfer of a capital asset by an individual or HUF under a gift or will. Thus, the amended exemption provision is now intended to be available only to individuals and HUFs.

Rationale of the Proposed Amendment

EM states that in multiple cases taxpayers have argued before judicial flora that transaction of gift of shares by company is still not liable to capital gains tax in view of provisions of S. 47(iii) of the ITA. Gift, as explained in the EM would be given out of natural love and affection and therefore, provisions of S. 47(iii) would now be restricted to gifts given by individuals and HUFs.

Our Comments

In the past, in the context of gifting of shares by corporates, various courts have upheld the legitimacy of corporate gifting and allowed the benefit u/s. 47(iii). See for instance:

- PCIT vs. Redington (India) Ltd. [2020] 122 taxmann.com 136 (Mad HC)
- DP World (P) Ltd. vs. DCIT [2013] 140 ITD 694 (Mum. Trib.);
- DCIT vs. KDA Enterprises Pvt. Ltd. [2015] 68 SOT 349 (Mum. Trib.);
- Deere & Co. Deere & Co. [2011] 337 ITR 277 (AAR).

The proposed amendment seeks to overrules the ratio insofar as it relates to corporate gifting being exempt u/s. 47(iii) by restricting the exemption only to individuals and HUFs.

A question still remains as to whether on first principles can capital gains be computed on transfer by way of gift, in the absence of any consideration.

Also, can the deeming provisions such as S. 50C, S. 50CA and S. 50D be extended to gifts in the absence of consideration accrued or received by an assessee on transfer.

Besides, gift is already chargeable to tax in the hands of the donee u/s. 56(2)(x). Hence, if the same is taxed even in the hands of the donor, it would lead to same transaction being taxed twice, which should not be condoned.

The implications of the proposed amendment will also have to be examined in case of gift by trusts.

Buy-back of Shares [S. 115QA]

Background

Presently, if a domestic company buys back its shares from its shareholders, then the company is liable to pay additional income-tax at the rate of twenty per cent increased by cess and surcharge on the distributed income u/s. 115QA of the ITA. Distributed income is computed as consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares [Rule 40BB of the Rules lay down the computation of distributed income in various scenarios].

Tax on buy-back u/s. 115QA when introduced, only covered buyback u/s. 68 of the Companies Act, 2013. Through an amendment vide FA 2016, S. 115QA was extended to cover all buy-backs under the provisions of the Companies Act. Further, vide FA (No. 2), 2019, the said provisions were made applicable even to buy-back by listed companies.

Correspondingly, in the hands of the shareholder, S. 10(34A) exempted any receipt under buy-back which was taxed u/s.115QA.

Proposed Amendments

In order to align the tax treatment for dividend and buy-back, the following amendments are proposed:

- A sunset provision for S. 115QA has been introduced for payment made pursuant to buy-backs after October 1, 2024. Consequential amendment is made u/s. 10(34A) deleting the exemption in the hands of the shareholders.
- Buy-back u/s. 68 of the Companies Act, 2013 is proposed to be covered as dividend u/s. 2(22) [insertion of sub-clause (f) to S. 2(22)]. Thereby, buy-back would be taxed in the hands of shareholder as IFOS u/s. 56. The hitherto exclusion under clause (iv) of S. 2(22) from treating buyback u/s. 68 as dividend is proposed to be deleted.
- No deduction u/s. 57 would be available on such income. Hence, the entire consideration received on buy-back by the shareholders is proposed to be taxed at full rate in their hands.
- The COA paid by the shareholder on the said shares, is however, being allowed to be carried forward or set-off as capital loss. For the said purpose, S. 46A is proposed to be amended from October 1, 2024, such that the consideration received by the shareholder on buy back of the shares referred to in S. 2(22)(f) would be deemed to be nil. This would result in a capital loss in the hands of the shareholder. [S. 46A deals with computation of capital gain as difference between the COA and the value of consideration received by the shareholder].
- TDS u/s. 194 at 10% would also be deductible on proceeds of buy-back in case of resident shareholders. In case of non-residents, TDS would be

u/s. 195 or other applicable provisions.

Rationale of the Proposed Amendments

As per the EM, both dividend and buy-back are methods for the company to distribute accumulated reserves and accordingly, they are being treated at par in terms of taxability and hence, the proposed amendment.

Our Comments

- It would be interesting to look at the evolution of buy-back tax in India.

- Tax on buy-back was first introduced vide FA 1999 w.e.f. April 1, 2000 where the gain on buy-back was taxed as capital gains in the hands of the shareholders and S. 2(22) specifically excluded buy-back from its ambit. Hence, for almost 15 years, the gain was subject to lower rate of tax.

- S. 115QA was introduced by FA 2013 as it was noted by the Finance Ministry that companies were using buy-back as a mechanism read with treaty benefits to effectively pay out dividends without levy of DDT (applicable u/s. 115-O at that time).

- At the time of introduction, S. 115QA was applicable only to unlisted companies. Later, vide FA 2019, the same was extended to listed companies on the same premise that it was used as a mechanism to pay lower taxes. At this stage, tax on dividend (DDT) was payable by the company declaring dividend. The premise was to treat it at par with dividend income. However, even at this stage, deduction was allowed for the issue price and only gain was subjected to tax at the rate of 20%.

- However, DDT was abolished vide FA 2020. With that, dividend became taxable in the hands of the recipients at applicable slab rates whereas buyback continued to be taxed at 20% in the hands of the company.

- In order to restore the equilibrium between taxation of dividend and buyback, amendments are now proposed vide FB. On the amendment being effective, proceeds from buy back of shares in accordance with S. 68 of the Companies Act, 2013 shall be deemed as dividend and taxed as IFOS u/s. 56 in the hands of the receiver shareholders at full rate.

- However, it may be highlighted here that buyback u/s. 68 of the Companies Act, 2013 could be out of free reserves (accumulated profits), proceeds of issue of shares or any other specified securities, or securities premium. In contrast to this, dividend can be declared only out of accumulated profits. By virtue of insertion of sub-clause (f) to S. 2(22), no distinction is made between buyback u/s. 68 of Companies Act, 2013 carried out using accumulated profits vis. a vis. securities premium or proceeds of fresh issue of shares. Incidentally, while the EM refers to both dividend and buy-back as methods for the company to distribute accumulated reserves, the proposed language does not use the word accumulated profits.

- S. 46A which is a specific provision to tax buyback of shares, is amended to provide that for buyback taxed u/s. 2(22)(f), the consideration will be deemed to be nil. Hence, the COA of the shares which have been bought back would generate capital loss in the hands of the shareholders of such bought back shares. The said capital loss would be available for set-off against capital gains. However, the set-off if claimed may be against LTCG which is taxable at a lower rate of 12.5% whereas the entire receipt on buy-back would now be taxed at full rate applicable to the assessee. Hence, the proposed amendment would certainly increase the tax incidence on buy-back considerably.

- It may further be highlighted that the proposed amendment would apply to buy-back by both listed and unlisted companies. However, this amendment would cover only buy-backs in accordance with S. 68 of the Companies Act, 2013. Any other form of buyback under alternate provisions of the Companies Act, 2013 may still be outside the purview of proposed amendment.

- Implications of the proposed amendments where shares are held as stock-in-trade will have to be evaluated.

- Further, where shareholder is a non-resident, the characterisation of buy-back in the relevant Double Tax Avoidance Agreement and the implications thereof, will have to be examined.

- Applicability of S. 80M in the hands of corporate shareholders receiving consideration on buyback will have to examined.

Salary and Pension

Standard Deduction [S. 16(ia)] & Deduction of Family Pension [S. 57(iia)]

Background

Presently, clause (ia) of S. 16 of the ITA allows deduction of fifty thousand rupees or the amount of the salary, whichever is less, while computing the income under the head "Salaries".

Also, clause (iia) of S. 57 of the ITA provides that in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or fifteen thousand rupees, whichever is less, shall be allowed before computing the income chargeable under the head IFOS.

Proposed Amendments

The FB proposes amend the foregoing provisions to enhance the limit of deduction from existing limits to seventy-five thousand rupees and twenty-five thousand rupees in case of salary and pension income, respectively for taxpayers opting for taxation under new regime as per S. 115BAC(1A) of the ITA.

These amendments to be applicable from AY 2025-26 and onwards.

Our Comments

These are welcome changes and aimed towards encouraging and incentivising taxpayers (especially salaried taxpayers) to shift to new tax regime.

Deduction in respect of Employer's Contribution to NPS [S. 80CCD]

Background

Presently, S. 80CCD(2) of the ITA provides for deduction of ten percent of salary in respect of contribution of pension scheme notified as per S. 80CCD(1) of the ITA by employees of non-government employers.

Proposed Amendment

The FB proposes to insert proviso for those taxpayers opting for taxation under new regime as per S. 115BAC(1A) of the ITA u/s. 80CCD(2) for enhancing existing limit to fourteen percent of salary at par with deduction allowed for employees of Central Government or State Government.

These amendments to be applicable from AY 2025-26 and onwards.

Our Comments

This is welcome change and aimed towards encouraging and incentivising salaried taxpayers to shift to the new tax regime.

Business Income

Income from letting out of a residential house property [S. 28]

Background

S. 22 of the ITA provides for taxability of income under the head Income from House Property arising from letting of a house property or part thereof. It also provides an exception in respect of income arising from house property which is occupied for the purpose of business of the taxpayer.

However, based on recent judicial pronouncements including that of Apex Court on certain facts, the assesses were claiming that income from leasing as assessable under the head PGPB.

Proposed Amendment

It is proposed to clarify that the income arising from letting out of a residential house property or part thereof shall be taxable as house property and not PGBP.

The proposed amendment applies from the April 1, 2025 and accordingly from AY 2025-26 onwards.

Rationale of the Proposed Amendment

As per EM, the proposed amendment intends to undo the practice of taxpayers reporting their rental income generated from letting out of house property under PGBP instead of house property income.

Our Comments

The proposed amendment seeks to apply only to residential houses or part thereof and not commercial properties.

Question arises as to whether the proposed amendment applies only in respect of “bare shell letting” of a residential house property and not to a taxpayer engaged in a systematic, commercial activity of letting of house property along with amenities. Whether having a composite agreement or separate agreements would make any difference.

Also, the scope of the term ‘owner’ in the context of the amendment needs to be interpreted.

Deduction for Employer's Contribution to NPS [S. 36(1)(iva)]

Background

Presently, S. 36(1)(iva) of ITA provides for deduction to employer for contribution to pension scheme notified as per S. 80CCD(1) of ITA to the extent of ten percent of salary of employee.

Proposed Amendment

The FB proposes to increase the limit to fourteen percent of salary of employee as a consequential amendment to allow deduction u/s. 80CCD(1) to employees opting for new tax regime.

These amendments to be applicable from AY 2025-26 and onwards.

Our Comments

This deduction will be available to employers regardless of whether their employees choose the old or new tax regime.

Disallowance of amounts paid to settle contraventions [S. 37(1)]

Background

S. 37(1) of the ITA deals with allowability of expenditure laid out or expended wholly and exclusively for the purpose of business or profession, which are not in the nature of capital / personal expenditure and not explicitly covered by the provisions of S. 30 to 36 of the ITA.

Explanation 1 to S. 37(1) of the ITA provides that any expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and thus, no deduction or allowance shall be made in respect of such expenditure.

Further, the existing *Explanation* 3 to said section clarifies that the expression "expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law" includes any expenditure incurred:

- for any purpose which is an offence or is prohibited by, any law enacted in or outside India; or
- to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline under the law governing the conduct of such person; or
- to compound an offence under any law for the time being in force in or outside India.

Proposed Amendment

It is proposed to insert clause (iv) to *Explanation* 3 to provide that any expenditure incurred by an assessee to settle proceedings initiated in relation to a contravention under any law for the time

being in force, as may be notified by the Central Government in the Official Gazette in this behalf shall be included in the expression referred to in *Explanation* 1.

The proposed amendment will take effect from April 01, 2025 and will accordingly apply in relation to AY 2025-2026 and subsequent AYs.

Rationale of the Proposed Amendment

As per the EM, settlement amounts are incurred due to infraction of law and relate to contraventions, etc. Therefore, the same should not be allowed as business expenditure.

Thus, to prohibit deduction of such settlement amounts paid, clause (iv) is proposed to be inserted to *Explanation* 3 to S. 37(1) of the ITA, thereby enlarging the scope of the expression referred to in *Explanation* 1.

Our Comments

While expenditure incurred for compounding of an offence under any law in force in or outside India is already included, an expenditure incurred to settle proceedings in relation to alleged contravention of any law (where parties would not have admitted violations) was earlier not covered within the ambit of *Explanation* 3.

Prior to the insertion of *Explanation* 3, several courts have held that amounts paid to settle proceedings, or any consent fees paid without admitting guilt were allowable business expenditure and could not be hit by *Explanation* 1 to S. 37(1) of the ITA.

In case of **Delhi High Court in CIT vs. Desiccant Rotors International (P.) Ltd. [2012] 347 ITR 32 (Del HC)**, wherein the assessee had made certain payment for settlement of dispute in relation to infringement of patents to the concerned party in USA, the court held that the payments under settlement were compensatory in nature and there was no element of penalty under the US Patent Code or Indian Patents Act and thus, were allowable business expenditure u/s. 37(1) of the ITA. Further, the **Mumbai Tribunal** in certain cases[2] dealing with consent / settlement charges paid to SEBI, has held that such charges were paid without admitting the guilt and to avoid long-winded litigation in terms of time, cost, hassle and reputation and were therefore not covered by the ambit of Explanation 1 to S. 37(1) of the ITA. Similar view taken by **Bombay High Court** in case of **TCS vs. DCIT [2023] 294 Taxman 190 (Bom HC)**.

Thus, the proposed amendment seeks to overrule such decisions. However, one will have to wait and watch, which laws are notified by Central Government under the proposed amendment.

The expansion of *Explanation* 3 r.w. *Explanation* 1 will further increase burden of the assessee and the tax auditor to identify and disallow certain expenditure falling within its ambit, require understanding of complex Indian and overseas laws and obtaining legal opinion on the breach or violation thereof.

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[2] ITO vs. Reliance Share & Stock Brokers (P.) Ltd. [2015] 67 SOT 73 (Mum. Trib.) and DCIT vs. Anil Dhirajlal Ambani [2018] 66 ITR(T) 606 (Mum. Trib.)

Increase in limit of deductible partner's remuneration [S. 40(b)]

Background

S. 40 of the ITA deals with amounts that shall not be deducted while computing the income chargeable under the head PGBP. Sub-clause (v) of S. 40(b) provides for disallowance of remuneration paid to any working partner, which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed, in so far as the amount of such remuneration paid to all the partners exceeds the amounts prescribed therein.

Proposed Amendment

It is proposed to amend the aforesaid limits for payment of remuneration to working partners, as specified u/s. 40(b) of the ITA. The limits specified and pre and post amendment scenarios are as under:

Pre-amendment		Post-amendment	
a) on the first Rs. 3,00,000 of the book-profit or in case of a loss	Rs. 1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more	a) on the first **Rs. 6,00,000** of the book-profit or in case of a loss	**Rs. 3,00,000** or at the rate of 90 per cent of the book-profit, whichever is more
b) on the balance of the book-profit	at the rate of 60 per cent	b) on the balance of the book-profit	at the rate of 60 per cent

Besides above, it is also proposed to introduce a new S. 194T, to bring certain payments made to partners under the ambit of withholding provisions. The same has been dealt with separately in detail in the TDS Chapter.

The proposed amendment will take effect from April 01, 2025 and will accordingly apply in relation to AY 2025-2026 and subsequent AYs.

Rationale of the Proposed Amendment

As per the EM, the old limits were put in place on the statute with effect from AY 2010-11. Thus, it has now been proposed to amend the aforesaid limits.

Our Comments

The proposed amendment would enhance the limits specified for allowing the deduction for remuneration paid by partnership firm to its working partners, while computing income of the firm.

Removal of reference to public companies governed by National Housing Bank Act, 1987 [S. 43D]

Background

S. 43D of the ITA is a special provision dealing with recognition of interest income in relation to specified categories of bad and doubtful debts.

Clause (a) of S. 43D deals with income of public financial institutions, scheduled banks, co-operative banks other than primary agricultural credit societies, primary co-operative agricultural and rural development banks, State financial corporations, State industrial investment corporations, specified NBFCs, having regard to guidelines issued by RBI.

Clause (b) of said section deals with income of public companies registered in accordance with the Housing Finance Companies (NHB) Directions, 1989 given u/s. 30 and 31 of the National Housing Bank Act, 1987, having regard to the guidelines issued by the National Housing Bank ("NHB").

Proposed Amendment

It is proposed to remove reference to NHB by omitting clause (b) of S. 43D of the ITA along-with clauses (a) and (b) of *Explanation* to the said section, dealing with the definitions of 'NHB' and 'Public Company'. Consequential amendment is proposed to be made to the marginal heading of said S. 43D of the ITA.

The proposed amendment will take effect from April 01, 2025 and will accordingly apply in relation to AY 2025-2026 and subsequent AYs.

Rationale of the Proposed Amendment

As per the EM, the Finance (No. 2) Act, 2019 (23 of 2019) has amended the NHB Act, 1987, thereby conferring powers for regulation of Housing Finance Companies ("HFCs") with the RBI. As a consequence, HFCs are now covered under the purview of the RBI as a category of NBFC.

Since separate provisions already exist in S. 43D of the ITA for recognition of interest income in relation to specified categories of bad and doubtful debts for specified NBFCs, the proposed amendment omits the references to such public companies governed by NHB Act, 1987.

Our Comments

The Central Government has, pursuant to the Finance (No. 2) Act, 2019, transferred the regulatory powers of HFCs from the NHB to the RBI w.e.f. August 09, 2019. Consequently, the RBI vide press release dated August 13, 2019, has clarified that HFCs will henceforth be treated as one of the categories of NBFCs for regulatory purposes.

The aforesaid changes are proposed to be made to S. 43D of the ITA to align the provisions ITA with the said amendments in NHB Act, 1987 introduced in 2019.

Promotion of domestic cruise ship operations by non-residents [S. 44BBC and S. 10(15B)]

Background

The existing S. 44B of the ITA deals with presumptive taxation for computing profits and gains of shipping business in the case of non-residents engaged in shipping business.

It has been observed that the non-resident cruise ship operators may be operating as multi-layer entities and there was a need to provide clarity, certainty and simple structure for the purpose of promoting the business of cruise-shipping in India.

Proposed Amendments

- It is proposed to introduce a new presumptive taxation for a non-resident, engaged in the business of operation of cruise ships. Accordingly, S. 44BBC is proposed to be inserted to the ITA which deems 20% of the aggregate amount received / receivable by, or paid / payable to, the non-resident cruise-ship operator, on account of the carriage of passengers, as profits and gains from such cruise-shipping business, subject to the conditions as may be prescribed.

- In consequence to the above, it is proposed to amend the provisions of S. 44B of the ITA to provide that the said provisions shall no longer apply to cruise-shipping business.

- It is also proposed to insert S. 10(15B) to the ITA to provide an exemption to a foreign company, in receipt of income by way of lease rentals of cruise ships from a non-resident cruise ship operator which operates such ships in India, provided both the foreign company and the non-resident cruise ship operator are subsidiaries of the same holding company. The said benefit is restricted for AYs beginning on or before April 01, 2030.

The proposed amendment will take effect from April 01, 2025 and will accordingly apply in relation to AY 2025-2026 and subsequent AYs.

Rationale of the Proposed Amendments

As per the EM, the amendments are proposed in order to promote the cruise shipping industry in India by attracting global tourists to cruise shipping in India, as well as popularising cruise shipping with Indian tourists. It has been envisaged that the participation of international cruise-ship operators in this sector may encourage development of this sector and enable access to international best practices.

Our Comments

As stated above, the amendments have been proposed to encourage the cruise-shipping industry in India. Recently, cruises have started between Indian cities / islands as well as between India and Sri-Lanka. Considering the vast coastline, cruise tourism is indeed on growth trajectory.

If any non-resident opts for presumptive tax regime under proposed S. 44BBC, he needs to evaluate whether his profits are otherwise more than 20%. Effectively, if it is foreign company, then under presumptive tax, it shall pay approx. 7% tax plus surcharge and cess.

Unlike S. 44B of the ITA which applied in case of non-resident assessee engaged in operation of ship, in proposed S. 44BBC, additional conditions as would be prescribed would have to be complied with.

While the proposed amendment seeks to indicate that presumptive tax for non-resident cruise shipping operators shall be beneficial, would the operation of cruise ship by non-resident be already covered u/s. 44B of the ITA?

Further, the proposed S. 44BBC nowhere suggests whether the presumptive regime would be applicable in case of carriage of passengers to / from India or only with Indian Ports / Indian Territorial Waters, unlike S. 10(15B) of the ITA.

Although the objective of proposed amendment is to encourage cruise shipping industry in India, the amendment provides for presumptive regime only for non-resident cruise ship operators and does not extend the same to resident cruise shipping companies. Also, no rationale can be inferred for extending the proposed exemption u/s. 10(15B) only to the foreign companies which are subsidiaries of same holding company, and not otherwise.

Restriction on deductibility of expenses claimed by life insurance business [Rule 2 of First Schedule]

Background

S. 44 of the ITA provides for computing of profits and gains of any insurance business in accordance with First Schedule of the ITA, **notwithstanding other specified provisions of the ITA relating to computation of income, including S. 28 to 43B of the ITA**.

Rule 2 of the First Schedule, which is applicable for Life insurance business, states that the profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938.

Proposed Amendment

It is proposed to insert a proviso to Rule 2 of First Schedule, to provide that any expenditure which is not admissible under the provisions of S. 37 of the ITA in computing the profits and gains of a business shall be added back to the profits and gains of such life insurance business.

The proposed amendment will take effect from April 01, 2025 and will accordingly apply in relation to AY 2025-2026 and subsequent AYs.

Rationale of the Proposed Amendment

As per the EM, there have been instances where certain non-business expenses have been claimed by life insurance companies, and there exists no provision in the ITA to add back such expenses to the income of such companies.

Thus, to prevent misuse of deduction for such expenses not admissible u/s. 37 of the ITA, the aforesaid proviso is proposed to be inserted to Rule 2 of the First Schedule.

Our Comments

The mechanism for computation of income of a life insurance company is governed by special code contained in S. 44 r.w. First Schedule of the ITA.

The **Supreme Court** in **Life Insurance Corpn. of India vs. CIT [1964] 51 ITR 773 (SC)** held that the AO had to accept the annual average of the surplus disclosed by the actuarial valuation made in accordance with the Life Insurance Act and the AO had no power to change the figures in accounts of the assessee, except the power to exclude any surplus or deficit included in the actuarial valuation. The said decision was also followed by **Bombay High Court** in case of **CIT vs. ICICI Prudential Insurance Co. Ltd. [2016] 73 taxmann.com 201 (Bom HC)**.

Further, the **Delhi High Court** in **Sahara India Life Insurance Co. Ltd. vs. ACIT [2023] 457 ITR 548 (Del HC)** has explicitly held the that rules contained in the First Schedule appended to the ITA will determine the manner in which the profits and gains of insurance business are to be ascertained and the provisions spanning between S. 28 to 43B of the ITA will not apply in case of an assessee carrying on insurance business.

The proposed amendment by way of insertion of a proviso to Rule 2 of First Schedule would now require life insurance companies to examine S. 37 r.w. *Explanations* thereto and recompute its taxable income to be offered to tax. Thus, like permitted adjustment while determining “book profits” u/s. 115JB of the ITA, now, while the starting point would be actuarial surplus, presently this additional adjustment would have to be factored in.

Capital Gains

Period of Holding [S. 2(42a)]

Background
S. 2(42A) determines Period of Holding relevant for the purpose of classifying an asset as short-term or long-term. Presently, there are three holding periods, namely,12 months, 24 months and 36 months.

Proposed Amendment
It is proposed that henceforth, there shall be only two holding periods, viz. 12 months and 24 months to classify a capital asset as short-term or long-term.

The table enumerates the proposed period of holding for capital assets to be categorised as short-term:

Name of Capital Asset	Proposed Period of Holding
Listed securities	<12 months
Other Assets	<24 months

The proposed amendment is to take effect from July 23, 2024, and hence, shall apply to any transfer of capital asset undertaken on or after July 23, 2024.

Rationale of the Proposed Amendment
The amendment proposes to rationalise and simplify taxation of capital gains by providing one simple rule for holding period based on whether the asset is listed or unlisted.

Our Comments
For foreign listed shares and securities, the relevant period of holding shall still be 24 months, as the benefit of 12 months is only for securities listed in recognised stock exchange of India. Further, in case of slump sale of undertaking taxable u/s. 50B, the same would still be considered to be short-term where the undertaking is owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer.

Rate of Taxes for Capital Gains [S. 111A, 112 and 112A]

Background
S. 111A, S. 112 and S. 112A provides for specific rate of income-tax on capital gains in respect of various category of assets.

Presently, the rates specified in the said sections are as under:

Section	Nature of Asset	Nature of Capital Gain	Rate of Tax
112A	Eligible Listed securities*	LTCG	10%
112	Any other long term Capital asset except those covered u/s. 50AA	LTCG	20%**
111A	Eligible Listed securities	STCG	15%

* i.e. equity shares, units of equity-oriented funds and business trusts, on which STT is paid at the time of transfer.
** In case of listed securities (other than units) and zero-coupon bonds, option of tax at 10% without indexation is available.

For cases not falling under these provisions, the capital gains are taxable as per the normal applicable rate as provided in the relevant FA.

Further, an exemption upto Rs. 1 lakh is available from LTCG covered u/s. 112A.

Proposed Amendments

- **Long-term Capital Gains:**
  - It is proposed to provide a universal tax rate of 12.5% without indexation in case of all long-term capital gains, irrespective of whether the asset is listed or unlisted, STT paid or not, Indian or foreign, held by resident or non-resident, except for certain assets which fall u/s. 50AA of the ITA.
  - Accordingly, amendments have bene proposed in various sections i.e. S. 112, 112A, 115AB, 115AC, 115ACA, 115AD, 115E, 196B and 196C to change the rate from 20% to 12.5% in case of long-term capital gains.
  - It is further proposed to remove the benefit of indexation available for calculation of long-term capital gains wherever hitherto available, such as on sale of property, gold and other unlisted assets as per provisos to S. 48. However, the same shall be available on sale of the said assets before July 23, 2024.
  - Lastly, the limit of exemption from LTCG covered u/s. 112A is proposed to be increased from Rs. 1 lakh to Rs. 1.25 lakhs (aggregate).
- **Short-term Capital Gains:**
  - In case of short-term capital gains arising from transfer of Eligible Listed Securities, it is proposed to amend S. 111A to increase the rate of tax from 15% to 20%.
  - Corresponding amendment is also proposed in S. 115AD of the ITA which provides rates of taxes for Foreign Institutional Investors.
  - The rate of tax on short-term capital gains for other assets, shall continue to be governed by the rates as applicable to the assessee as per the relevant FA.
- It is further proposed to deduct TDS at the new rates specified u/s. 112A and 111A, as the case may be, in case of non-residents for transfers taking place on or after July 23, 2024.However, earlier rates shall apply in respect of transfers before July 23, 2024.
- The table below enumerates the proposed rates of taxes in respect of various category of assets:

Name of Capital Asset	Section	Nature of Capital Gain	Proposed Rate of Tax
Eligible Listed securities	112A	LTCG	12.5%
Any other long term Capital asset except those covered u/s. 50AA	112	LTCG	12.5%
Eligible Listed securities	111A	STCG	20%

The proposed amendments will take effect from July 23, 2024 and will accordingly apply in relation to the transfer taking place on or after the said date.

Rationale of the Proposed Amendments

The amendment proposes to rationalise and simplify taxation of capital gains by providing standard rates of tax for long-term and short-term capital gains to the extent deemed feasible.

Our Comments

- The amendment in S. 112 is a welcome step benefitting the investors by way of reduction in tax rates. Also, it aims to bring parity between resident and non-resident investors by bringing to tax them at a flat rate of 12.5% on sale of all long-term capital assets instead of earlier rate of 20% with indexation or 10% without indexation, as the case may be.

- The amendment with respect to increase in exemption limit from Rs. 1 lakh to Rs. 1.25 lakh u/s. 112A is clearly made available even for transfer taking place before July 23, 2024. Accordingly, the amendment seems to provide extra benefit of Rs. 25,000/- even if there are no transfer on or after July 23, 2024.

- However, in a case where the long-term capital gains u/s. 112A arises both before July 23, 2024 and subsequently, question arises as to whether the assessee can claim the benefit of Rs. 1.25 lakhs entire for the capital gains earned subsequently, the same being chargeable to tax at a higher rate of 12.5%.

The table below compares the proposed changes in the capital gains tax on various category of Capital Assets:

Name of Capital Asset	Nature of Capital Gain	Relevant Section after the Budget	Period of Holding		Rate of Tax	
			Present	Proposed w.e.f transfers on or after July 23, 2024	Present	Proposed w.e.f transfers on or after July 23, 2024
Listed Equity Shares (STT Paid)*	LTCG	112A	> 12 months	> 12 months	10% (without indexation)	12.5% (without indexation)
	STCG	111A	≤ 12 months	≤ 12 months	15.00%	20.00%
Listed Equity Shares (STT not paid and not covered u/s. 112A)	LTCG	112	> 12 months	> 12 months	10% (without indexation)	12.5% (without indexation)
					20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FA (No. 2), 2024	≤ 12 months	≤ 12 months	applicable rate	applicable rate

Name of Capital Asset	Nature of Capital Gain	Relevant Section after the Budget	Period of Holding		Rate of Tax	
			Present	Proposed w.e.f transfers on or after July 23, 2024	Present	Proposed w.e.f transfers on or after July 23, 2024
Unlisted Equity shares	LTCG	112	> 24 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FA (No. 2), 2024	≤ 24 months	≤ 24 months	applicable rate	applicable rate
Units of Equity Oriented MFs (Listed)*	LTCG	112A	> 12 months	> 12 months	10% (without indexation)	12.5% (without indexation)
	STCG	111A	≤ 12 months	≤ 12 months	15.00%	20.00%
Units of Debt Oriented MFs/ Debt Fund of Funds**	STCG	50AA (Rates as per First Schedule of FA (No. 2), 2024)	always short-term	always short-term	applicable rate	applicable rate
Listed Bonds/ Debentures (other than Capital index bonds and Sovereign Gold Bonds)	LTCG	112 (without indexation)	> 12 months	> 12 months	20% (without indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FA (No. 2), 2024	≤ 12 months	≤ 12 months	applicable rate	applicable rate
Unlisted Bonds/ Debentures	LTCG	50AA (Rates as per First Schedule of FA (No. 2), 2024)	> 36 months	always short-term	20% (without indexation)	applicable rate
	STCG	50AA (Rates as per First Schedule of FB (No. 2), 2024)	≤ 36 months	always short-term	applicable rate	applicable rate
Market Linked Debentures	STCG	50AA (Rates as per First Schedule of FB (No. 2), 2024)	always short-term	always short-term	applicable rate	applicable rate
Listed Capital Indexed	LTCG	112	> 12 months	> 12 months	10% (without indexation)	12.5% (without indexation)

Name of Capital Asset	Nature of Capital Gain	Relevant Section after the Budget	Period of Holding		Rate of Tax	
			Present	Proposed w.e.f transfers on or after July 23, 2024	Present	Proposed w.e.f transfers on or after July 23, 2024
Bonds and Sovereign Gold Bonds					20% (with indexation)	
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 12 months	≤ 12 months	applicable rate	applicable rate
Unlisted Capital Indexed Bonds	LTCG	112	> 36 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 36 months	≤ 24 months	applicable rate	applicable rate
Zero Coupon Bonds	LTCG	112	> 12 months	> 12 months	10% (without indexation) 20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 12 months	≤ 12 months	applicable rate	applicable rate
Listed Units of Business Trust (InVITs and REITs)*	LTCG	112A	> 36 months	> 12 months	10% (without indexation)	12.5% (without indexation)
	STCG	111A	≤ 36 months	≤ 12 months	15.00%	20.00%
Listed Preference Shares	LTCG	112	> 12 months	> 12 months	10% (without indexation) 20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 12 months	≤ 12 months	applicable rate	applicable rate
Unlisted Preference Shares	LTCG	112	> 24 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 24 months	≤ 24 months	applicable rate	applicable rate

Name of Capital Asset	Nature of Capital Gain	Relevant Section after the Budget	Period of Holding		Rate of Tax	
			Present	Proposed w.e.f transfers on or after July 23, 2024	Present	Proposed w.e.f transfers on or after July 23, 2024
Immovable Properties	LTCG	112	> 24 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 24 months	≤ 24 months	applicable rate	applicable rate
Physical Gold	LTCG	112	> 36 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 36 months	≤ 24 months	applicable rate	applicable rate
Foreign Equity	LTCG	112	> 24 months	> 24 months	20% (with indexation)	12.5% (without indexation)
	STCG	Rates as per First Schedule of FB (No. 2), 2024	≤ 24 months	≤ 24 months	applicable rate	applicable rate

** The limit of exemption from LTCG covered u/s. 112A is proposed to be increased from Rs. 1 lakh to Rs. 1.25 lakhs (aggregate).*
*** For funds purchased before April 1, 2023, the gains will be LTCG or STCG depending upon its period of holding. Further, this covered even other non-equity funds such as Gold, ETF, Gold funds, etc. purchased on or after April 1, 2023 and transferred before April 1, 2025. From April 1, 2025, these other non-equity bonds/MFs will be taxed as per normal provisions of CG.*

Amendment in S. 50AA

Background

FA 2023 inserted a new provision, S. 50AA which provides for treating the capital gain arising from transfer, redemption or maturity of 'Market Linked Debentures' and unit of a 'Specified Mutual Fund' as STCG irrespective of the period of holding.

'Specified Mutual Fund' is presently defined to mean a 'Mutual Fund by

whatever name called, where not more than 35% of its total proceeds is invested in the equity shares of domestic companies'.

Further, currently, any gain arising from transfer of unlisted bonds and unlisted debentures is taxed at the rate of 20% without indexation (in case of LTCG) or at applicable rates (in case of STCG).

Proposed Amendment

The FB proposes to amend S. 50AA to redefine 'Specified Mutual Fund' and to include unlisted bonds and unlisted debentures under the said section.

Accordingly, 'Specified Mutual Fund' is now defined as:

(i) a Mutual Fund by whatever name called, where more than 65% of its total proceeds is invested in debt and money market instruments.
(ii) a fund which invests atleast 65% of its total proceeds in units of a fund referred above (FOFs).

It is to be noted that the proposed amendment will take effect from April 1, 2026 and will accordingly apply in relation to AY 2026-27 and subsequent AYs.

Further, it is now proposed to tax the capital gain arising from transfer, redemption or maturity of unlisted bonds and unlisted debentures as short-term capital gain irrespective of the holding period. The proposed amendment will take effect from July 23, 2024 and will accordingly apply in relation to the transfer taking place on or after the said date.

Rationale of the Proposed Amendment

The said amendments propose to expand the scope of S. 50AA by including even unlisted bonds and debentures. As per the EM, the said securities are in the nature of debt instruments and accordingly, any capital gain therefrom is proposed to be taxed at full rates. Further, the definition of 'Specified Mutual Funds' is being amended so as to restrict its application to pure debt-oriented funds and FOFs.

Our Comments

The earlier requirement of investment of not more than 35% in equity shares in case of 'Specified Mutual Funds' had adverse impact on other non-equity funds like ETFs, Gold Mutual Fund, Gold ETFs which are not actually debt-oriented funds but invest below 35% in equity shares. Therefore, the amendment brought in the definition of 'Specified Mutual fund' bring clarity as to the investment to be made by said funds and FOFs.

However, since the amendment in the definition of 'Specified Mutual Funds' is proposed to take effect only from AY 2026-27 i.e. w.e.f. April 1, 2025, capital gain arising from transfer, redemption or maturity of unit of funds like ETFs, Gold Mutual Fund, Gold ETFs acquired after April 1, 2023 and transferred till March 31, 2025 will still be covered by the existing provisions of S. 50AA, which is contrary to the stated intention. The said amendment should also become applicable immediately from July 23, 2024, like other amendments in the Capital Gains section, if not retrospectively from April 1, 2023.

Revision of STT Rates [S. 98 (Chapter VII) of FA (No. 2), 2004]

Background

S. 98 of the FA 2004 provides a list of various taxable securities along with STT levied on their sale and purchase transactions.

As per the said section, the rate of levy of STT on sale of an option in securities is 0.0625 % of the option premium and on sale of a future in securities is 0.0125 % of the price at which such futures are traded.

Proposed Amendments

The FB proposes to increase the said rates on sale of an option and a future in securities. The table below enumerates the same:

Type of Transaction	Present rate	Proposed rate
Sale of an option in securities	0.0625% of the option premium	0.1 % of the option premium
Sale of a future in securities	0.0125 % of the price at which such "futures" are traded.	0.02 % of the price at which such "futures" are traded

The above amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendments

The trading in derivatives (F&O) is now accounting for a large proportion of trading in stock exchanges. The said amendment has been made keeping in mind the exponential growth of derivative markets in recent times.

Our Comments

The Government has noticed that the trading of F&O has been increasing day-by-day at a huge pace. In view of the said exponential growth, the Government has come up with the increased rate of levy of STT on transactions of derivatives to discourage trading in F&Os.

The said amendment will increase the burden of tax on taxpayers who will trade in futures & options after October 1, 2024.

Grandfathering of Capital Gains in case of shares Offered for Sale [S. 55]

Background

S.112A of the ITA provides for a concessional rate of 10% (now increased to Rs. 12.5%) on LTCG on transfer of, *inter alia*, equity shares subject to payment of STT at the time of acquisition and on transfer.

Shares which are transferred under Offer for Sale (OFS) at the time of initial public

offering are subject to STT as per S. 97(13)(aa) of Chapter VII of the Finance (No. 2) Act, 2004. Further, such shares are exempt from the requirement of STT at the time of acquisition to avail the benefit of S. 112A as per CBDT Notification no. 60 of 2018. Hence, gains on transfer of such shares qualify for concessional tax rates u/s. 112A.

The gains chargeable under said section are allowed grandfathering of gains accrued till January 31, 2018.

Accordingly, S. 55(2)(ac) of the ITA provides that the COA in case of long-term equity shares acquired before February 1, 2018 shall be grandfathered as under –

Higher of -

a. The COA of such asset; and
b. Lower of:
    i. The FMV of such asset as on January 31, 2018; and
    ii. The full value of consideration received

Explanation(a)(iii) to S. 55(2)(ac) defines what is FMV in case of an equity share in a company. The said section presently does not cover cases where unlisted shares are subject to STT and are accordingly fall under the ambit of S. 112A. As a consequence, there is ambiguity with respect to determining COA of the shares transferred under OFS.

Proposed Amendment

With a view to clarify the ambiguity with regards to determining COA of the shares transferred under OFS, *Explanation(a)(iii)* to S. 55(2)(ac) is proposed to be amended with retrospective effect so as to include within its ambit even transfers in respect of sale of unlisted equity shares under an OFS to the public included in an Initial Public Offer ("IPO").

In such cases, FMV shall be an amount which bears to the COA the same proportion as Cost Inflation Index ("CII") for the FY 2017-18 bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on the April 1, 2001, whichever is later.

This amendment is proposed to be deemed to have been inserted with effect from the April 1, 2018 and shall accordingly apply retrospectively from AY 2018-19 onwards.

Rationale of the Proposed Amendment

As per the EM, since there was ambiguity with regard to determining the COA u/s. 55(2)(ac) in case of shares transferred under OFS in an IPO, there have been instance where the assesses have taken a view that in absence of any express provision, as the COA is indeterminable, no capital gains is chargeable on the said transfer. To plug this lacuna, the aforesaid amendment has been proposed to be brought in.

Our Comments

This a welcome provision since it provides clarity on taxability of shares transferred under OFS.

TDS & TCS

Rationalisation of TDS rates [S. 194D, 194DA, 194G, 194H, 194IB, 194M, 194O and 194F]

Background

Under the ITA, TDS is required to be deducted under various sections, with different threshold limit and multiple rates ranging from 0.1% to 30% and above.

Proposed Amendments

With a view to simplify and standardise the rate of TDS, it is proposed to amend the current rates of TDS under various provisions as under:

Section	Present TDS Rate	Proposed TDS Rate	With effect from
194D – Payment of insurance commission (in case of person other than company)	5%	2%	April 1, 2025 (no amendment proposed in the current FB). This is mentioned only in the EM.
194DA - Payment in respect of life insurance policy	5%	2%	October 1, 2024
194G – Commission etc on sale of lottery tickets	5%	2%	October 1, 2024
194H - Payment of commission or brokerage	5%	2%	October 1, 2024
194IB - Payment of rent by certain individuals or HUF	5%	2%	October 1, 2024
194M - Payment of certain sums by certain individuals or HUF	5%	2%	October 1, 2024
194O - Payment of certain sums by e-commerce operator to e-commerce participant	1%	0.1%	October 1, 2024
194F relating to payments on account of repurchase of units by certain Mutual Fund or Unit Trust of India	20%	Proposed to be omitted	October 1, 2024

Rationale of the Proposed Amendments

As per EM, in order improve ease of doing business and better compliance by taxpayers, TDS rates are proposed to be reduced and standardised.

Our Comments

These are welcome amendments as they would promote ease of doing business by rationalizing rates of TDS and would improve the working capital for deductors.

TDS on Salary [S. 192]

Background

S. 192 of the ITA deals with TDS from Salaries. S. 192(2B) provides that an employee may inter alia send details of income under any other head of income and of any tax deducted thereon for the same FY to the employer to consider them at the time of deducting TDS u/s. 192(1).

Proposed Amendment

It is proposed to amend S. 192(2B) to expand the scope to include all types of TDS deducted under the provisions of Chapter XVII-B as well as all TCS collected under Chapter XVII-BB, as the case may be, to be taken into account for the purposes of making the deduction u/s. 192(1).

The proposed amendment will apply with effect from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, representations have been received that credit for TCS should be allowed while computing TDS on salary income of the employees as this will help in avoiding cash flow issues for employees. EM further notes that when TCS credit is not taken into account, the same is required to be claimed as a refund by the employee which adds to the compliance process and hence, to ease compliance, S. 192(2B) is being amended to include TCS.

Our Comments

This is a beneficial amendment which aids in reducing cash flow issues for employees since employers will reduce TCS while computing TDS u/s. 192.

TDS on Securities [S. 193]

Background

Clause (iv) of the proviso to S. 193 of the ITA exempts interest paid on any security of Central or State Government from TDS. The exception to the exemption is interest in excess of Rs. 10,000/- paid on the following:

- 8% Savings (Taxable) Bonds, 2003; and
- 7.75% Savings (Taxable) Bonds, 2018

Proposed Amendment

It is proposed to substitute Clause (iv) of proviso to S. 193 to add the following securities:

- Floating Rate Savings Bonds (FRSB), 2020 (Taxable); and
- Any security of Central Government or State Government, as the Central Government may, by notification in the Official Gazette, specify in this behalf

The proposed amendment will take effect from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, the Government has introduced Floating Rate Savings Bonds (FRSB), 2020 (Taxable), hence, S. 193 of the ITA is proposed to be amended to allow deduction of TDS on interest on Floating

Rate Savings Bonds (FRSB), 2020 (Taxable) and also any other government security as may be notified.

Our Comments

With the Central Government being empowered to notify any security of the Central or the State Government under clause (iv), frequent amendments would not be required in the said provision.

TDS on Dividend [S. 194]

Background

S. 194 provides for deduction of TDS on payment of dividend.

Proposed Amendment

Corresponding to the amendment in S. 2(22) including payments made pursuant to buy-back of shares u/s. 68 of the Companies Act, 2013 within the ambit of 'dividend', S. 194 is also proposed to be amended to provide for withholding tax obligation on the company on payment of such sum at the time of buy-back.

Our Comments

Detailed discussion with respect to the said amendment can be found in the Chapter "Corporate Restructuring".

TDS on Payment to Contractors [S. 194C]

Background

S. 194C requires TDS at the prescribed rates from sums payable to any resident for carrying out of any "work". Clause (iv) of the Explanation to S. 194C defines "work" in an inclusive manner. The aforesaid clause only excluded manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or associate of such customer from the definition of "work".

Proposed Amendment

It is now proposed to insert a specific exclusion that any amount subject to TDS u/s. 194J will not be subject to TDS u/s. 194C.

The proposed amendment applies from October 1, 2024.

Rationale of the Proposed Amendment

As per the EM, in the absence of explicit exclusion of assesses who are required to deduct tax u/s. 194J, some deductors are deducting TDS at lower rate u/s. 194C instead of tax at 10% u/s. 194J. EM further states that specific exclusion of the work specified u/s. 194J(1) avoids TDS at lower rate and thereby avoids loss to the revenue.

Our Comments:

As a result of proposed amendment, TDS is likely to be deducted more u/s. 194J as against 194C in order to avoid litigation, which could create working capital issues for small deductees.

TDS on Payment on transfer of certain immovable property [S. 194IA]

Background

S. 194IA requires any person responsible for paying to a resident any consideration for transfer of any immovable property to deduct tax @ 1% of the higher of such sum or the stamp duty value of such property. No TDS is required where the consideration for the transfer and the stamp duty value of such property, are both less than Rs. 50,00,000/-.

Proposed Amendment

It is proposed to amend 194IA(2) of the ITA to the effect that where there is more than one transferor or transferee in respect of an immovable property, the limit of Rs. 50,00,000/- needs to be determined considering the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for transfer of such immovable property.

The proposed amendments will apply with effect from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, instances have been noticed where some taxpayers are interpreting that the limit of Rs. 50,00,000/- u/s. 194IA applies to each individual buyer's payment rather than the total consideration paid for the immovable property. As a result, assesses have not been deducting tax where a single buyer is paying less than Rs. 50,00,000/-. The proposed amendment seeks to plug this lacuna.

Our Comments

The proposed amendment seeks to link the limit of Rs. 50,00,000/- qua the immovable property as against the transferor or the transferee. Hence, in case of co-ownership of the seller or the purchaser, the consideration for the entire property would need to be considered instead of consideration reflected in a particular assessee's return.

Question however arises as whether the said amendment would apply even in cases where an immovable property is sold in two or more separate transactions, by the co-owners. Further, if the co-owners sell their undivided interested in separate previous years, then how would the threshold of Rs. 50,00,000/- be determined for the first transaction.

TDS on Payment to partners of firm [S. 194T]

Proposed Amendment

It is proposed to insert a new S. 194T to provide that a firm responsible for paying to the partner of such firm during the FY would be liable to deduct TDS at the rate of 10% on following:

- Salary
- Remuneration

- Commission
- Bonus
- Interest

Further, it is proposed that TDS shall be deducted by the firm at the earlier of credit of such sum to the partner's account (including capital account) or actual payment.

An aggregate threshold limit of Rs. 20,000/- for a FY has been provided for the said provisions to apply,

The proposed amendment will take effect from immediately w.e.f. April 1, 2025.

Rationale of the Proposed Amendment

As per EM, this provision is introduced as presently there is no provision for deduction of TDS on payment of salary, remuneration, interest, bonus or commission to partners of a firm by the firm.

Our Comments

Issues could arise when a firm makes interim payments to partners during a FY without specifically identifying them against remuneration or share of profit.

Is the section applicable for payment or credits from April 1, 2025 (i.e. AY 2026-27) or April 1, 2024 (i.e. AY 2025-26)?

Interplay between S. 40(b) and S. 40(a)(i)/(ia) r.w. S. 28(v) and proposed S. 194T needs to be examined.

The proposed amendment seems to apply to resident as well as non-resident partners.

Notably, the EM uses the term "partnership firm" while the proposed provision uses the term "firm" which includes an LLP.

S. 197 is not amended to include the proposed S. 194T.

Scope of Lower or Nil TDS u/s. 197

Background

Presently, S. 197(1) of the ITA enables assessees to apply to the AO for TDS at nil rate or lower rate, for TDS u/s. 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194M, 194O and 195 of the ITA.

Proposed Amendment

It is proposed to amend S. 197(1) of the ITA to include within its ambit even S. 194Q (TDS deductible payment of certain sum for purchase of goods) of the ITA.

The proposed amendment shall apply from October 1, 2024.

Rationale of the Proposed Amendment

As per the EM, the amendment is proposed to facilitate ease of doing business.

Our Comments

This is a welcome provision as this brings S. 194Q at par with other provisions in terms of ability of the seller of goods to obtain LDC which the buyer can give effect to.

Tax deducted is income received [S. 198]

Background

Presently, S. 198 deems all TDS deducted under the ITA to be income received for the purpose of computing the income of an assessee in India.

Proposed Amendment

It is now proposed to expand the scope of this provision to even taxes paid outside India by way of deduction, in respect of which an assessee is allowed a credit against the tax payable under ITA.

Hence, even taxes deducted under foreign tax laws will be deemed to be income received for the purpose of computing the income of the assessee, where credit is allowed for such tax under the provisions of ITA.

The proposed amendment will apply with effect from April 1, 2025.

Rationale of the Proposed Amendment

As per the EM, some assesses are not including taxes withheld outside India for calculating their total income which was leading to reporting of total income as only the net income. However, such assesses were claiming credit for taxes withheld abroad resulting in double deduction on account of income not being included in total income but credit for foreign tax being taken.

The proposed amendment is to address the foregoing issue.

Our Comments

The proposed amendment applies when two conditions are satisfied, *viz.* tax is withheld outside India for which credit is allowed against tax payable under the ITA. Hence, TDS deducted abroad, for which credit is not available in India, shall not be taxable as income in India.

Duty of person deducting tax [S. 200]

Background

Presently, the proviso to S. 200(3) allows a person deducting tax to file the correction statement for rectification of any mistake or to add, update or delete the information in the TDS statement filed u/s. 200(3). There

is no time limit prescribed in ITA for filing such correction statement.

Proposed Amendment

It is proposed to insert second proviso u/s. 200(3) to provide a maximum time limit till when any correction statement can be filed as six years from the end of the FY in which the statement is filed u/s. 200(3).
The proposed amendment will apply from April 1, 2025.

Rationale of the Proposed Amendment

As per the EM, in the absence of any time limit to file the correction statement multiple times indefinitely, these provisions may be misused causing difficulty to deductees / collectees. EM further states that in order to put certainty and finality on the filing process of TDS and TCS statements, it is proposed to cap the time limit upto a maximum period of six years. The corresponding amendment is also proposed in S. 206C(3B) of the ITA.

Processing of statement of TDS/ statements other than those filed by a deductor [S. 200A]

Background

The existing provisions of S. 200A of the ITA set out the manner in which statements of TDS or correction statements of TDS filed by the deductors are processed.

Proposed Amendment

It is proposed to introduce a new S. 200A(3), which shall empower the CBDT to make a scheme for the processing of statements filed by persons other than deductors.

The proposed amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendment

As per EM, the proposed amendment aims to widen the manner in which the processing of the statements such as Form No. 26QF filed by an Exchange which is an operating a platform for transfer of virtual digital assets (as introduced vide Notification No. 73/2022 dated June 30, 2022) would be undertaken.

Consequences of failure to deduct or pay [S. 201]

Background

Presently, S. 201(3) specifies the time limit to pass an order u/s. 201(1) in case of a payee who is a resident under the ITA. That time limit is the later of the following:

a) Seven years from the end of the FY in which payment is made or credit is given or
b) Two years from the end of the FY r in which the correction statement is filed under the proviso to S. 200(3),

There is no time limit to pass an order u/s. 201(1) in case where the payee is a non-resident.

Proposed Amendment

It is proposed to reduce the period of seven years to six years for all payees (resident or non-resident) from the end of the FY in which the payment is made or credit is given.

The proposed amendment applies from the April 1, 2025.

Rationale of the Proposed Amendment

As per EM, absence of time limit to pass an order in case of non-resident payee creates uncertainty in case of non-residents.

Our Comments

While one may contend basis judicial precedence[3], that where no time-limit is prescribed for taking an action under the statute, the action can be taken only within a reasonable time, by harmoniously considering the scheme of the ITA; by specifying the time limit in the statute, litigation on this ground could be avoided. The proposed amendment would also bring speedy disposal of orders u/s. 201.

TCS [S. 206C]

Background

S. 206C of the ITA is an elaborate code on TCS provisions in terms of the transactions covered, applicable rate, exemption, compliance, etc.

Proposed Amendments

The proposed amendments u/s. 206C are summarized hereunder:

Sub-section	Existing Provisions	Proposed Amendment	With effect from
(1F)	TCS is to be collected @1% of the sale value of a motor vehicle where the sale value exceeds Rs. 10,00,000/-.	The Central Government could notify sale of any other goods, on which TCS will apply.	January 1, 2025
(3B)	The person collecting TCS can file a correction statement to rectify any mistake, or to add, delete or update any information in the statement filed u/s. 206C(3).	A new proviso is proposed to be inserted by which the maximum time limit to file the correction statement is six years from the end of the FY in which the statement u/s. 206C(3) is filed.	April 1, 2025
(4)	This sub-section enables the person from whom TCS is collected and deposited by the Collector with the Central Government to claim credit for such TCS.	The benefit of claiming the credit will be available to "any other person eligible for credit".	January 1, 2025
(7)	The Collector is liable to pay interest on failure to collect the	There will be different rate of tax for the two defaults as under:	April 1, 2025

[3] DIT vs. Mahindra & Mahindra Ltd. [2014] 365 ITR 560 (Bom. HC.)
Dr. Reddy's Laboratories Ltd. vs. DCIT [2023] 155 taxmann.com 97 (Telangana HC.)

	tax or after collecting the tax failure to deposit with the Central Government @ 1% per month or part thereof on the amount of TCS from the date on which the tax was collectible to the date on which the tax was actually paid.	∞ 1% for every month or part thereof on the amount of TCS from the date on which tax was collectible to the date on which tax is collected ∞ 1.5% for every month or part thereof on the amount of TCS from the date on which tax was collected to the date on which tax is actually paid	
(7A)	NA	The new provision in sub-section (7A) proposes that an order u/s. 206C(6A) treating an assessee as "an assessee in default" for failure to collect TCS will be passed not later than the following: a) six years from the end of the FY in which the TCS was collectible; or b) Two years from the end of the FY in which the correction statement is filed under sub-section (3B).	April 1, 2025
(9)	This sub-section enabled the seller to obtain an LDC for TCS.	It is proposed to extend the benefit of obtaining an LDC for TCS by a seller of goods covered u/s. S. 206C (1H).	October 1, 2024
(12)	NA	The Government could notify association and other entities to whom S. 206C will not apply or will apply at a lower rate.	October 1, 2024

Rationale of the Proposed Amendments

- **Amendment in sub-section (1F):** As per the EM, it has been seen that there has been an increase in expenditure on luxury goods by high-net-worth persons. For proper tracking of such expenses and in order to widen and deepen the tax net, it is proposed to amend S. 206C(1F) to also levy TCS on any other goods of value exceeding Rs. 10,00,000/-, as may be notified by the Central Government in this behalf which would be luxury goods.

- **Amendment in sub-section (3B):** The rationale is similar to that for the amendment in S. 201(3) discussed earlier. The corresponding amendment is also proposed in S. 200(3) of the ITA.

- **Amendment in sub-section (4):** As per the EM, representations have been received that there is no provision in the ITA for allowing credit of TCS to any other person (e.g. parent) other than the collectee. For example, funds remitted under the Liberalised Remittance Scheme of the RBI may have been remitted in the name of minor and accordingly tax would have been collected u/s 206C(1G). However, there is no provision for the parent to claim the same in their tax return. It is, therefore, proposed to introduce a provision in S. 206C of the ITA, to allow the Board to notify the rules for cases where credit of tax collected are given to person other than collectee. However, to ensure that this provision is not misused, credit of TCS of the minor shall only be allowed where the income of the minor is being clubbed with the parent as u/s. 64(1A) of the ITA which states that in computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child.

- **Amendment in sub-section (7):** This amendment is intended to align the interest rate applicable for late collection or deposit of TCS with the interest rate applicable u/s. 201(1A) for late deduction or deposit of TDS.

- **Insertion of sub-section (7A):** This sub-section has been inserted to rationalise with the provisions of S. 201(3) of the ITA.

- **Amendment in sub-section (9):** As per the EM, representations have been received that there are instances where the taxpayers are incurring losses and due to TDS u/s. 194Q of the ITA, their funds are getting blocked. Moreover, TDS in such cases has to be refunded. Further, there is an additional compliance as a seller liable for TCS needs to also verify whether the buyer has deducted tax or not. Therefore, to facilitate ease of doing business and to provide an option to seek an LDC to reduce compliance burden on the assessee, it is proposed to amend S. 197 to bring S. 194Q in its ambit and S. 206C(9) to bring S. 206C(1H) in its ambit.

- **Insertion of sub-section (12):** As per the EM, representations have been received that there can be entities whose income is exempt from taxation and are not required to furnish ROI. However, they face difficulty as tax is being collected on transactions carried out by them. They state that there is no provision in the ITA for them to be exempted from the TCS provisions therefore proposed to provide that no collection of tax shall be made or that collection of tax shall be made at such lower rate in respect of specified class of person as may be notified by the Central Government in the Official Gazette, in this behalf.

Penalty for failure to furnish statements, etc. [S. 271H]

Background

S. 271H levies penalty for failure to file TDS/TCS statement or for furnishing incorrect information in such statements. Under the present provisions, of S. 271H(3) no penalty shall be levied if the person proves that after paying TDS/ TCS along with fees and interest, the person has filed the TDS/TCS statement before expiry of one year from the time prescribed for furnishing such statement.

Proposed Amendment

It is now proposed to reduce the time of one year (supra) to one month to get exemption from levy of penalty u/s. 271H.

The proposed amendment will apply with effect from April 1, 2025.

Rationale of the Proposed Amendment

As per the EM, earlier the due date to file a belated return was one year from the end of the AY, the time limit presently is December 31 of the same AY, thereby resulting into inconvenience to deductees/ collectees if the TDS/TCS statements by deductors/ collectors are not furnished in time. This leads to mismatch in TDS/TCS during processing of income-tax returns and raising of infructuous demands.

To avoid this inconvenience, it is proposed to reduce the time-period for attracting the penal provision from one year to one month from the time prescribed for furnishing such statement.

Our Comments

The proposed amendment would ensure timely compliance by for TDS/TCS returns and could help deductees/collectees in avoiding mismatch in TDS/TCS credit.

Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B [S. 276B]

Background

S. 276B of the ITA imposes rigorous imprisonment from three months to seven years where the deductor of TDS fails to pay TDS deducted to the credit of Central Government within prescribed time limit.

Proposed Amendment

It is now proposed to insert a proviso whereby, the person will not be prosecuted if the payment of TDS in respect of a quarter has been made to the credit of the Central Government at any time on or before the time prescribed for filing the statement of such quarter u/s. 200(3) of the ITA.

The proposed amendment will apply from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, the proposed amendment is made with the intent to provide relief to the deductors by decriminalizing the late payment of TDS, if the payment is made

before the time prescribed for filing the TDS
statement.

Our Comments

The proposed amendment is a welcome move.

International Tax and Transfer Pricing

Discontinuation of EL 2.0 [Chapter VIII of FA 2016 and S. 10(50)]

Background

Chapter VIII of the FA 2016 related to EL was amended by Finance Act, 2020 to provide for imposition of EL of 2% on the amount of consideration received/ receivable by an e-commerce operator from e-commerce supply or services ("EL 2.0").

Any service which was liable to EL 2.0 was exempt u/s. 10(50) of the ITA.

Proposed Amendments

It is proposed that EL 2.0 shall not be applicable to consideration received or receivable for e-commerce supply or services, on or after August 1, 2024. Consequently, the exemption u/s. 10(50) is also proposed to be deleted.

Rationale of the Proposed Amendments

As per the EM, the proposed discontinuation of EL 2.0 stems from concerns raised by some stakeholders that EL 2.0 is ambiguous and leads to compliance burden.

These amendments will take effect from the August 1, 2024.

Our Comments

In absence of EL 2.0 and corresponding exemption u/s. 10(50), the potential impact of Significant Economic Presence u/s. 9 of ITA will have to be examined on e-commerce transactions in the future, especially where treaty benefits are not available.

At the post-budget announcement conference, the Finance Minister indicated that since India is moving towards the global Pillar 1 and Pillar 2 systems, EL 2.0 cannot be continued. News items suggest that India does not want any tax related disputes to be subjected to international arbitration and as a conciliatory measure, India proposed to remove EL 2.0[4].

Draft consultation paper on Pillars is eagerly anticipated. However, considering many countries have already implemented Pillar 2, it is expected that India might pursue an early adoption of Pillar 2.

[4] India and US had reached a political compromise on November 24, 2021 outlining a transitional approach wherein India would grant credit of EL 2.0 paid during the interim period against future corporate tax liabilities arising out of Amount A under Pillar 1. This compromise was intended to counteract the unilateral measures of EL 2.0 currently in force, while Pillar 1 implementation progresses. Initially, the validity of the agreement was from April 1, 2022 until implementation of Pillar 1 or March 31, 2024, whichever is earlier, the agreement was extended until June 30, 2024.

Enhancing the ambit of TPO w.r.t SDTs [S. 92CA]

Background

S.92CA of the ITA deals with determination of arm's length price by the TPO on a reference made by the AO. Sub-sections (2A) and (2B) thereof provides that where any international transaction(s) other than those referred by AO or international transactions not reported in Form 3CEB come to the notice of the TPO during the course of the TP proceedings before him, the provision of Chapter X shall apply as if such other international transaction is also referred to him by AO. This permitted the TPO to assess all international transactions which could be identified irrespective of whether or not the same was reported by the assessee or referred by the AO to the TPO.

At present, the above noted provisions of sub-sections (2A) and (2B) of S.92CA do not extend to SDTs.

Proposed Amendment

It is proposed to amend sub-sections (2A) and (2B) of S. 92CA to enable the TPO to deal even with SDTs which have not been referred to him by the AO and/or in whose respect audit report u/s. 92CE (i.e. Form 3CEB) has not been filed.

This amendment will take effect from April 1, 2025 i.e. AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendment

As per the Finance Minister Speech, the aforesaid amendment is proposed to streamline transfer pricing assessment procedures.

Our Comments

The amendments intend to nullify the effect of the decisions in case of **Times Global Broadcasting Company Ltd in [2019] 260 Taxman 314 (Bom HC) and [2019] 413 ITR 42 (Bom HC)** where High Court has held that in view of specific non-inclusion of SDTs under sub-sections (2A) and (2B) of S. 92CA, in cases of transactions not referred to the TPO by AO, TPO's extended jurisdiction was confined only to international transactions.

Penalty for furnishing inaccurate SFT or reportable account [S. 271FAA]

Background

S. 285BA of the ITA requires specified person to furnish Specified Financial Transactions ("SFTs") or reportable accounts. Hitherto, S. 271FAA provides for penalty of Rs. 50,000 in the event of inaccurate information provided in the said statement and where, inter alia, the inaccuracy is on account of failure to comply with due diligence requirement or willfully not furnishing the correct statement.

Proposed Amendment

It is proposed amend S. 271FAA and provide that penalty shall be attracted in the following circumstances:

- Furnishing inaccurate information in the statement or fails to furnish

correct information within period specified u/s. 285BA(6) ; or

- Failure to comply with due diligence requirement prescribed u/s. S.285B(7)[5] in the statement

Further in S. 273B, it is proposed to add the reference of S. 271FAA in order to provide that no penalty shall be imposable if the assessee proves that there was reasonable cause for such failure.

The said shall apply prospectively from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, the said amendment is brought to comply with the Automatic Exchange of Information (AEOI) framework, the Global Forum on Transparency and Exchange of Information for Tax purposes has formed a view that the penal sanction available under the said section for inaccuracies would not automatically extend to all the cases where due diligence was not correctly done if information did not lead to incorrect reporting.

Our Comments

From the language used in the EM, it appears that the penalty is intended to be levied only where the failure to carry out due diligence in prescribed manner results in incorrect reporting. However, the language used in the amendment suggests that the penalty could be levied in case of improper due diligence, irrespective of whether the same results in incorrect reporting or not.

The two clauses (a) and (b) in the proposed amendment have been separated by the word 'or' which makes them independent conditions, whereas as per the intention mentioned in EM, the same should have been 'and'.

As a result, although the amendment was intended to liberalise the penal consequences, the proposed language imposes an additional onerous obligation on the reporting entities to maintain proper document to demonstrate how they have undertaken proper due diligence in accordance with S. 285BA(7) so as to avoid any penalty u/s. 271FAA. Hence, it is crucial for reporting financial institutions to comply with due diligence requirements for identifying reportable accounts to avoid any potential penalties.

Submission of statement by liaison office of NR in India [S. 271GC & 285]

Background

Typically, a liaison office of a NR does not undertake any business activities, rather, it is established solely for facilitating communication between foreign head office and parties in India. Since, these offices do not engage in business operations in India, they typically do not furnish any income-tax returns in India. Therefore, to maintain regular information about activities of NR's liaison office in India, Form No. 49C is required to be filed

[5] Refer Rule 114H of the Rules

by authorised signatory (either CA or person authorised by NR) within 60 days from the end of the FY, in accordance with S. 285 of the ITA.

Proposed Amendments

It is proposed to substitute the period of 60 days provided in S. 285 for filing Form 49C with "such period". As per the EM, the period will prescribed under the Rules

A new S. 271GC is proposed to be inserted to levy 'Penalty for failure to submit statement u/s. 285' as under:

- Rs.1,000 per day if such a failure is less than 3 months or
- Rs. 1,00,000/- in any other case

Further in S. 273B it is proposed to add the reference of S. 271GC in order to provide that no penalty shall be imposable if the assessee proves that there was reasonable cause for such failure.

This amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendments

As per EM, including a mandatory penalty provision for delay in filing will ensure and enhance better compliance to the law. While exemption for 'reasonable cause' ensures that penalty will not be levied in case of genuine difficulties.

Time Limit for withdrawing pending application for Advance Rulings [S. 245Q and 245R]

Background

Presently, S. 245Q provides time limit of thirty days from the date of making application to withdraw application made for obtaining advance ruling.

Proposed Amendments

The FB proposes to amend S. 245Q to provide a one-time permission to the applicants to file applications to withdraw their past applications for advance rulings file before the Authority for Advance Ruling (AAR) which have been transferred to the Board of Advance Rulings ("BAR") and not been decided or disposed off before October 31, 2024. Such applications for withdrawal has been allowed only till October 31, 2024.

Consequential amendment is made u/s. 245R(2) empowering the BAR to dispose such applications for withdrawal and reject the advance ruling applications filed u/s. 245Q(1) as withdrawn. Such orders need to be passed on or before December 31, 2024.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendments

As per EM, these amendments were made pursuant to representations received by the BAR, from many of the applicants regarding pendency for disposal. However, due to various reasons like change in constitution of BAR forum, non-binding nature of the ruling (as it is made appealable to High Court), substantial passage of time, and other commercial reasons, these applicants wish to withdraw their applications.

Our Comments

The fact that advance rulings are now appealable to the High Court in a way removes the finality and binding nature of the orders passed by BAR. The proposed amendments offer flexibility for applicants whose advance ruling applications have been pending for an extended period. By extending the withdrawal window, the amendment acknowledges the practical difficulties faced by applicants due to prolonged delays and changes in the regulatory environment. This will also reduce the list of pendencies before the BAR.

Other key amendments impacting NRs

- Reduction in income-tax rates for foreign companies to 35% from 40% (Refer Chapter "Rates and Taxes")
- Change in capital gains tax rate for NRs (Refer Chapter "Capital Gains")
- Presumptive taxation regime applicable to non-residents engaged in operating cruise business
- Amendments to promote domestic cruise ship operations by non – residents have been dealt with in Chapter "Business Income"
- Sunset of Angel tax u/s. 56(2)(viib) (Refer Chapter "Corporate Restructuring")
- Taxation of distributed income on buy-back of shares by domestic company (Refer Chapter "Corporate Restructuring")
- The proposed Direct Tax Vivad-se-Vishwas Scheme, 2024 could also be applied by non-resident appellants in case of pending litigation. (Refer Chapter "The Direct Tax Vivad se Vishwas Scheme, 2024")
- In her speech, FM has proposed to expand scope of Safe Harbour Rules under Transfer Pricing regime and include safe harbour rates for foreign mining companies selling raw diamonds in the country. Suitable amendment would be made in the rules.

Charitable Trust

Sunset of S.10(23C) regime and migration to S. 11 to S. 13 and other amendments

Background

At present, there are two main regimes in place for Trusts or Funds or Institutions to claim exemption. The first is contained in the provisions of S. 10(23C)(iv), (v), (vi) or (via) (referred to as 'First Regime'). The second is contained in the provisions of S. 11 to S. 13 (referred to as 'Second Regime'). The provisions of the respective regimes lay down the procedure for filing application for approval/ registration, the conditions subject to which such approval/ registration shall be granted or can be withdrawn, other compliances, etc. Over the last 3 years, there have been substantial changes made to both the regimes with the purpose to make them almost at par with each other.

Proposed Amendments

It is proposed to amend S. 12A(1)(ac)(ii) & (iii) w.e.f. October 1, 2024 so as to enable Trust or Institution approved or provisionally approved as the case may be, under First Regime to make application for approval to PCIT/CIT[6] under second regime within stipulated time limit before their earlier registration is due to expire.

Corresponding amendments have also been proposed u/s. 10(23C) to the effect that the time limit for making application as also approval by PCIT/CIT shall not be granted on and after October 1, 2024.

Further, due to migration of Trusts/Institution registered under First Regime to Second Regime, certain eligible modes of investment under the First regime (viz. those specified in clause (b) of third proviso to S.10(23C) are included in the Second regime, by way of proposed amendment in S. 13.

Lastly, it is also proposed to insert proviso to S. 12A(1)(ac) to enable the PCIT or CIT to condone delay in filing application for registration if there is a reasonable cause for delay in filing the application.
The amendment will be effective from October 1, 2024.

Rationale of the Proposed Amendments

In order to take forward the process of simplification of procedures and to reduce administrative burden, it is proposed that the First Regime be sunset and Trusts, Funds or Institutions be transited to the Second Regime in a gradual manner.

Further, if a Trust or Institution is unable to apply for registration/approval within the time specified, it may become liable to tax on accreted income as per provisions of Chapter XII-EB of the ITA. Under present law, there was no explicit power granted to PCIT/CIT to condone delay in making application. In order to explicitly allow PCIT/CIT to consider delay and condone

[6] Principal Commissioner of Income Tax (PCIT), Commissioner of Income Tax (CIT)

the same in cases of reasonable clause, proviso is now added.

Our Comments

While in recent past, there has been a plethora of amendments under both the Regimes, the proposed amendment seeks to simplify the administration of such Trust/Institution. The subtle differences in some phrases in the First Regime and the Second Regime may have to be considered and reconciled.

The said amendments though effective from October 1, 2024, the trusts and institutions in the First regime are not required to immediately shift to the Second Regime and are required to migrate only once their subsisting registration is to expire.

While CBDT had issued Circular No. 7/2024 to mitigate genuine hardship where the application was delayed and extended time like to make electronic application directed consideration thereof by PCIT/CIT, incorporating power to condone delay in the statute is a welcome amendment.

Timelines to dispose of applications seeking registration u/s. 12AB or approval u/s. 80G

Background

At present, applications seeking registration of Trust or Institution u/s. 12AB(ac)(ii) & (iii), and S. 80G(5)(vi)(iv) read with appropriate proviso require, such application to be processed u/s. 12AB(3) and third proviso to S. 80G(5) respectively by the PCIT or CIT within a period of six months from the end of the month in which the application was received.

Proposed Amendments

Amendment has been proposed in the S. 12AB(3) and third/fourth proviso to S. 80G(5), wherein the time limit for disposing of the application of registration made by the Trust or Institution in certain cases has been extended to "six months from the end of the **quarter**" instead from "six months from the end of the **month**" in which the application has been received.
These amendments will be effective from October 1, 2024.

Rationale of the Proposed Amendments

Rationalisation of timelines for disposing applications by PCIT/CIT leading to better administration and monitoring.

Taxation implication on merger of Charitable Trusts with other Registered Trusts

Background

At present, when a Trust or Institution which is approved / registered u/s. 10(23C) or S. 12AB, as the case may be merges with another approved / registered entity under either regime, having similar objects, the provisions of Chapter XII-EB, relating to tax on accreted income in certain circumstances, were not attracted.

Proposed Amendments

A new S. 12AC is proposed to be inserted to provide that the provisions of Chapter XII-ED shall not apply to the merger of trusts/institutions where apart from the two existing conditions, namely,

a) The other Trust or Institution having same or similar objects; and

b) The other Trust or Institution being registered u/s. 12AA or S. 12AB or approved u/s. 10(23C) (iv) or (v) or (vi) or (via), as the case may be.

The said merger also fulfils such conditions as may be provided by rules.

Thus, while S. 115TD(1) is unamended, new S.12AC is proposed to be introduced to provide for following conditions for merger of Trusts/Institutions to not attract provisions of Chapter XII-EB namely:

a) The other Trust or Institution has same or similar objects;

b) The other Trust or Institution is registered u/s. 12AA or S. 12AB or approved u/s. 10(23C) (iv) or (v) or (vi) or (via), as the case may be; and

c) The said merger fulfils such conditions as may be provided by rules.

These amendments will take effect from the April 1, 2025.

Rationale of the Proposed Amendments

The proposed amendment intends to enable merger of trusts/institutions without attracting tax on accreted income, subject to fulfilment of prescribed conditions.

Our Comments

Under certain circumstances like S. 50A(2) of Maharashtra Public Trust Act, 1950 or where High Court exercises certain power, the charitable Trust could merge into another charitable Trust/Society. While earlier only two conditions were stipulated [namely (a) & (b)] above, now, additional conditions to be prescribed would have to be complied with to avoid accretion/exit tax under Chapter XII-EB.

Inclusion of reference of Clause (23EA), Clause (23ED) and Clause (46B) Of S. 10 in S. 11(7)

Background

S. 11(7) lays down that registration u/s. 12AB shall become inoperative, if the Trust or Institution is approved/notified under clause (23C), (23EC), (46) or (46A) of S. 10. Such Trust or Institution has a one-time option to make its registration re-operative u/s. 12AB, subject to the condition that on

such registration becoming operative, approval or notification under other clauses of S. 10 referred above shall cease to have any effect and thereafter no exemption under such clauses of S. 10 shall apply.

Proposed Amendments

It is proposed to amend S. 11(7) to include notifications under clause (23EA), clause (23ED) and clause (46B) of S. 10 in addition to present list covering clause (23C) of S. 10 or notification under clause (23EC), clause (46) or clause (46A).

These amendments will be effective from April 1, 2025.

Rationale of the Proposed Amendments

To add income of certain Funds In the list where they may choose under which section they want to continue to claim exemption.

Relief to Certain Entities Located in IFSC

Extension of Exemption u/s. 10(4D)

Background

Presently, S. 10(4D) of the ITA exempts certain income received by a specified fund located in IFSC subject to fulfilment of certain conditions.

Proposed Amendment

It is proposed to amend the definition of 'specified fund' in S. 10(4D) to include funds which:

- are established or incorporated in India in the form of a trust or a company or a LLP or a body corporate;
- have been granted a certificate as a retail scheme or an Exchange Traded Fund and;
- are regulated under the IFSC Regulations made under the IFSCA Act, 2019 and satisfy prescribed conditions.

This proposed amendment will take effect from the April 1, 2025 and will, accordingly, apply in relation to AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to expand the ambit of the specified funds which can claim exemption u/s. 10(4D).

Extension of Exemption u/s. 10(23EE)

Background

Presently, S. 10(23EE) of the ITA exempts specified income of notified Core Settlement Guarantee Funds, set up by a recognised clearing corporation in accordance with the regulations.

Proposed Amendment

It is proposed to amend the Explanation to S. 10(23EE) to the following effect:

- The definition of 'recognised clearing corporation' will include a reference to the IFSCA (Market Infrastructure Institutions) Regulations, 2021 made under the IFSCA Act, 2019.
- The definition of 'Regulations' too, will include the IFSCA (Market Infrastructure Institutions) Regulations, 2021.

The proposed amendment will take effect from the April 1, 2025 and will, accordingly, apply in relation to AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to incentivize the operations of entities located in the IFSC.

Extension of Exemption u/s. 10(23FB)

Background

S. 68 of the ITA taxes unexplained cash credits.

From April 1, 2023, S. 68 was amended to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other amount credited in the books shall be treated as explained only if the source of funds is also explained in the hands of the creditor to the satisfaction of the AO. However, this additional burden of satisfactorily explaining the source in the hands of the creditor does not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund (VCF) or Venture Capital Company (VCC) registered with SEBI. S. 68 accordingly makes a reference to the definition of VCF/VCC in the Explanation to S. 10(23FB).

Proposed Amendment

It is proposed to amend the definition of VCF in the Explanation to S. 10(23FB) to include VCFs in IFSC. As a result, S. 68 will now exclude even VCFs located in IFSC.

The proposed amendment will take effect from the April 1, 2025 and will, accordingly, apply in relation to AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to extend the relaxation in place for VCFs registered with SEBI, to those VCFs which are regulated by IFSCA.

Limitation on Interest Deduction in Certain cases [S. 94B]

Background

S. 94B of the ITA puts a restriction on deduction of interest expense in respect of any interest expense incurred on debt borrowed by Indian Company or Indian PE from a non-resident, being an associated enterprise of the borrower. If such a person incurs any interest expense exceeding one crore rupees which is deductible in computing income chargeable under the head PGBP, the interest deductible shall be restricted to the extent of 30% of its earnings before interest, taxes, depreciation and amortisation to avoid thin capitalisation of the entity.

S. 94B does not apply to Indian companies or PEs of foreign banks or foreign insurance companies carrying on respective business in India or notified NBFCs.

Proposed Amendment

It is now proposed that S. 94B shall not apply even to finance companies located in IFSC, as defined in the IFSCA (Finance Company) Regulations, 2021 made under the IFSCA Act, 2019, if such companies satisfy the prescribed conditions.

The proposed amendment will take effect from the April 1, 2025 and will, accordingly, apply in relation to AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendment

It is proposed to amend S. 94B to also exclude 'Finance company located in any IFSC' from the scope of applicability of that provision.

Our Comments

As per the EM, the proposed amendments aim at further incentivizing operations from IFSC and achieve the goal of making it a global hub of financial services sector.

Assessment and Appeals

Returns filed pursuant to order u/s. 119(2)(b) of the ITA [S. 139 and S. 153]

Background

Presently, there is no specific provision related to returns filed pursuant to order u/s. 119(2)(b) of the ITA.

Proposed Amendments

The FB proposes to amend S. 139 by inserting sub-section (9A) to provide that provisions of S. 139 will apply in respect of such returns.

Further, the FB proposes to provide time limit for making assessment u/s. 143 or 144 of the ITA at any time before twelve months from the end of the FY in which such return was furnished.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendments

The amendment is brought to remove ambiguity regarding legal standing and procedural difficulties in respect of processing and scrutiny of such returns under the provisions of the ITA, such as S. 143, 142, etc.

Our Comments

This amendment give power to the department for processing and making assessment for such returns by treating the same at par with returns filed as per S. 139 of the ITA.

Surprisingly, there is no proposed amendment for returns files pursuant to S. 170A of the ITA.

Power of setting aside to CIT(A) [S. 251 and S. 153]

Background

Presently, there is no set aside power available with CIT(A) while disposing the appeal.

Proposed Amendments

The FB proposes to insert proviso to S. 251(1) of the ITA to provide power to CIT(A) to set aside the assessment and refer the case back to AO where best judgement orders is passed by the AO u/s. 144 of the ITA.

Consequential amendment is proposed u/s. 153(3) of the ITA to provide time limit of twelve months from the end of the FY in which such order is passed to AO for disposal of cases set aside by CIT(A) u/s. 250 of the ITA.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendments

The amendment is brought to reduce pendency of appeals before CIT(A) and referring case back to the AO in case of orders passed on best judgement basis u/s. 144 of the ITA.

Our Comments

This amendment targets cases where taxpayers have remained non-responsive to letters or notices issued during assessment proceedings as under the new faceless assessment scheme, while the notice are being uploaded on the portal, real time alert of emails and SMS are not regularly received or missed by the assessee. In the absence of power to set-aside, the CIT(A) had to dismiss appeals. On appeal to the Tribunal, the matters were being restored back.

It is important to note that the proposed amendment is restricted to set-aside power only *qua* orders passed on best judgement basis u/s. 144 of the ITA.

Rationalisation of the time-limit for filing appeals before ITAT [S. 253]

Background

Presently, time limit for file for filing appeal before ITAT is sixty days from the date on which order is communicated to the assessee or to the PCIT or CIT, as the case may be.

Proposed Amendment

The FB proposes to replace the time limit from sixty days to two months from the end of the month in which order is communicated to the assessee or PCIT or CIT, as the case may be.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, the amendment is brought to remove difficulties faced by the PCIT or the AO in tracking due dates for filing appeals before ITAT since orders are uploaded on daily basis by the CIT(A) on ITBA portal.

Our Comments

This amendment has increased time the limit for filing appeal before ITAT for assessees as well as the department and would make it easier for the aggrieved party to track the due date.

Reassessment of Income

Revised scheme of reassessment [S. 148, S.148A, S. 151 and S. 152]

Background

The FA 2021 amended the procedure for assessment or reassessment of income in the ITA with effect from the April 1, 2021. The said amendment modified, *inter alia*, S. 148 (procedure for issuance of notice), and also introduced a new S. 148A (procedure to be followed before issuance of notice) in the ITA.

The existing provision of S. 148 specify the procedure for issuance of notice to initiate assessment or reassessment or recomputation u/s. 147 of the ITA. It also provides as to what constitutes 'information' for the purposes of issuance of notice for reopening.

The existing provisions of S. 148A of the ITA specify the procedure to be followed by the AO before issuance of notice including conducting enquiry, providing an opportunity of being heard to the assessee (minimum seven days to maximum thirty days), and passing an order prior to issuing a reopening notice u/s. 148.

Proposed Amendments

With a view to further rationalize the scheme of reassessment proceedings, it is proposed that a new system be introduced wherein the following changes are proposed:

Procedure u/s. 148A:

- Requirement of conducting an enquiry with respect to information received and obtaining approval from specified authority before issuance of notice u/s. 148A has been done away with;
- It is explicitly provided that the show-cause notice issued u/s. 148A needs be accompanied with the information which suggests that income has escaped assessment;
- The earlier minimum time limit provided for furnishing reply by the assessee to the show cause notice has been removed and the same is left at the discretion of the AO, which he may specify in the show cause notice;
- The earlier time limit of one month from the end of the month in which the assessee's reply is received, for passing order u/s. 148A has been removed. However, an outer limit has been provided in S. 149 for issuance of notice u/s. 148 with a time gap of 3 months between the due date for issue of notice u/s. 148A and due date for issue of notice u/s. 148. Therefore, the entire proceedings u/s. 148A need to be completed between the said due date for it to be not get time barred.
- The requirement to obtain prior approval of specified authority before passing the order u/s. 148A continues. However, S. 151 is proposed to be amended to replace 'specified authority' from PCCIT, PDGIT, CCIT, DGIT, PCIT, PDIT,

CIT or DIT[7], as the case may be to ACIT, ADIT, JCIT or JDIT[8].

- The procedure u/s. 148A is still not applicable where information is received by the AO u/s. 135A (Faceless collection of information) of the ITA.
- All these amendments are proposed to take effect from September 1, 2024 and therefore, shall apply to notices issued on and after the said date.

Procedure u/s. 148:

- The words 'serve on the assessee a notice' have been replaced with the words 'issue a notice to the assessee'. Hence, as long as the notice u/s. 148A is issued, the reopening proceedings may be considered to be valid, even if the same is not properly 'served' on the assessee.
- The definition of the term 'information' has been amended to:
  - Include any information in the case of the assessee emanating from survey conducted u/s. 133A [except as obtained u/s. 133A(2A)];
  - In view of reintroduction of Chapter XIV-B of the ITA (block assessment for search and seizure cases), information received u/s. 132 and u/s. 132A will no longer be deemed information for the purposes of S. 148;
- The earlier time limit of minimum three months (subject to further extension) for filing ROI is proposed to be restricted to maximum period of three months;
- All the foregoing amendments are proposed to take effect from September 1, 2024 and therefore, shall apply to notices issued on and after the said date.
- In cases where information is received by the AO u/s. 135A (Faceless collection of information) of the ITA, notice u/s. 148 be issued directly with prior approval of specified authority.

Consequential amendments are made in S. 152 of the ITA.

Rationale of the Proposed Amendments

As per the EM, the aforesaid amendments have been proposed considering litigation at various fora arising from the multiple interpretations of the provisions of aforementioned sections.

Our Comments

Although the explicit requirement of obtaining a prior approval of the specified authority before issuing a notice u/s. 148 of the ITA is no longer required, the said notice shall be accompanied by a copy of order passed u/s. 148A(3). Since no order u/s. 148A(3) can be passed without obtaining an approval of the specified authority, all notices issued u/s. 148 of the ITA in practicality would always be accompanied by a prior approval of the specified authority.

[7] Principal Chief Commissioner of Income Tax (PCCIT), Principal Commissioner of Income-tax (PCIT), Chief Commissioner of Income Tax (CCIT), Director General of Income Tax (DGIT), Principal Director of Income Tax (PDIT)

[8] Assistant Commissioner of Income Tax (ACIT), Additional Director of Income Tax (ADIT), Joint Commissioner of Income Tax (JCIT) or Joint Director of Income Tax (JDIT)

This view can be further corroborated by the requirement of obtaining prior approval of the specified authority in cases where information has been received under the scheme notified u/s. 135A, which is specifically excluded from the purview of S.148A.

Further, changing the specified authority to officers at a lower level in the hierarchy will provide ease for the AO to seek approval before issuing notices u/s. 148 or S. 148A, as the case maybe. It may also create a self-review threat where the AO himself is a ACIT, ADIT, JCIT or JDIT.

Time limit for issue of notice [S. 149]

Background

The existing provisions of S. 149 of the ITA provide the time limits for issuance of notice u/s. 148 and computation of the period of limitation under various circumstances. Under the existing provisions, notice u/s. 148 of the ITA could be issued upto ten years from the end of the relevant AY subject to the AO having in his possession books of accounts or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax has escaped assessment. Also, presently, no period of limitation is provided for issuance of notice u/s. 148A.

The said provision has resulted in various litigation with respect to interpreting the due date for issuance of notice u/s. 148/148A of the ITA.

Proposed Amendment

The proposed amendment aims at streamlining the time limit for issuing notices u/s.148/148A of the ITA.

Time limit for issuing notice u/s. 148 of the ITA is proposed to be amended as under:

Particulars	Before September 1, 2024	On or After September 1, 2024
Income which has escaped assessment amounts to or is likely to be less than Rs. 50 lakhs	Upto three years from the end of the relevant AY	Upto three years and three months from the end of the relevant AY
Income which has escaped assessment amounts to or is likely to be Rs. 50 lakhs or more (subject to AO being in possession of books of accounts or other documents or evidence related to any asset or expenditure or transaction or entries*)	Upto ten years from the end of the relevant AY	Upto five years and three months from the end of the relevant AY

* The present requirement pertains only to information which reveal income chargeable to tax represented in the form of an asset, expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account. The scope is proposed to be widened to any transaction.

Time limit for issuing notice u/s. 148A of the ITA is proposed to be as under:

Particulars	Before September 1, 2024	On or After September 1, 2024
Income which has escaped assessment amounts to or is likely to be less than fifty lakhs	No limit specified	Upto three years from the end of the relevant AY
Income which has escaped assessment as per the information with the AO amounts to or is likely to be Rs. 50 lakhs or more	No limit specified	Upto five years from the end of the relevant AY

Rationale of the Proposed Amendment

As per the EM, the aforesaid amendments have been proposed considering the representations received to reduce the time-limit for issuance of notice for the relevant AY in proceedings of assessment, reassessment or re-computation.

Our Comments

With a view to rationalize time limit for issuing notice u/s. 148, various amendments have been brought in over a period of years. However, as there was no time limit for issuing notice u/s.148A of the ITA, there was ambiguity with respect to the same which led to litigations as the assessees would rely on the time limit specified for issuing notice u/s. 148 whereas the department would continue issuing notices u/s. 148A since there was no outer limit for issuing the same. The said amendment thus, rationalizes the time limits for issuing notices u/s. 148 and S. 148A.

The first proviso to the amended S. 148(1) states that no notice shall be issued unless there is information with the AO, however, as per the amended provisions of S.149(1)(b), a notice can be issued u/s. 148 only if the AO has 'in his possession books of accounts or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more'. Thus, mere availability of information shall not be sufficient to issue a notice u/s. 148 beyond 3 years and 3 months and the AO needs to demonstrate that he possesses aforesaid evidences related to any asset or expenditure or transaction or entries which show that the income chargeable to tax exceeding Rs. 50 lakhs has escaped assessment.

Block Assessment for search / requisition cases [Chapter XIV-B (S. 158B – S. 158BI)]

Background

Special procedure has been laid down in the ITA for completion of assessment and reassessment for search cases (S. 132) / requisition cases (S. 132A), which have been amended from time and again.

- Chapter XIV-B consisting of S. 158B to S. 158BI as introduced vide FA 1995:

  The main objectives of the aforesaid Chapter XIV-B were to avoid disputes, early finalization of search assessments in an efficient and meaning manner and reduction in multiplicity of proceedings. The said Chapter as amended, provided, inter alia, for the following:

  - Single assessment of undisclosed income of a block period, meaning the PYs relevant to 6 AYs preceding the PY in which the search was conducted alongwith the period up to the date of commencement of such search.
  - This single assessment shall be in addition to the regular assessment in respect of each PY included in the block period[9].
  - The manner in which such undisclosed income is to be computed.
  - Procedure to be followed for block assessment in hands of the person in whose case search is initiated / requisition is made.
  - Procedure to be followed for block assessment in case where the books of accounts ("BOA") or documents seized during a search belong to some person other than the person who is searched.
  - Non-levy of interest u/s. 234A, 234B and 234C as well as non-levy of penalty u/s. 271(1)(c), 271A and 271B.

- Insertion of S. 153A to S. 153C vide FA 2003 in place of Chapter XIV-B:

  Owing to the two parallel streams of assessment and failure to achieve the early resolution of search assessments, vide FA 2003, Chapter XIV-B was made ineffective for any search /requisition made after May 31, 2003. Consequently, with effect from June 1, 2003, the assessment procedure for search/requisition cases was governed by newly

[9] Inserted by way of explanation to S. 158BA(2) by the Finance (No. 2) Act, 1998, w.r.e.f. 1-7-1995

introduced S. 153A to S. 153C. The said provisions as amended, provided, inter alia, for the following:

- S. 153A deals with the assessment procedure in search cases in case of a person where a search is initiated u/s. 132 or BOA or other documents are requisitioned u/s. 132A after May 31, 2003.
- S. 153B provides for the time limit for completion of search assessments.
- Similarly, S. 153C deals with the assessment procedure in case where the BOA or documents seized during a search belong to some other person than the person who is searched.
- In both the cases, the AO would then assess or reassess the total income of 6 years preceding the AY in which the search is conducted, or requisition made.
- Abatement of assessments pending at the time of conduct of search so as to avoid parallel assessments for the same AY.

∞ Abolition of separate search assessment regime vide FA 2021:

The regime for search assessments provided u/s. 153A and 153C were abolished and such assessments were subsumed into the amended reassessment procedure contained in S. 148/148A w.e.f. April 1, 2021 vide FA 2021. This change was brought into the ITA so as to reform the system of assessment of search related cases as also to reduce litigation and provide ease of doing business to taxpayers. The said provisions as amended, provided, inter alia, for the following:

- Common new procedure to be followed in case of assessments, reassessments or re-computations in case of search u/s. 132 or requisition u/s. 132A initiated or made after March 31, 2021 which are prescribed in substituted S. 147, 148, 148A of the ITA.
- Existence of 'information' in case of search or requisition initiated or conducted on or after April 1, 2021 so as to invoke provisions of S. 147 r.w.s. 148A.
- Time limit for search assessments extended upto 10 years.
- Separate reassessment orders to be passed for each relevant AY.

Proposed Amendments

While the structure of the proposed block assessment scheme is similar to the erstwhile regime, the table below captures the scheme comparison broadly:

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
158B	Definition – Block Period	6 AY's preceding the PY of initiation of search / requisition (+) **Period upto commencement of search / requisition date.**	6 AY's preceding the PY of initiation of search / requisition (+) **Period from 1st April of the PY in which search / requisition**

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
			was initiated upto the date of execution of last authorizations.
158B	Definition – Undisclosed Income	**Includes inter alia:** **Falsely** claimed expenses, deductions or allowances.	**Includes inter alia:** **Incorrectly** claimed expenses, deductions or allowances.
158BA	Assessment of income as a result of search	∞ Section heading: Assessment of **undisclosed income** as a result of search ∞ **Undisclosed income** for block period taxed @ 60% (+) **Surcharge as applicable in the AY relevant to PY in which search initiated / requisition made** ∞ **No abatement of pending assessment proceeding.** Block assessment is in addition to regular assessments of each PY included in the block. Undisclosed income excludes income assessed in regular assessment and vice versa. ∞ If assessee proves that income is from a year where PY hasn't ended or return due date hasn't expired (+)	∞ Section heading: Assessment of **total income** as a result of search ∞ **Total income** for block period taxed @ 60% (+) **Surcharge if any levied by any Central Act (presently, no surcharge is proposed as per amendment in S. 113)** ∞ **Abatement of pending assessment**, including reassessment / recomputation / TP assessment proceedings as on the date of initiation of search / requisition. However, prior ongoing search assessment to be completed before assessment in relation to subsequent search / requisition. ∞ In case search order is annulled, then abated assessment to revive. In case such annulment order is set aside, then revival shall cease to have effect.

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
		Income/ transactions are recorded in BOA before search/ requisition = Income should not be included in the block period	∞ Only undisclosed income to be taxed under Chapter XIV-B of the PY in which last of the authorisations were executed.
158BB	Computation of income	∞ **Undisclosed income shall be:** - Total income of all PYs falling within block period (-) - Total income assessed u/s. 143(3) / 144 / 147 where assessment have been concluded prior to commencement of search / requisition (-) - Returned income filed u/s. 139 / 142(1) / 148 where assessments have not been made till the date of search / requisition (-) - Income assessed in earlier search u/s. 158BC (-) - Income assessed based on settlement order u/s. 245D(4)	∞ **Total income as per s. 158BB shall be:** - Total income disclosed in return filed u/s. 158BC (+) - Income assessed in original proceedings prior to date of initiation of search / date of requisition (+) - Income declared in return filed u/s. 139 / 142(1) / 148 and not covered above (+) - Where PY relating to search not ended, income to be determined based on entries/ transactions recorded in books and other documents on or before last date of authorization (+) - Undisclosed income determined by AO for the block period ∞ Undisclosed income computed on basis of:

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
			- Evidence found as a result of search / survey/ requisition; and - such other materials or information as are either available with the AO or come to his notice during the course of proceedings under this Chapter. - Evidence found during search relating to international transaction / specified domestic transaction pertaining to PY in which last of authorisations were executed, then such evidence not to be considered for determining total income of the block period. - Tax at the rate of 60% on = Total income disclosed in return filed u/s. 158BC (+) Undisclosed income determined by AO for the block period.

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
158BC	Procedure for block assessment	∞ AO to issue notice, requiring the Assessee to furnish ROI within **15 to 45 days**. ∞ AO to determine the **undisclosed income** of the block as per the manner laid down in S. 158BB. ∞ AO to pass **assessment order** and determine the tax payable.	∞ AO to issue notice, requiring the Assessee to furnish ROI within **60 days**. › If ROI not filed within the allowed time, then ROI not deemed to be return u/s. 139. ∞ AO to determine the **total income including the undisclosed income of the block** as per the manner laid down in S. 158BB. ∞ AO to pass assessment/ **reassessment order** and determine the tax payable. ∞ **No intimation u/s. 143(1)** to be issued for ROI filed as above. ∞ **Prior approval of competent authority defined u/s. 158BG required before issuance of notice u/s. 158BC**.
158BD	Undisclosed income of any other person	Handing over of BOA, other documents or assets seized or requisitioned by AO of searched person to the AO of other person.	Handing over of any **money, bullion, jewellery or other valuable article or thing, or assets, or expenditure**, or BOA, other documents, or **any information contained therein**, seized or requisitioned by AO of searched person to the AO of other person.

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
158BE	Time limit for completion of block assessments	**Own case - 2 years** from the end of the month in which last of the authorizations was made **Any other person case** – **2 years** from the end of month in which notice is served on other person.	**Own case - 12 months** from the end of the month in which last of the authorizations was made. **Reference made to TPO in any of the block assessment period – Additional 12 months** **Any other person case** – **12 months** from the end of month in which notice is served on other person. **Reference made to TPO in any of the block assessment period – Additional 12 months**
158BF	Interest and penalties not to be imposed	∞ No interest u/s. 234A/B/C ∞ No penalty **u/s. 271(1)(c) / 271A / 271B**	∞ No interest u/s. 234A/B/C ∞ No penalty u/s. **270A**
158BFA	Levy of Interest and penalty in certain cases	∞ **Interest** to be levied at **1%** per month or part of the month on tax on undisclosed income from expiry of time limit of notice u/s. 158BC: ▹ where ROI furnished after the time limit till furnishing of ROI; ▹ where no ROI filed, till the date of completion of assessment u/s. 158BC(c). ∞ **Penalty not less than amount of tax leviable but maximum 3 times the amount of tax** so leviable in respect	∞ **Interest** to be levied at **1.5%** per month or part of the month on tax on undisclosed income from expiry of time limit of notice u/s. 158BC **till date of completion of assessment u/s. 158BC(c) irrespective of whether ROI is filed belatedly or not.** ∞ **Penalty** at **50% of tax so leviable** in respect undisclosed income determined by the AO.

Section	Particulars	Erstwhile Scheme under Chapter XIV-B	Proposed Scheme under Chapter XIV-B
		undisclosed income determined by the AO.	
158BG	Competent Authority	For granting of approval before passing block assessment order: ∞ Joint Commissioner; or ∞ Joint Director.	For granting of approval before passing block assessment order: ∞ **Additional Commissioner; or** ∞ **Deputy Commissioner**; or ∞ Joint Commissioner; or ∞ Joint Director

This amendment will take effect where a search is initiated u/s. 132 or requisition is made u/s. 132A **on or after September 1, 2024**. Therefore, for cases where search is initiated or requisition is made upto August 31, 2024, present provisions of S. 148/148A would continue to apply.

Consequential amendment is proposed u/s. 276CCC.

Rationale of the Proposed Amendments

As stated in the EM, the rationale for reinstating the erstwhile Chapter XIV-B in place of reassessment provisions contained in present s. 148/148A covering search cases is the multiple problems arising under the present scheme as gathered from the field officers. It was also observed that the present scheme of search assessment u/s. 147 r.w.s. 148A did not provide for a consolidated assessment order to be passed as a result of which the following challenges were faced by both – the taxpayer and revenue authorities:

- Coordinated investigation not feasible in search cases due to staggered search assessments.
- Searched assessee may be engaged in the search assessment process for up to 10 years.
- Owing to the prescribed outer time limit of 10 years, possibility of change of opinion with respect to the line of enquiry cannot be ruled out as a result of which legal position on an issue may undergo change, leading to different additions in different years, on the same issue.
- Time consuming process escalating litigation costs.

Therefore, the above amendments with respect to reverting back to the separate scheme of 'Block Assessment' have been proposed so as to achieve early finalization of search assessments, coordinated investigation during search assessments and reduction in multiplicity of proceedings.

Our Comments

FB 2024 seeks to reinvent the wheel by reviving the provisions of separate scheme of block assessment which was rendered ineffective almost two decades prior. The reasons given for originally bringing in such provisions way back in 1995 were as under:

- "to have a **cost-effective, efficient and meaningful** search assessment procedure"; and
- also for "avoidance of disputes, **early finalisation of search assessments and reduction in multiplicity of proceedings**".

These provisions were subsequently made inapplicable with effect from June 1, 2003 on account of failure to achieve the objective of 'early resolution of search assessments'.

Interestingly, the rationale given in the EM of FB 2024 for reintroducing such provisions into the ITA is similarly worded to those used in 1995:

- To make the procedure of assessment of search cases **"cost-effective, efficient and meaningful"**;
- The main objectives for the introduction of this scheme are **"early finalization of search assessments**, coordinated investigation during search assessments and **reduction in multiplicity of proceedings**".

It thus appears that the law makers after trying different regimes over two decades have now resorted back to the original one which was eliminated for "non-achievement" of its objectives. Indeed, it would be worthwhile to see whether this reinvented regime can achieve its original as well as proposed objectives.

The proposed block assessment regime seeks to expand the scope of the basic provisions *viz*. 'block period' as well as 'undisclosed income':

- 'Block period' under the old block assessment regime included the period only upto the commencement of search whereas the proposed regime seeks to extend this period upto the date of the execution of the last of the authorisations for the search. To illustrate, suppose a search is commenced on October 1, 2024 and the date of execution of last authorizations for search is January 15, 2025. The "period" to be included in the block period under the old regime vis-à-vis the newly proposed regime is as follows:
  - Old regime: 6 AYs preceding FY 2024-25 plus April 1, 2024 till September 30, 2024
  - Proposed regime: 6 AYs preceding FY 2024-25 plus April 1, 2024 till January 15, 2025

- While the erstwhile block assessment regime defined the term 'undisclosed income' so as to, inter alia, include "any expense, deduction or allowance claimed under this Act which is found to be **false**", the proposed regime defines the said term to, inter alia, include "any expense, deduction or allowance claimed under this Act which is found to be **incorrect**, in respect of the block period".
  - In other words, the old regime sought to cover within the ambit of undisclosed income only those expenses / deductions / allowances which were claimed intentionally despite knowing the same to be false or claimed illegally without any

explanation whatsoever[10]. Thus, there seemed to be a hint of "mens rea" or "concealment" in the erstwhile regime insofar as the second limb of 'undisclosed income' is concerned.

- The new regime proposed to be reinstated on the other hand uses the word "incorrect" in relation to the expenses / deductions / allowances being claimed. This appears to enlarge the scope of the term 'undisclosed income' such that even cases where a taxpayer has claimed a deduction under a bona fide belief may get covered if the said deduction is merely not acceptable to the AO. Clue in this regard may be taken from the erstwhile penalty S. 271(1)(c) wherein the AO used to simply levy penalty for furnishing inaccurate particulars of income for any and every disallowance made by him in the assessment order.

It may also be worth noting that while the definition of the term 'undisclosed income' neither in the earlier scheme nor in the proposed scheme refer to any money, bullion, etc. "found during the course of search", the mechanism provided for computation of such undisclosed income does make a mention of the same. A perusal of the proposed S. 158BB(2) reveals that undisclosed income would be computed:

- "on the basis of evidence found….."
  - This may be interpreted to mean evidence in the form of tangible material in form of documents or papers as well as oral evidence such as statements on oath;
  - "Found" would refer to discovery of information or facts in the context of investigation or detection[11];

- "…. as a result of search or survey or requisition……"
  - While the words "search" and "requisition" were used even in the old regime, the word "survey" was absent hitherto.
  - The intention of adding the word "survey" seems to be to explicitly expand the boundary of s. 158BB as also to fall in line with the decision of Hon. Supreme Court in the case of **CIT vs. S. Ajit Kumar [2018] 93 taxmann.com 294 (SC).**

    In this case, while examining whether the material found in a survey could be utilized for making block assessment under the erstwhile regime, the Court held that since the boundary set by the then S. 158BB did not include 'survey' within its purview, no departure could be made so as to consider the documents collected in survey. However, the Court referred to the words occurring in the latter portion of the then S. 158BB "and such other materials or information as are available with the AO and relatable to such evidence".

    Basis these words, it was held by the Apex Court that any material or evidence found/collected in a survey which has been simultaneously made at premises of a

[10] Medical Land vs. CIT [2014] 363 ITR 81 (Ker.)
[11] CIT vs. M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi HC)

connected person can be utilized while making block assessment in respect of an assessee u/s. 158BB.

- "…….. and such other materials or informations as are either available with the AO or come to his notice during the course of proceedings under this Chapter."
    - It may be noted that interestingly, the words "*and relatable to such evidence*" appearing in the old S. 158BB has not found any place in the proposed S. 158BB(2). In its place, FB proposes to widen the scope so as to cover any and every material and information available with the AO or coming to the AO's knowledge during the search proceedings under Chapter XIV-B.
    - Whether such search proceedings have to necessarily relate to the searched person or any other person remains unclear.

In view of the foregoing, a question which arises is whether only such evidence found which is in the nature of "incriminating material" would be covered within the ambit of these provisions or would it be any and every evidence which comes to the AO's knowledge?

The provisions relating to abatement of pending proceedings, including pending TP proceedings, though not forming part of the original block assessment regime, was incorporated in sections 153A and 153C and continue to operate even under the proposed regime. The question which arises therefrom is whether in case of 'unabated assessments', the disallowances made in the original assessment/ reassessment order would be repeated while passing the block assessment order? The answer to this question is yes! This is evident from proposed S. 158BB(1) which lays down that the total income of the searched person would be the aggregate of certain items including "total income assessed u/s. 143(3) or 144 or 147 or 153A or 153C prior to the date of initiation of the search or the date of requisition, as the case may be".

Though TPO reference can be made u/s. 92CA for ITP and SDT in the course of search proceedings, provisions of S. 144C would not apply, meaning thereby that no draft assessment order u/s. 144C will be passed and the only route available to the assessee would be to approach the CIT(A) in first appeal u/s. 246A.

In case of assessment of other person, the requirement of 'satisfaction' to be recorded by AO of searched person and 'handing over' of documents to the AO of such other person remains the same subject to change in time limits. In view thereof:

- 'Satisfaction' of the AO is a pre-requisite for initiating assessment proceedings against person other than searched person u/s. 158BD and the requirement of sharing the satisfaction note recorded by AO with the assessee would hold good even today[12].
- 'Handing over of documents' – where AO of searched person and other person is the same, satisfaction is to be recorded in the satisfaction note that documents seized from

[12] Sakun International vs. JCIT [2005] 94 ITD 138 (Delhi Trib.)

searched person belonged to other person; not required to transmit documents so seized from searched person[13].

To take an example by analysing different scenarios:

Particulars	Search initiated = 01.10.2024 Date of execution of last of the authorisations = 15.01.2025	Search initiated = 01.10.2024 Date of execution of last of the authorisations = 30.04.2025
Block period: ∞ 6 AYs preceding the PY in which search was initiated AND ∞ Period of search	Block period: ∞ AY 2019-20 to AY 2024-25 AND ∞ 01.04.2024 to 15.01.2025	Block period: ∞ AY 2019-20 to AY 2024-25 AND ∞ 01.04.2024 to 30.04.2025
Taxation of total income of PY in which last of authorisations were executed u/s. 158BA(6)	Total income of PY 2024-25 = Normal income + undisclosed income ∞ Normal income assessed as per other provisions of Act (at normal tax rates) ∞ Undisclosed income assessed as per Chapter XIV-B (at 60% tax rate)	Total income of PY 2025-26 = Normal income + undisclosed income ∞ Normal income assessed as per other provisions of Act (at normal tax rates) ∞ Undisclosed income assessed as per Chapter XIV-B (at 60% tax rate) (Total income of PY 2024-25 to be taxed as per Chapter XIV-B)

[13] Super Malls (P.) Ltd. vs. PCIT [2020] 423 ITR 281 (SC)

Particulars	Search initiated = 01.10.2024 Date of execution of last of the authorisations = 15.01.2025	Search initiated = 01.10.2024 Date of execution of last of the authorisations = 30.04.2025
Computation of total income u/s. 158BB(1)(iv) (i.e. total income where PY has not ended)	Total income of incomplete PY 2024-25 = On the basis of entries relating to total income or transactions as recorded in the BOA and other documents maintained in the normal course on or before 15.01.2025	Total income of incomplete PY 2025-26 = On the basis of entries relating to total income or transactions as recorded in the BOA and other documents maintained in the normal course on or before 30.04.2025 (Total income of completed PY 2024-25 to be computed as other PYs in block period*)*
Evidence found during search relating to international transaction / specified domestic transaction pertaining to PY in which last of authorisations were executed [S. 158BB(3)]	**For PY 2024-25:** Such evidence not to be considered for determining total income of the block period and such income shall be considered in the assessment made under the other provisions of this Act	**For PY 2025-26:** Such evidence not to be considered for determining total income of the block period and such income shall be considered in the assessment made under the other provisions of this Act *(*If evidence pertains to PY 2024-25 i.e. before the period comprising of date when last of authorisations were executed, then such evidence to be considered for block assessment.)

The Direct Tax Vivad Se Vishwas Scheme, 2024

Background

Considering the success of the Direct Tax Vivad Se Vishwas Act ("DTVsVA"), 2020 and the mounting pendency of appeals at CIT(A) level, the Government has proposed to introduce Direct Tax Vivad se Vishwas Scheme ("DTVsVS"), 2024 (VsV 2.0).

Appeals Covered

The DTVsVA, 2020 covered disputes pending as on January 31, 2020. The DTVsVS, 2024 is proposed on the similar lines, and covers disputes (appeals/writs/SLPs) pending as on July 22, 2024, whether filed by taxpayer or tax authority, before:

- Supreme Court or High Court or ITAT or CIT(A) or JCIT(A),
- DRP or where the DRP directions has been issued but the final assessment order is awaited,
- Revision petition is pending before the CIT.

Amount Payable under the Scheme by the declarant

A bird's eye view of the amount proposed to be payable under this Scheme to settle the dispute have been tabulated as under:

Particulars	Amount payable on or before December 31, 2024	Amount payable after December 31, 2024 but on or before the last date.
Tax Arrears involving disputed tax, interest chargeable or charged and penalty leviabale or levied on such disputed tax		
Disputes eligible for the settlement under the DTVsVS, 2024 where the declarant is an appellant on or before January 31, 2020 at the same appellate forum in respect of such tax arrear	110% of the disputed tax	120% of the disputed tax
All other eligible disputes	100% of the disputed tax	110% of the disputed tax
Tax Arrears involving disputed interest or penalty or fee		
Disputes eligible for the settlement under the DTVsVS, 2024 where the declarant is an appellant on	30% of disputed penalty, interest or fee	35% of disputed penalty, interest or fee

or before January 31, 2020 at the same appellate forum in respect of such tax arrear		
All other eligible disputes	25% of disputed penalty, interest or fee	30% of disputed penalty, interest or fee

- Where an appeal/writ petition/SLPs is filed by the income-tax authority on any disputed issue before the appellate forum, the amount proposed to be payable shall be 50% of the amount in the Table above calculated on such issue, in such manner, as may be prescribed.
- Where an appeal or objections filed by the taxpayer on any issue before CIT(A), JCIT(A) or objections before DRP or ITAT and on which taxpayer has already got a decision in its favor by higher authority, i.e. the ITAT or by the High court, as the case may and the same has not been reversed by any higher authority, the amount proposed to be payable shall be 50% of the amount in the Table above calculated on such issue, in such manner, as may be prescribed.

Calculation of Disputed Tax

Disputed tax payable by the appellant under the provisions of the ITA, have been tabulated as under:

Particulars	Disputed tax (inclusive of surcharge and cess)
Where appeal/writ/SLP is pending before any appellate forum as on July 22, 2024	Tax payable if such appeal/writ/SLP was to be decided against the taxpayer
Where objections are pending before DRP as on July 22, 2024	Tax payable if DRP was to confirm variation proposed in the draft order
Where DRP has issued directions, but tax authority has not completed the assessment on or before July 22, 2024	Tax payable as per the assessment order to be passed by the tax authority in conformity with the directions of the DRP
Where an application for revision filed by the taxpayer is pending as on July 22, 2024	Tax payable if such application for revision was not to be accepted

Where settlement results in reduction of Minimum Alternate Tax ("MAT") /Alternate minimum Tax ("AMT") credit or losses or depreciation, the taxpayer can opt for either of the following:

- Include the amount of tax related to such MAT/AMT credit or loss or depreciation in the disputed tax; or
- Carry forward the reduced MAT/AMT credit or loss or depreciation (as may be prescribed)

Scheme not to apply for certain cases

The provision of this scheme shall not apply in certain cases –

- In respect of disputed tax, interest, penalty or fee relating to:
  a) Tax year in respect of which assessment has been made u/s. 143(3) or S. 144 or S. 147 or S. 153A or S. 153C of the ITA on the basis of search initiated

under S. 132 or S. 132A of the ITA;

b) Tax year in respect of which prosecution has been instituted on or before the date of filing of declaration.

c) Any undisclosed income from a source located outside India or undisclosed asset located outside India;

d) An assessment or reassessment made on the basis of information received under an agreement referred to in S. 90 or S. 90A of the ITA.

- A person in respect of whom a detention order is passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 on or before the date of filing of the declaration and such detention order is not revoked or set aside by a higher authority.

- A person in respect of whom prosecution has been instituted or he has been convicted under the provisions of Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, Benami Act, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002.

- A person in respect of whom prosecution has been initiated by an Income-Tax Authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force.

- A person who has been convicted of any offence punishable under Bharatiya Nyaya Sanhita, 2023.

- A person notified under S. 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the date of filing of the declaration.

Rationale of the Proposed Amendment

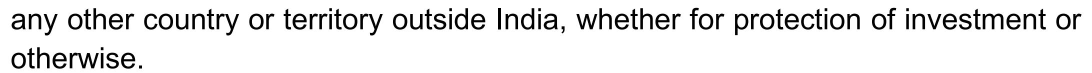
The Government has proposed to introduce this Scheme with the objective of providing a mechanism of settlement of disputed issues, thereby reducing litigation without much cost to the exchequer.

It is proposed that the start and end date of this Scheme shall be notified.

Our Comments

- The DTVsVS, 2024 permits the settlement of those disputes which were not settled under the 2020 Scheme, with a higher payment.

- Key differences between the DTVsVA, 2020 and the DTVsVS, 2024 is as under:
  - Unlike the DTVsVA, 2020, this Scheme does not envisage settlement of
    a) Orders for which the time limit for filing an appeal or SLP has not expired as on July 22, 2024, and
    b) Orders of assessment made pursuant to search u/s. 132 or 132A of the ITA, if the amount of disputed tax does not exceed five crore rupees.
  - There is no provision under the DTVsVS, 2024 to withdraw claims made by a declarant in arbitration proceedings under any agreement entered into by India with



any other country or territory outside India, whether for protection of investment or otherwise.

- Unlike the DTVSvVA, 2020, there is no explanation in this Scheme for providing clarity regarding non-inclusion of cases where writ petition or SLP or any other proceedings has been filed either by the assessee or the tax authority or both pursuant to order of Settlement Commission and such petition is pending or disposed of.

- While lot of litigation appears to have been settled under the DTVsVA, 2020, for those who have missed the bus and for those who want to reduce litigation and uncertainty, this is a good opportunity and should be evaluated on case-by-case basis. Needless to add, similar to 2020, present proposal also requires entire withdrawal of appeal and not restricted to selected grounds of appeal.

Miscellaneous

Amendment in provision relating to set off and withholding of refunds [S. 244A and S. 245]

Background

Presently, S. 245(2) of the ITA allows the AO to withhold refund due to person till the end of any other pending assessment or reassessment where:

- the AO is of the opinion that grant of refund is likely to adversely affect the revenue; and
- the AO records his reasons in writing; and
- obtains approval from PCIT or CIT, as the case may be for withholding the refund.

Further, proviso was inserted vide FA 2023 in S. 244A wherein no additional interest on refund u/s. 244A is payable to such person from the date on which such refund is withheld and ending with the date on which such assessment/reassessment is made.

Proposed Amendments

The FB proposes to relax the foregoing requirements u/s. 245(2) of the ITA by omitting the requirement that that AO should form an opinion that grant of refund is likely to adversely affect the revenue.

Further, the FB proposes to increase time limit to withhold refund from date when assessment or reassessment is made to sixty days from the date when assessment or reassessment is made.

Consequential amendment is made u/s. 244A for non-granting of additional interest payable on such refund till sixty days from the date when assessment or reassessment is made.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendments

As per EM, since AO is already required u/s. 245(2) to record reasons for withholding refund, there is no need for the condition of forming of opinion by the AO in this respect.

Further, the time limit to withhold refund is increased to sixty days from the date when assessment or reassessment is made since as per the Legislature, the existing time limit was inadequate especially, since the demand itself becomes due to the assessee after thirty days of the date of assessment or reassessment.

Our Comments

The proposed amendment makes the requirement of the AO less onerous as now there is no criteria/condition that the refund can be withheld only where the same adversely affects the revenue. The AO could provide even other reasons for withholding refunds, which would lead to arbitrariness in the procedure.

In our view, even after the amendment, the AO while recording reasons will have to justify that grant of refund is like to adversely affect the revenue. Further, since more often than not, assessment or reassessment of corporate assessees are invariably pending at any given point in time and considering the time gap between refund becoming due to the assessee till the conclusion of pending assessment or reassessment in reality, disentitlement of the assessee for additional interest for the interregnum, is unjustified, more so because in case the pending assessment results in a demand being created, such demand will certainly include interest u/s. S. 234B till the date of assessment/reassessment.

Removing ambiguity related to period of limitation of imposing penalties [S. 275]

Background

Presently, S. 275 of the IT Act provides for the period of limitation for imposing penalties. Order imposing a penalty cannot be passed where the relevant assessment order or other order is the subject-matter of an appeal before the Appellate authority, after the expiry of the FY in which the proceeding is completed or six months from the end of the month in which the order of the Appellate Authority is received by the Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner whichever is later.

Proposed Amendment

It is proposed to amend sub-sections (1) and (1A) of the S. 275 so as to omit the reference of the Pr. Chief Commissioner or Chief Commissioner from the said sub-sections.

The proposed amendments will take effect from October 1, 2024.

Rationale of the Proposed Amendment

As per EM, these amendments were made to resolve ambiguity for the purposes of calculation of number of days for imposing penalties as a consequence of orders referred to in the said section.

Our Comments

In our view, by withdrawing the role of the Pr. Chief Commissioner and Chief Commissioner from this process, it is intended to reduce a layer of authority, thereby smoothening the process to initiate penalty proceedings timely.

Penalty for Failure to furnish Return in relation to Foreign Income and Assets [S. 42 and 43 of BMA]

Background:

S. 42 of the BMA provides that where a Resident and Ordinarily Resident who is required to file ROI u/s. 139(1) of the ITA and who, at any time during the PY-

- held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise; or
- was a beneficiary of any asset (including financial interest in any entity) located outside India; or
- had any income from a source located outside India,

and fails to furnish such return before the end of the relevant AY, the AO may levy penalty of ten lakh rupees regardless of the value of the asset outside India or income or source outside India. Under the proviso to S. 42, such penalty shall not apply in respect of one or more bank accounts having an aggregate balance not exceeding five lakh rupees at any time during the PY.

S. 43 of the BMA further provides that where a Resident and Ordinarily Resident who has furnished a ROI u/s. 139(1) or 139(4) or 139(5) fails to furnish any information or furnishes any inaccurate information in such ROI on items set out in S. 42, the AO may levy penalty of ten lakh rupees regardless of the value of the asset outside India or income or source outside India. Under the proviso to S. 43, such penalty shall not apply in respect of one or more bank accounts having an aggregate balance not exceeding five lakh rupees at any time during the PY.
[underlined for emphasis]

Proposed amendments

FB proposes the following:

- The provisos to sections 42 and 43 will be amended to cover any asset or assets (other than immovable property) unlike the present provisions which cover only bank accounts.
- The threshold to levy penalty by the AO is increased to twenty lakh rupees from the present limit of Rs. five lakhs.

The proposed amendments will apply from October 1, 2024.

Rationale of the Proposed Amendments

Para 159 of Finance Minister Speech states that Indian professionals working in MNCs get ESOPs and also invest in social security schemes and movable assets outside India and non-reporting of these smaller value foreign assets invites penalty under the BMA. Accordingly, it is proposed to de-criminalise such non-reporting of foreign assets upto twenty lakh rupees.

Our Comments

Often, foreign assets and income therefrom could be lower than the penalty for non-disclosure which is fixed at ten lakh rupees. Also, non-disclosure could be unintentional or due to different interpretation of reporting requirements. Such cases where the amounts involved are small, will now not be subject to the huge penalty. Further, by covering all the movable assets under the higher threshold of ten lakh rupees will also benefit larger section of assesses.

Overall, this is a welcome amendment.

Notice and Attachment of Property involved in Benami Transaction [S. 24 of the Benami Act]

Backgound

- The objective of the Benami Act is to prohibit Benami transactions, allow for the recovery of property held under such transactions, and address related matters.
- S. 24 of the Benami Act, relates to notice and attachment of property involved in the Benami transaction and the timelines for issuing and filing of replies.

Proposed Amendments

Section	Scope	Existing provision	Proposed Provision
24(1) and 24(2)	Time limit for furnishing of reply to Show Cause Notice ("SCN") by benamidar / beneficial owner	Existing norms do not provide for any time limit for a Benamidar /Beneficial owner to furnish a reply to the SCN asking why the property should not be treated as benami property	Proposed to insert a S. 24(2A) to provide a maximum time limit of three months from the end of the month in which notice is issued u/s. 24 (1) to the benamidar or the beneficial owner to file their explanations or submissions
24(3)	Time limit for provisional attachment of property, in case of risk of alienation	The provisional attachment can be made for a period not exceeding 90 days from the last day of the month, in which SCN asking why the property should not be treated as Benami property is issued.	Proposed to extend the period of 90 days to 4 months from the end of the month in SCN is issued.
24(4)	Time limit to pass an order: a) Where provisional attachment is made - for continuing the provisional attachment or revoking the same; or b) Where provisional attachment is not made, to decide to	Existing time limit is 90 days from the last day of the month in which SCN u/s. 24(1) is issued as to why the property should not be treated as benami property	Proposed to extend the period of 90 days to 4 months from the end of the month in SCN is issued

	make the attachment or not		
24(5)	Time limit for making a statement of the case and refer to the Adjudicating Authority, after passing the order for continuing the provisional attachment of the property u/s. 24(4)(a)(i) or passes an order provisionally attaching the property u/s. 24(4)(b)(i)	The existing time limit is 15 days from the date of attachment order	Proposed to extend the time limit from 15 days to 1 month from the date of attachment order

Rationale of the Proposed Amendments

To rationalize time limits for attachment of property and reference to adjudicating authority.

These amendments will take effect from the October 1, 2024.

Power to Tender Immunity from Prosecution [S. 55A of the Benami Act]

Background

S. 53(2) of the Benami Act provides that the Benami transactions are punishable by rigorous imprisonment for one to seven years and a fine up to 25% of the property's FMV. These severe penalties apply equally to benamidars, beneficial owners, and facilitators, often deterring benamidars from testifying against beneficial owners.

Proposed Amendment

A new S. 55A is proposed to be inserted in the Benami Act, which provides power to the Initiating Officer to tender immunity from penalties to benamidars and others (excluding beneficial owners) who fully disclose details of the Benami transaction, with necessary approvals. Once the immunity is so tender and accepted, it would prevent prosecution for any offence in respect of which the tender was made.

However, the Initiating Officer can withdraw the immunity so granted if the conditions for grant of immunity are not met or false evidence is given, with the competent authority's approval. Such person may be tried for office in respect of which immunity was tendered or for any other offence for which he was found guilty in connection with the same matter.

These amendments will take effect from the October 1, 2024.

Key Amendments to Finance Bill (No. 2), 2024 as passed in Lok Sabha on 07-08-2024

A. Amendment in Section 112 with respect to taxability of long-term capital gain on sale of immovable properties

Rate of Capital Gains Tax for Resident Individual/HUF on sale of land or building or both			Remarks
Present	**Proposed in Finance (No.2) Bill, 2024 dated 23-07-2024**	**As per Finance (No. 2) Bill, 2024 as passed in Lok Sabha on 07-08-2024**	
20% (with indexation)	12.5% (without indexation) **for all transfers on or after 23-07-2024 irrespective of the date of acquisition**	a) **For property acquired before 23-07 2024:** 12.5% (without indexation) or 20% (with indexation) whichever is lower. However, loss based on indexed cost would not be allowed. b) **For property acquired on or after 23-07-2024:** 12.5% (without indexation)	**With this amendment, Resident individuals or HUFs who bought any immovable property before July 23, 2024, can now opt to pay LTCG tax under the new scheme at the rate of 12.5% without indexation or claim the indexation benefit and pay 20% tax. However, the loss if any due to indexation will not be allowed to be set-off or carried forward.**

B. Amendment in Section 158B with respect to definition of Undisclosed Income

Definition of Undisclosed Income			Remarks
Present	**Proposed in Finance (No.2) Bill, 2024 dated 23-07-2024**	As per Finance (No. 2) Bill, 2024 as passed in Lok Sabha on 07-08-2024	
Includes *inter alia:* Falsely claimed expenses, deductions or allowances	**Includes *inter alia:* Incorrectly** claimed expenses, deductions or allowances	**Includes *inter alia:* Incorrectly** claimed expenses, **exemptions** deductions or allowances	**With this amendment, the scope of the term 'undisclosed income' is enlarged to include even the exemptions which are incorrectly claimed by the taxpayer in relation to any year covered under block period**

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