ANALYSIS OF DIRECT & INDIRECT TAX PROPOSALS

Finance Bill, 2025

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Commonly used Abbreviations

ACIT	Additional Commissioner of Income Tax
AIF	Alternate Investment Fund
AJP	Artificial Juridical Person
ALP	Arm's Length Price
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
BOI	Body of Individuals
CCIT	Chief Commissioner of Income Tax
CGST	Central Goods and Service Tax
CGST Act	Central Goods and Service Tax Act, 2017
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
CG	Central Government
DCIT	Deputy Commissioner of Income Tax
DGIT	Director General of Income Tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
EM	Explanatory Memorandum
ETF	Exchange Trade Fund
FA	Finance Act
FB	Finance Bill, 2025
FII	Foreign Institutional Investor
FY	Financial Year
GST	Goods and Services Tax
HUF	Hindu Undivided Family
IFSC	International Financial Service Centre
IFSCA	International Financial Service Centre Authority
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017

ISD	Input Service Distributor
ITA	Income Tax Act
ITAT	Income Tax Appellate Tribunal
ITC	Input Tax Credit
JCIT	Joint Commissioner of Income Tax
LIP	Life Insurance Policy
LTCG	Long Term Capital Gains
MMR	Maximum Marginal Rate
NR	Non Resident
NPS	National Pension Scheme
NSS	National Savings Scheme
OBU	Offshore Banking Unit
PCCIT	Principal Chief Commissioner of Income Tax
PCIT	Principal Commissioner of Income Tax
PDIT	Principal Director of Income Tax
PDGIT	Principal Director General of Income Tax
PY	Previous Year
r.w.r	read with rules
ROI	Return of Income
Rules	Income Tax Rules
S.	Section
SDT	Specified Domestic Transaction
SEBI	Securities and Exchange Board of India
SEP	Significant Economic Presence
SEZ	Special Economic Zone
TCS	Tax Collected at Source
TDS	Tax Deduction at Source
TP	Transfer Pricing
TPO	Transfer Pricing Officer
u/s.	under section
VDA	Virtual Digital Asset
w.e.f	with effect from

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 2026-27 under the old regime. However, relaxation has been provided for slab rates as well as rebate under S. 87A of the ITA for taxation under new regime under S. 115BAC of the ITA.

(I) The rates of income-tax for AY 2026- 27 under the new regime, i.e. S. 115BAC of the ITA is as follows:

The existing slab rates of income-tax for Individual, HUF, AOP and AJP as per S. 115BAC of the ITA are 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%

Proposed Amendment

The proposed revised rates of income-tax for Individual, HUF, AOP and AJP as per S. 115BAC for AY 2026-27 are as follows:

Slab	Applicable rate of tax
Upto Rs. 4,00,000	Nil
Rs. 4,00,001 to Rs. 8,00,000	5%
Rs. 8,00,001 to Rs. 12,00,000	10%
Rs. 12,00,001 to Rs. 16,00,000	15%
Rs. 16,00,001 to Rs. 20,00,000	20%
Rs. 20,00,001 to Rs. 24,00,000	25%
Above Rs. 24,00,000	30%

Rebate u/s 87A

It is proposed to revise the amount of rebate allowable under S. 87A of the ITA w.e.f AY 2026-27 as under:

A resident Individual whose Total Income does not exceed Rs. 12,00,000/- would now be eligible to claim a rebate of an amount which is lower of Rs. 60,000/- or 100% amount of income-tax. Earlier, the limit for total income was Rs. 7,00,000/- and the amount of eligible rebate was lower of Rs. 25,000/- or 100% amount of the income-tax.

If the total income of such Individual exceeds Rs. 12,00,000/- and the income-tax payable on such total income exceeds the amount by which the total income exceeds Rs. 12,00,000/-, the assessees shall now be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under Chapter VIII of the ITA dealing with Rebates and Reliefs) 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. 12,00,000/-. Earlier, the monetary limit was Rs. 7,00,000/- instead of Rs. 12,00,000/-.

Further, it is proposed to insert a second proviso to S. 87A of the ITA w.e.f AY 2026-27 to provide that the amount of rebate under the first proviso to S. 87A of the ITA shall not exceed the amount of income-tax payable as per the rates provided in S.

115BAC(1A) of the ITA. By inserting the said proviso, it is intended to deny rebate in tax at special rates (for e.g., capital gains u/s. 111A, 112, etc.).

Default Regime

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

Surcharge

There has been no change in surcharge rates in case of Individual, HUF, AOP, BOI and AJP. The rates of surcharge in case of Individual, HUF, AOP, BOI and AJP for AY 2026-27 continue as follows:

Total Income	Income other than Dividend & Capital Gains covered u/s. 111A, S. 112 and S. 112A	Dividend & Capital Gains covered u/s. 111A, S. 112 and S. 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	25%	15%

For AOP consisting of only companies as its member:

Slab	Applicable rate of tax
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 2026-27 for assessees opting out of the new regime u/s. 115BAC (i.e. falling under the old regime) 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. 10,00,001	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. 10,00,001	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. 10,00,001	30%

There has been no change in the amount of rebate u/s. 87A of the ITA available to a resident Individual for AY 2026-27 under the said regime. 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

There has been no change in surcharge rates under the old regime in case of

Individual, HUF, AOP, BOI and AJP. The rates of surcharge in case of Individual, HUF, AOP, BOI and AJP for AY 2026-27 are as follows:

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:

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

Health and Education Cess

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

Our Comments

The proposed tax rates under the new regime would considerably reduce tax outgo for the middle class and provide more disposable income, thus helping boost household consumption, savings and investment which in turn will boost economic growth. The amount of tax savings due to the proposed changes in the tax rates is depicted in the following table:

Total Income under the new regime	Tax as per Proposed New Regime (including surcharge & health and education cess)	Tax as per Existing New Regime (including surcharge & health and education cess)	Tax Savings
4,00,000	-	-	
8,00,000	-	31,200	31,200
12,00,000	-	83,200	83,200
16,00,000	1,24,800	1,76,800	52,000
20,00,000	2,08,000	3,01,600	93,600
24,00,000	3,12,000	4,26,400	1,14,400
50,00,000	11,23,200	12,37,600	1,14,400
1,00,00,000	29,51,520	30,77,360	1,25,840

Total Income under the new regime	Tax as per Proposed New Regime (including surcharge & health and education cess)	Tax as per Existing New Regime (including surcharge & health and education cess)	Tax Savings
2,00,00,000	66,73,680	68,05,240	1,31,560
5,00,00,000	1,89,54,000	1,90,97,000	1,43,000
7,50,00,000	2,87,04,000	2,88,47,000	1,43,000
10,00,00,000	3,84,54,000	3,85,97,000	1,43,000

As could be observed from the above table, the maximum amount of tax savings due to proposed revised tax rates would be Rs. 1,43,000/-.

The proposed tax rates will make the new tax regime even more lucrative as the tax benefit obtained under the said regime in most cases is likely to be higher than the tax on amount of deductions and exemptions that is required to be foregone by the assessee. The following chart shows amount of deductions/exemptions to be foregone at which the tax under both regimes will break-even:

Total Income in New Regime	Tax as per New Regime (including surcharge & health and education cess)	Deductions to be foregone at which the tax under both regimes will break-even	Total Income in Old Regime	Tax as per Old Regime (including surcharge & health and education cess)
2,50,000	NIL	NIL	2,50,000	NIL
4,00,000	NIL	NIL	4,00,000	NIL
5,00,000	NIL	NIL	5,00,000	NIL
8,00,000	NIL	3,00,000	5,00,000	NIL
10,00,000	NIL	5,00,000	5,00,000	NIL
12,00,000	NIL	7,00,000	5,00,000	NIL
16,00,000	1,24,800	5,75,000	10,25,000	1,24,800
20,00,000	2,08,000	7,08,333	12,91,667	2,08,000
24,00,000	3,12,000	7,75,000	16,25,000	3,12,000
50,00,000	11,23,200	7,75,000	42,25,000	11,23,200
1,00,00,000	29,51,520	7,75,000	92,25,000	29,51,520
2,00,00,000	66,73,680	7,75,000	1,92,25,000	66,73,680
5,00,00,000	1,89,54,000	7,75,000	4,92,25,000	1,89,54,000
7,50,00,000	2,87,04,000	72,21,715	6,77,78,285	2,87,04,000
10,00,00,000	3,84,54,000	94,11,496	9,05,88,504	3,84,54,000

- Additional relief has been provided to the small tax payers by increasing the amount of total income for which rebate is available under new regime (first proviso to S. 87A of the ITA) from Rs. 7,00,000/- to Rs. 12,00,000/-. However, the said relief is intended to be denied to income chargeable under special rates of taxes such as income under S. 111A, S. 112 and S. 112A of the ITA.

- As far S. 112A of the ITA is concerned, the existing sub-section (6) of S. 112 of the ITA already disqualifies LTCG u/s. 112A of the ITA for rebate under S. 87A of the ITA. However, similar provision is not contained in sections 111A and 112 of the ITA.

- Though the intention discernible from the EM is that the proposed rebate is to be completely denied to income falling under these sections (S. 111A, S. 112, etc.); however, the proposed second proviso to S. 87A of the ITA only states that the deduction under the first proviso, shall not exceed the amount of income-tax payable as per the rates provided in S. 115BAC(1A). It does not state that the deduction shall not be available for income chargeable u/s. 111A, S. 112, etc. The language so used in the proposed second proviso indicates that even for income falling under these sections, rebate shall be available to the extent of the slab rates of 5% and 10% (being the rates mentioned in S. 115BAC(1A) of the ITA for slabs upto Rs. 12,00,000/-). This difference in the language of the amendment (proposed second proviso) and what is mentioned in the EM as well as the Hon' ble FM Speech could lead to controversy about the implications of the said amendment.

- Recently, the **Hon'ble Bombay High Court** in the case of **Chamber of Tax Consultants vs. DGIT [2025] 170 taxmann.com 707 (Bom. HC) [24-01-2025], issued a direction** to modify the utilities for filing of the ROI u/s. 139 of the ITA immediately, thereby allowing assessees to make a claim of rebate u/s. 87A of the ITA read with the proviso to section 87A of the ITA for all types of income, in their ROI for the AY 2024-25 and subsequent years including revised returns to be filed u/s. 139(5) of the ITA.

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 2026-27 are as follows:

Slab	Applicable rate of tax
(i) Where its total turnover or the gross receipt in the PY 2023-24 does not exceed Rs. 400 crores;	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 2026-27 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 crore	7%
Income exceeds Rs. 10 crores	12%

Where a domestic company opts for concessional tax rate u/s. 115BAA or 115BAB of the ITA, then rate of surcharge for AY 2026-27 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

There has been no change in rates of income-tax of foreign companies. The rates of income-tax in case of foreign companies for AY 2026-27 shall be of 35%.

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 2026-27 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 2026-27 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 2026-27 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 2026-27 are as follows:

Slab	Applicable rate of tax
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 of the ITA for AY 2026-27 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 for AY 2026-27 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 crore	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 2026-27 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.

Personal Income Tax

Increase in the Limits on the Income of the Employees for the Purpose of Determining Perquisite [S. 17(2)]

Background

The existing provisions of S. 17(2)(iii) of the ITA provide for taxation of value of any benefit or amenity granted or provided free of cost or at concessional rate by any employer (including a company) to an employee who is neither a director of the company nor has a substantial interest in the company as 'perquisites' only where his income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds Rs. 50,000/-.

Further, clause (vi) of the proviso to S. 17(2) of the ITA provides that any expenditure incurred by the employer on travel of an employee or any member of the family of such employee along with one attendant in connection the medical treatment of such employee/family member, outside India, shall not be treated as "perquisite", subject to the condition, amongst others, that the gross total income of the employee before including the said expenditure, does not exceed Rs. 2,00,000/-.

Proposed Amendments

- It is proposed to amend the foregoing provisions of S. 17(2) of the ITA so as to increase the monetary limit of employee's income to be eligible for the exemption from perquisite as under:

S. No.	Type of perquisite	Existing limit	Proposed Limit
S. 17(2)(iii)	Value of any benefit or amenity granted or provided free of cost or at concessional rate by any employer to an employee who is not a director of the company or has a substantial interest in the company	Income of the employee under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, should exceed Rs. 50,000/-	Income of the employee under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, should exceed such amount as may be prescribed.
Clause (vi) to the proviso to	Expenditure incurred by the employer on travel of	Gross Total Income of the employee before	Gross total income of the employee before

S. 17(2) of the ITA – exemption from purview of taxable perquisite	an employee or any member of the family of such employee along with one attendant in connection with the medical treatment of such employee/family member, outside India.	including the said expenditure, does not exceed Rs. 2,00,000/-.	including the said expenditure, does not exceed such amount as may be prescribed.

These amendments will take effect from April 1, 2026 and shall accordingly, apply in relation to AY 2026-27 and subsequent AYs.

Rationale of the Proposed Amendments

The FB proposes to amend the foregoing provisions as the current limits for the purpose of calculating perquisites were introduced almost 2-3 decades ago. Thus, there exists a need to adjust these limits to take into account changes in standard of living and economic conditions. Accordingly, the FB proposes to empower the CBDT to notify the extended limit in this regard.

Our Comments

With the proposed amendments, the limits for being qualified for tax free perquisite for salaried employee are proposed to be increased thereby providing certain relaxation to the middle class employed assessees. This will result in broadening of base of employees (depending upon the increase in limit of salary income/gross total income to be notified) that would be eligible for tax-free perquisite.

Simplification of Conditions for Treating a Property as a Self-Occupied Property [S. 23]

Background

S. 23 of the ITA relates to determination of annual value of any house property. The current provisions of S. 23(2) of the ITA allow the annual value of a self-occupied property to be Nil only where such house property is either used by the owner for the purposes of his own residence or the owner cannot actually occupy it due to the reason of his employment, business or profession carried on at any other place.

Proposed Amendment

It is now proposed to amend S. 23(2) of the ITA to provide that if the owner occupies a house property or any part thereof for his own residence or cannot actually occupy it due to any reason, then the annual value of such house property or any part thereof shall be taken as nil.

This amendment will take effect from the April 1, 2025 and shall accordingly apply for AY 2025-26 and onwards.

Rationale of the Proposed Amendment

The aforesaid amendment has been proposed to simplify the provisions of S. 23(2) of the ITA by allowing the taxpayers to claim the annual value of up to two self-occupied properties as Nil.

Our Comments

Hitherto, for self-occupied properties to not be subject to tax, the assessee was required to demonstrate that they were either factually occupied by the assessee or that the same could not be occupied for specific reasons of his employment, business or profession carried on at any other place. On failure to satisfy these conditions, such property could still be burdened with deemed rental income regardless of whether it was actually being rented out or not. See for instance **DCIT vs. A.K. Ganju [2004] 88 ITD 311 (Delhi Trib.), Shikharchand Jain vs. CIT [1982] 11 Taxman 124 (MP HC)**.

Further, S. 23 was amended vide FA, 2019, w.e.f. 1-4-2020 allowing the benefit of self-occupied property upto two properties. Even though the said benefit was provided, it was difficult for the assessees to claim the second property as self-occupied as satisfying the conditions prescribed under S. 23(2) of the ITA for two properties may, at times, be difficult to demonstrate.

The proposed amendment would enable the assessee to claim benefit of Nil Annual Value for two houses without satisfying any conditions for non-occupation.

Benefit in Respect of Contribution to NPS Vatsalya Scheme of CG [S. 10(12BA) & 80CCD]

Background

S. 10 of the ITA provides various types of income which are not to be included in computation of the total income.

S. 80CCD of the ITA deals with the deductions related to contributions made to the NPS.

The CG, recently on September 18, 2024, launched the NPS Vatsalya Scheme which enables parents and guardians to start an NPS account for their children. This scheme is designed exclusively for minors and will be operated by the guardian for the exclusive benefit of the minor till they attain majority. When a minor attains 18 years, the account will continue to be operational and transferred to the child's name with the accumulated corpus and will be shifted into the NPS-Tier 1 Account - All Citizen Model or other non-NPS scheme account.

Proposed Amendments

- It is proposed to extend the provisions applicable to NPS u/s. 80CCD of the ITA to the contributions made to the NPS Vatsalya account as follows:
  - A deduction shall be allowed from the parent/guardian's Gross Total Income of the amount paid or deposited in the account of any minor under the NPS Vatsalya Scheme subject to a maximum limit of Rs. 50,000/-.

- The said limit of Rs. 50,000/- shall apply on an overall basis for all the contributions eligible for deduction u/s. 80CCD of the ITA.
- The amount on which deduction has been allowed under S. 80CCD(1B) of the ITA or any amount accrued thereon, will be charged to tax when such amount is withdrawn from the account of the minor [except to the extent exempt u/s. 10(12BA) of the ITA]; and
- The amount on which deduction has been allowed and is received on closure of the account due to the death of the minor shall not be deemed to be the income of the parent/guardian.

∞ It is further proposed to introduce a new clause (12BA) in S. 10 of the ITA so as to provide that any income received on partial withdrawal made out of the minor's NPS account shall not be included in the total income of the parent/guardian to the extent it does not exceed 25% of the amount of contributions made by him and in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013 and the regulations made thereunder.

These amendments will take effect from April 1, 2026 and shall accordingly, apply in relation to AY 2026-27 and subsequent AYs.

Rationale of the Proposed Amendments

As per the EM, the NPS Vatsalya Scheme allows for partial withdrawal from minor's account to address certain contingency situations like education, treatment of specified illnesses and disability (of more than 75%) of the minor.

Our Comments

The proposed amendments intend to encourage parents/guardians to make tax-deductible investments for meeting their child's future needs.

However, the said deduction is subject to the limit of Rs. 50,000/- u/s. 80CCD(1B) of the ITA and also overall limit of Rs. 1,50,000/- u/s. 80CCE of the ITA. Hence, the proposed amendments may not motivate assessees who have already exhausted said limits through other investments.

Further, though no amendment has been brought in S. 10(12A) of the ITA, the benefit of exemption under the said section available for 60% of the amount withdrawn from NPS scheme ought to be available even in case of eventual withdrawal from the NPS Vatsalya Scheme on closure or on opting out of the scheme in accordance with the provisions of the pension scheme.

Exemption from Taxation to Individuals on Withdrawals from NSS [S. 80CCA]

Background

Prior to AY 1993-94, S. 80CCA of the ITA provided for deduction to Individuals and HUF for any amount deposited under NSS.

Further, S. 80CCA(2) of the ITA provides that the amount withdrawn from the amount credited to the NSS account along with accrued interest is chargeable to tax in the PY in which the said amount is withdrawn. The said amount is chargeable to tax only when the deposits were made prior to AY 1993-94 and deduction in respect of said deposit had been claimed in the year in which said deposit has been made. Further, as per Circular No. 532 issued on March 17, 1989, no amount is chargeable to tax in hands of legal heirs on withdrawal on closure of account due to death of the depositor.

Proposed Amendment

It is proposed to insert a new proviso to S. 80CCA of the ITA to provide exemption to the withdrawals made by Individuals on or after August 29, 2024 from the Scheme which were otherwise taxable under S. 80CCA(2) of the ITA.

The Proposed amendment shall apply with retrospective effect from August 29, 2024.

Rationale of the Proposed Amendment

The Department of Economic Affairs vide its notification dated August 29, 2024 has provided that no interest would be paid on the balance standing to the credit in the accounts of the Individual maintained under NSS after October 1, 2024.

The said amendment has been brought in to provide relief to individuals especially senior citizens who were compelled to withdraw the amount standing to the credit of NSS as a result of the said notification.

Our Comments

The said amendment is a one-time relaxation provided essentially to senior citizens having their money in the accounts maintained under this Scheme with the hope of earning interest on the balance available in the said accounts. They can now withdraw the said amounts without any additional tax burden and make better investments out of the said withdrawals.

However, since no corresponding amendment has been made in S. 194EE of the ITA, withdrawals from NSS account would still be subjected to TDS u/s. 194EE of the ITA.

Business Income

Presumptive Taxation for NR Engaged in Providing Services/Technology for Electronics Manufacturing Facility in India [S. 44BBD]

Background

A comprehensive program for the development of semiconductors and display manufacturing ecosystem in India was approved by Government of India. For this purposes, Ministry of Electronics and Information Technology has notified schemes for setting up of such facilities in India to position India as the global hub for Electronics System Design and Manufacturing.

In several cases, NRs provide support for setting up of such electronics manufacturing facilities by deploying the technology and providing support services.

Proposed Amendments

- It is proposed to introduce a new scheme of presumptive taxation u/s. 44BBD of the ITA for taxing a NR, engaged in the business of providing services or technology in India, to a resident company which is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the CG in the Ministry of Electronics and Information Technology and satisfies, such conditions as may be prescribed.
- S. 44BBD of the ITA deems 25% of the aggregate amount received/receivable by, or paid/payable to, the NR, on account of providing services or technology, as profits and gains of such NR from this business which will result in an effective tax payable of less than 10% on gross receipts, by the NR.
- It is also proposed that those NRs who are covered under this section would not get the benefit of set off of unabsorbed depreciation or brought forward losses.
- The proposed amendment will take effect from April 1, 2026, and will accordingly apply in relation to AY 2025-26 and subsequent AYs.

Rationale of the Proposed Amendments

As per the EM, the amendments are proposed in order to ensure certainty and promotion of Electronics Systems Design and Manufacturing industry.

Our Comments

From a plain reading of the provision it appears that it would apply to only those NR service and technology providers who are 'engaged in the business of providing service or technology in India', i.e. those who have a business connection or a PE in India.

The new provision overrides S. 28 to 43A of the ITA. The provisions dealing with maintenance of accounts (S. 44AA of the ITA) and tax audit (S. 44AB of the ITA) are not dispensed with.

The provision uses the word 'services' and not 'technical service'. This would therefore include management services, legal services, accounting services, etc. if they are "for the purposes of" setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India.

Unlike S. 44BBB of the ITA, which deals with presumptive taxation of profits of foreign companies engaged in business of civil construction in certain turnkey projects, this section does not provide option of declaring lower profits by maintaining books of account and furnishing audit report.

At what rates should the Indian company receiving the services or technology deduct tax at source is not specified separately in the First Schedule to the FB.

Rationalisation of Provisions Related to Carry Forward of Losses in Case of Amalgamation and Business Reorganisation [S. 72A & 72AA]

Background

S. 72A and S. 72AA of the ITA give provisions relating to carry forward and set-off of accumulated loss and unabsorbed depreciation allowance in cases of amalgamation of companies and certain types of business reorganisation as specified therein. These business reorganisations include succession of a firm or a proprietary concern by a company u/s. 47(xiii) and 47(xiv) of the ITA, conversion of a company into Limited Liability Partnership u/s. 47(xiiib) of the ITA and mergers of banks and Government companies.

S. 72A and S. 72AA of the ITA stipulates that accumulated loss and unabsorbed depreciation of the amalgamating entity or the predecessor entity shall be deemed to be the loss of the amalgamated company or the successor entity for the PY in which the amalgamation or business reorganisation has been effected or brought into force. Consequently, though S. 72 of the ITA provides that no loss under the head "Profits and Gains from Business or Profession" shall be carried forward for more than eight AYs immediately succeeding the AYs for which the loss was first computed, by virtue of amalgamation or business reorganisation, the amalgamated company/successor entity gets a fresh period of eight years for carry forward and set off of the losses of the amalgamating company/predecessor entity.

Proposed Amendment

It is proposed to insert a new sub-section (6B) to S. 72A of the ITA, and a proviso to S. 72AA of the ITA to provide that, where, in any amalgamation or such business reorganisation effected on or after April 1, 2025, any loss that forms part of the accumulated loss of the predecessor entity is deemed to be the loss of the successor entity, such loss shall be carried forward by

the successor entity for a maximum of eight AYs immediately following the AY in which such loss was first calculated for the original predecessor entity.

Further, 'original predecessor entity' has been defined as predecessor entity in respect of the first amalgamation or business reorganisation.

The proposed amendments will take effect from April 1, 2026.

Rationale of the Proposed Amendment

As per EM, the proposed amendment is made in order to bring clarity and parity with the provisions of S. 72 of the ITA. The proposed amendment is aimed to prevent the evergreening of losses by a predecessor entity due to successive amalgamations as it ensures that no carry forward or set-off of accumulated losses is permitted beyond eight AYs following the AY in which the loss was first computed for the original predecessor entity.

Our Comments

This amendment applies only to accumulated losses and not to unabsorbed depreciation.

S. 72A(2) of the ITA r.w.r 9C of the Rules provides for conditions to be satisfied so as to ensure that the amalgamation is genuine. S. 47(xiii), (xiiib) and (xiv) of the ITA provide for stringent conditions so as to ensure that the succession is genuine. With such conditions already in place, evergreening of losses by way of sham mergers is anyway not possible. Besides, S. 72AA of the ITA relates to mergers of banking and Government companies. Reserve Bank of India and the Government is involved in the process of such mergers. Where is the possibility of unnatural evergreening? The whole purpose of encouraging mergers of non-performing entities with better managed entities gets defeated by virtue of this new amendment.

The cut-off date for applying the said amendment should be the Appointed Date under the merger scheme. In other words, only those cases where the Appointed date is April 1, 2015, or thereafter should be affected by the proposed amendment. There will be genuine hardship in cases of mergers that are presently in pipeline with a prospective appointed date on or after April 1, 2025, because the valuation for the purposes of determining share swap ratio would have already factored in the benefit of losses.

Under S. 72A(1) of the ITA since the accumulated loss of the amalgamating company is deemed to be the loss of the amalgamated company for the PY in which the amalgamation was effected, it would still be possible for the amalgamated company to set off those losses against its income under any other head in the year of amalgamation. That position is not affected by this amendment.

Tonnage Tax

Background

Chapter XII-G containing S. 115V to 115ZC of the ITA was inserted vide FA, 2004 providing for special provisions relating to taxation of the income of shipping companies. The Scheme was introduced to promote Indian shipping industry wherein the qualifying shipping companies were given an option to choose either the

tonnage tax regime or continue to remain within the normal corporate tax regime.

Proposed Amendments

It is proposed to extend the scope of tonnage tax scheme to "Inland Vessels" as registered under Inland Vessels Act, 2021. Thus, it is proposed to amend the following sections in the ITA to include "Inland Vessels" as a "qualifying ship".

S. No.	Scope
115V	Definitions
115VB	Operating ships
115VD	Qualifying ship
115VG	Computation of tonnage income
115V-I	Relevant shipping income
115VK	Depreciation
115VP	Method and time of opting for tonnage tax scheme
115VT	Transfer of profits to Tonnage Tax Reserve Account
115VV	Limit for charter in of tonnage
115VX	Determination of tonnage
115VZA	Effect of temporarily ceasing to operate qualifying ships

The proposed amendments other than S. 115VP (which is effective from April 1, 2025) of the ITA will take effect from April 1, 2026 and will accordingly apply in relation to AY 2026-27 and subsequent AYs.

Rationale of the Proposed Amendments

As per the EM, the amendment is proposed to promote inland water transportation industry. At present, India is short of inland water transport vessels fleet and requires higher investments in this capital intensive sector. Therefore, to provide a boost to inland water transportation, it was represented to include inland vessels under the ambit of tonnage tax scheme.

Our Comments

The term "inland vessel" is defined u/s. 2(q) of the Inland Vessel Act, 2021 and includes*:*

"any mechanically propelled inland vessel or non-mechanically propelled inland vessel which is registered and plying in inland waters, but does not include—
(i) a fishing vessel registered under the Merchant Shipping Act, 1958 (44 of 1958) or the Marine Products Export Development Authority Act, 1972 (13 of 1972); and
(ii) any vessel that are specified as not to be inland vessels by notification by the Central Government.

Explanation. — For the purposes of this clause, it is clarified that a vessel registered under the Merchant Shipping Act, 1958 (44 of 1958) and plying within the inland waters shall be deemed to be an inland vessel registered under this Act;"

As stated above, the amendment has been proposed to widen the scope of qualifying ships to include Inland Vessels registered under Inland Vessels Act, 2021 so to attract investments in the sector.

It is expected to reduce tax burdens for inland vessel operators, making the sector more attractive to investors.

The move aligns with the government's broader strategy of improving transportation infrastructure and promoting sustainable, cost-effective water-based logistics.

Charitable Trust

Enhanced Period of Registration of Smaller Trusts or Institutions [S. 12AB]

Background

S. 12AB of the ITA provides for the procedure related to the approval and cancellation of the registration of the charitable trusts making application u/s. 12A of the ITA.

Presently, S. 12AB of the ITA provides registration of trust or institution for a period of five years or provisional registration (where activities have not commenced at the time of filing application for registration) for a period of three years. All the trusts, which have been granted registration for five years, are required to apply for renewal of registration at least six months before the expiry of the five-year period. Where the trusts have been granted provisional registration for three years, such trusts are required to apply for conversion of provisional registration to regular registration at least six months before the expiry of three-year period or within six months of the commencement of the activities, whichever is earlier.

Proposed Amendment

It is proposed to insert a proviso to S. 12AB(1) of the ITA to increase the period of validity of registration of trust from five years to ten years, in cases where the trust or institution has made an application under sub-clause (i) to (v) of S. 12A(1)(ac) of the ITA and the total income of such trust or institution, without giving effect to the provisions of S. 11 and S. 12 of the ITA, does not exceed Rs. 5,00,00,000/- during each of the two PY, preceding to the PY in which such application is made.

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

Rationale of the Proposed Amendment

The proposed amendment intends to reduce the compliance burden for smaller charitable trusts or institutions.

Our Comments

The extended validity benefit applies to trusts or institutions that make application under sub-clauses (i) to (v) of S. 12A(1)(ac) of the ITA. Therefore, it does not apply to applications under sub-clause (vi) of S. 12A(1)(ac) of the ITA. Thus, the benefit is not available to trusts or institutions applying for registration for the first time, whether before or after commencing activities. It is granted only to applicants seeking re-registration of existing trusts on renewal of registration. In the view of same, whether all the small charities will see immediate benefits?

Where a newly formed trust obtains provisional registration and subsequently applies for a regular registration within six months of commencement of activities, there may be no history

of past two years track record, whether such trusts would be eligible to avail the extended validity of registration of ten years?

Whether the proposed amendment applies to registration certificates granted after April 1, 2025, or to applications made after April 1, 2025?

Where the AO makes an addition in the assessment or reassessment and the income surpasses the threshold limit of Rs. 5,00,00,000/-, will the change in income affect the validity of the registration so granted for ten years?

Relaxation of 'Specified Violation' for Cancellation of Registration of Trusts or Institutions [S. 12AB]

Background

Presently, S. 12AB(4) of the ITA, *inter alia* provides that the PCIT or CIT may, on noticing one or more specified violations during any PY, cancel the registration or provisional registration of the concerned charitable trust or institution

According to *Explanation* 4 to S. 12AB(4) of the ITA, 'specified violation' *inter alia* covers cases where the application referred to in S. 12A(1)(ac) of the ITA is 'not complete' or it contains 'false or incorrect information'.

Proposed Amendment

It is proposed to amend *Explanation* 4 to S. 12AB of the ITA to provide that where the application for registration of trust or institution is 'not complete', the same shall not be treated as specified violation for the purpose of S. 12AB(4) of the ITA.

This amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to avoid disproportionate consequences for minor defaults such as incomplete applications filed by charitable trusts.

Our Comments

The proposed amendment is a welcome relief as it seeks to protect trusts from severe consequences of cancellation of the registration u/s. 115TD of the ITA.

Rationalisation of Persons Specified u/s. 13(3) for Trusts or Institutions [S. 13]

Background

Presently, S. 13 of the ITA*, inter alia*, provides that the trust would not be eligible to claim exemption u/s. 11 or u/s. 12 of the ITA while computing its total income, where such income is applied directly or indirectly

for the benefit of any person referred to in S. 13(3) of the ITA.

S. 13(3) of the ITA *inter alia* comprises of the below-mentioned specified persons:

- S. 13(3)(b) covers any person who has made a substantial contribution to the trust or institution exceeding Rs. 50,000/- up to the end of the relevant PY;
- S. 13(3)(d), *inter alia* covers any relative of any person as provided in S. 13(3)(b);
- S. 13(3)(e), *inter alia* covers any concern in which any person specified u/s. 13(3)(b) has a substantial interest.

Proposed Amendments

The following amendments to S. 13(3) of the ITA are proposed:

- S. 13(3)(b) is substituted to state that a person will be treated as a specified person if his/her total contribution to the trust exceeds Rs. 1,00,000/- in the relevant PY or exceeds Rs. 10,00,000/- in aggregate over all PYs up to the relevant PY;
- S. 13(3)(d) is proposed to exclude the relatives of any aforesaid person as mentioned in S. 13(3)(b), from being classified as specified persons;
- S. 13(3)(e) is proposed to exclude any concern in which person as referred to in S. 13(3)(b) has a substantial interest, from being classified as specified persons.

Rationale of the Proposed Amendments

The rationale of the proposed amendments is to curb the difficulties in furnishing certain details of persons other than author, founder, trustees or manager, etc. who have made a substantial contribution to the trust or institution upto the PY exceeding specified limit.

These amendments will take effect from April 1, 2025.

Our Comments

This amendment is a welcome move. The compliance burden on trusts or institutions has been increasing since the last few years. One of the major compliance burdens of the trusts comprises of maintaining the register of persons who have made a substantial contribution exceeding Rs. 50,000/- since the inception of trust.

In normal circumstances, the assesses are required to maintain the books of account and documents for a period of eight years from the end of the relevant AY. However, a trust is required to maintain the books of account and documents from inception in order to compute the contribution received from specified persons as mentioned in S. 13(3) of the ITA.

The *per se* increase in the threshold limit is a welcome amendment. The difficulty of maintaining the register of donors since inception would still continue, specifically to determine the aggregate/cumulative threshold of Rs. 10,00,000/-. In any case, presently, the audit report in Form 10B and Form 10BB and Rule 17AA of the Rules mandate a trust to maintain and report certain details of the donors on a yearly basis.

Relief to Certain Entities Located in IFSC

Extension of Sunset Dates for Tax Concessions Available to Units in IFSC [S. 9A, 10(4D), 10(4F), 10(4H), Explanation to S. 47 (viiad) & 80LA(2)(d)]

Background

Presently, the ITA provides for several tax concessions in relation to income derived by/ from units located in IFSC or on relocation of assets/funds to IFSC. These concessions are subject to fulfilment of certain conditions. Such conditions include commencement of operations in IFSC or transfer of funds to IFSC on or before the sunset date specified in the relevant sections.

Proposed Amendments

It is proposed to extend the sunset date of commencing the operations in IFSC or relocation of assets/funds to IFSC from the existing dates to March 31, 2030 as under:

S. No.	Particulars	Existing sunset dates	Proposed sunset dates
S. 9A - Certain activities not to constitute business connection in India.	Commencement of activities by the eligible fund manager.	March 31, 2024	March 31, 2030
S. 10(4D) - Income of Investment Division of an OBU located in IFSC.	Commencement of operations of the Investment Division of the OBU.	March 31, 2025	
S. 10(4F) Income of NR by way of Royalty and Interest on lease of an Aircraft or a Ship by a unit located in IFSC.	Commencement of operations of the unit located in IFSC.	March 31, 2025	
S. 10(4H) – Capital gains arising to a NR or a unit located in IFSC engaged in the business of leasing of	Commencement of operations of the unit located in IFSC, engaged primarily in the business of leasing aircraft or a ship[1].	March 31, 2026	

an aircraft or a ship[1] from transfer of equity shares of a company, being a unit in IFSC engaged in the business of leasing of an aircraft or a Ship[1].			
Explanation (b) to S. 47(viiad).	Transfer of share/ unit/ interest in the original fund (a NR) in consideration of share/ unit/ interest in the resultant fund (AIF Category-I, II or III in IFSC) on account of relocation of assets by the original fund to the resultant fund.	March 31, 2025	
S. 80LA(2)(d) – Deduction in respect of Income from transfer of an aircraft or a ship leased by a unit located in IFSC.	Commencement of operations of the unit located in IFSC engaged in the business of leasing aircraft or a ship.	March 31, 2025	

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

Rationale of the Proposed Amendments

The rationale of the proposed amendment is to extend the existing tax concessions offered to units located in IFSC.

Our Comments

The proposed amendments will incentivize operations from IFSC by providing extended period for compliance with the sunset dates specified in the relevant provisions.

Definition of Dividend [S. 2(22)(e)]

Background

As per S. 2(22)(e) of the ITA, any loans/advances provided by a private company/unlisted company to a shareholder, being a beneficial owner of shares holding at least 10% of the voting power or to any concern in which such a shareholder is a member/partner and in which he has a substantial interest shall be treated as deemed dividend to the extent the company has accumulated profits.

S. 2(22) of the ITA specifically exclude any advance or loan given by the company to a shareholder or to the said concern, in the ordinary course of business, where money lending is a substantial part of the business of the company.

[1] Proposed to be added by the FB

Proposed Amendments

- It is proposed to exclude from S. 2(22) of the ITA, any loans or advances between two group entities, where one "group entity" is a "Finance Company" or a "Finance Unit" in IFSC set up as a global or regional corporate treasury centre to take up treasury activities or treasury services, and the "parent entity" or "principal entity" of such group is listed on a stock exchange in a country or territory of India outside India other than the country or territory outside India as may be specified by the Board.
- It is proposed to insert Clause (b) in *Explanation* 3 to S. 2(22)(e) of the ITA to define a "Finance Company" and a "Finance Unit" which shall have the same meaning as assigned respectively to them in clauses (e) and (f) of sub-regulation (1) of regulation 2 of the IFSCA (Finance Company) Regulations, 2021 made under the IFSCA Act, 2019.

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

Rationale of the Proposed Amendments

As per the EM, suggestions have been received that the borrowings by the corporate treasury centre in IFSC from any group entities located outside India could trigger the provisions of deemed dividend given u/s. 2(22)(e) of the ITA.

Our Comments

It is a welcome provision to safeguard the corporate treasury centres located in IFSC which could require and also avail substantial borrowings from the parent/principal entity whose main business may not be money lending.

Relaxation for Fund Managers based in IFSC [S. 9A(3)(c)]

Background

S. 9A(1) of the ITA provides that fund management activities carried out by an Eligible Investment Fund through an Eligible Fund Manager shall not constitute a business connection in India. S. 9A(3) of the ITA specifies conditions to qualify as an Eligible Investment Fund and S. 9A(4) of the ITA Act specifies conditions to qualify as an Eligible Fund Manager.

One of the conditions specified in S. 9A(3) of the ITA is that the aggregate participation/investment in the fund (directly or indirectly) by persons resident in India shall not exceed 5% of the corpus of the fund. [S. 9A(3)(c) of the ITA]

Further, S. 9A(8A) of the ITA gives powers to the CG to specify conditions that shall not apply or apply with modification as mentioned in S. 9A(3) or S. 9A(4) of the ITA to the fund manager located in IFSC. The said powers could be exercised only if the fund manager has commenced its operations by March 31, 2024.

Proposed Amendments

- It is proposed to amend clause (c) of S. 9A(3) of the ITA by specifying the dates on which the aggregate

participation/investment is to be seen. The dates specified are April 1 and October 1 of the PY (hereinafter referred to as “specified dates”).

- Further, it is proposed to insert a new proviso under clause (c) of S. 9A(3) of the ITA which provides an additional period of four months from the end of the specified dates to comply with the conditions specified under clause (c).
- Furthermore, it is proposed to amend S. 9A(8A) of the ITA that the CG cannot provide relaxation/modification from application of condition specified under clause (c) of S. 9A(3) of the ITA.
- Lastly, the other conditions provided in clauses (a) to (m) of S. 9A(2) of the ITA can be relaxed by the CG and for the said purpose the date of commencement of operations by the eligible fund manager located in IFSC is extended from March 31, 2024 to March 31, 2030.

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

Rationale of the Proposed Amendments

As per the EM, it has been represented that there is a need to provide a specific simplified regime for IFSC based fund managers, managing funds situated in other jurisdiction so that fund managers in IFSC are at par with the fund management entities in competing foreign jurisdiction. Accordingly, certain amendments are being proposed in S. 9A of the ITA.

Our Comments

The existing provisions of S. 9A(3)(c) of the ITA did not specify any date on which the cap of 5% is to be computed which could have brought some ambiguity. Therefore, the proposed amendment which specifies April 1 and October 1 of the PY as the only dates on which the 5% threshold is to be computed is a welcome move.

Expanding the Scope of S. 10(4E)

Background

Presently, S. 10(4E) of the ITA exempts the income of a NR arising from the transfer of certain instruments (non-deliverable forward contracts, offshore derivative instruments or over the-counter derivatives) or distribution of income on offshore derivative instruments, provided that the transactions are entered with an OBU of an IFSC as referred to in S. 80LA(1A) of the ITA.

Proposed Amendment

It is proposed to expand the ambit of exemption by including transactions entered by a NR with Foreign Portfolio Investors (FPI), being a unit of an IFSC.

The proposed amendment will take effect from April 1, 2026, and will, accordingly, apply in relation to AY 2026-27 and subsequent AYs.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to expand the ambit of exemption u/s. 10(4E) of the ITA.

Our Comments

The proposed amendment aims at further incentivizing operations from IFSC by expanding the ambit of S. 10(4E) of the ITA.

Expanding the Scope of S. 10(4H) and S. 10(34B)

Background

Presently, S. 10(4H) of the ITA exempts capital gains arising to a NR or a unit located in IFSC engaged in the business of leasing aircraft, on transfer of equity shares of a domestic company, being a unit located in IFSC and engaged in the business of leasing aircraft.

Further, S. 10(34B) of the ITA exempts dividend received by a NR or a unit of an IFSC primarily engaged in the business of aircraft leasing from a company being a unit located in IFSC primarily engaged in the business of aircraft leasing.

Proposed Amendment

It is proposed to extend the ambit of exemption u/s. 10(4H) and S. 10(34B) of the ITA to also include the unit located in IFSC which is primarily engaged in the business of leasing of ship.

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

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to expand the ambit of exemption u/s. 10(4H) and S. 10(34B) of the ITA to include ship leasing business in IFSC.

Exemption on LIP from IFSC Insurance Offices [S. 10(10D)]

Background

Presently, S. 10(10D) of the ITA exempts proceeds from LIP, including bonuses, subject to specific conditions.

Fourth, fifth, sixth and seventh provisos to the said clause state that exemption is not available if annual amount of premium or aggregate of premiums payable in any of the PY during the term of such policy is above Rs. 2,50,000/- for Unit Linked Insurance Policy ("ULIP") and Rs. 5,00,000/- for LIP other than ULIP.

Proposed Amendment

It is now proposed to amend S. 10(10D) of the ITA, by removing the foregoing restriction in case of policies issued by the IFSC insurance intermediary office, including the sum allocated by way of bonus on such policy. Thus, the proceeds received on LIP issued by the IFSC

insurance intermediary office shall be exempted without the condition related to the maximum premium payable on such policy as mentioned above.

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

Rationale of the Proposed Amendment

As per EM, the proposed amendment is to provide parity to non-residents availing life insurance from insurance office in IFSC vis a vis other foreign jurisdiction.

Our Comments

This is welcome amendment that incentivizes insurance companies to expand their business in foreign jurisdictions by setting up offices in IFSC.

Transactions not Regarded as Transfer [S. 47(viiad)]

Background

S. 47(viiad) of the ITA exempts a transfer by shareholders, unit holders, or interest holders of their shares, units, or interests from the original fund to the resultant fund during a relocation subject to the following conditions:

- The relocation occurs on or before March 31, 2025.
- The original fund is outside India and meets certain regulatory conditions.
- The resultant fund is a registered Alternate Investment Fund Category I/II/III.

Proposed Amendments

- It is proposed to amend the definition of “resultant fund” to include funds which have been granted a certificate as a retail scheme or an ETFs’ item (b) of sub-clause (I) of clause (c) of the Explanation to clause (4D) of S. 10 of the ITA which fulfils the conditions specified in the said clause (4D).
- Additionally, it is proposed to extend the sunset date to March 31, 2030 (Refer Para above).

The proposed amendment will take effect from April 1, 2026 i.e. from AY 2026-27 onwards.

Rationale of the Proposed Amendments

The EM states that the income from retail schemes and ETFs in the IFSC is exempt, along with other “specified funds” under S. 10(4D) of the ITA. The proposal to include such retail schemes and ETFs in the definition of "resultant fund" under clause (viiad) of S. 47 of the ITA, is to ensure that relocation of original fund to these IFSC funds remains a tax-neutral event.

Our Comments

This is a welcome amendment to promote the investment in ETFs located in IFSC.

International Taxation & Transfer Pricing

Significant Economic Presence [S. 9]

Background

A NR is liable to tax, *inter alia,* on any income deemed to accrue or arise in India as outlined u/s. 9 of the ITA.

S. 9(1)(i) of the ITA provides that all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India shall be deemed to accrue or arise in India.

However, *Explanation* 1(b) thereto provides a carve out stating that no income shall be deemed to accrue or arise in India to a NR through or from operations which are confined to the purchase of goods in India for the purpose of export.

FA, 2018 expanded the scope of business connection in India by introducing the concept of SEP through insertion of *Explanation* 2A u/s. S. 9(1)(i) of the ITA. SEP *inter alia* means transaction in respect of any goods carried out by a NR with a person in India, subject to satisfying the thresholds prescribed in Rule 11UD of the Rules.

Proposed Amendment

It is proposed to insert a proviso to the aforesaid *Explanation* 2A so that transactions or activities which are confined to the purchase of goods in India for the purpose of export shall not constitute SEP in India.

This amendment applies from April 1, 2026 i.e. AY 2026-27 onwards.

Rationale of the Proposed Amendment

The amendment is based on suggestions received that owing to the definition of SEP, the specific carve out under *Explanation* 1(b) in connection with purchase of goods in India for export may be denied. Thus, it is proposed that transactions or activities related to purchase of goods in India are excluded from the scope of SEP.

Our Comments

Explanation 1(b) excludes from taxation the profits attributable to the activity of purchase of goods by NR in India, whereas SEP intends to tax profits attributable to sales in India through virtual presence. The scope of both provisions *per se* is different and thus, a question may arise as to whether the purchase activity proposed to be excluded would at all be covered by SEP in the first instance.

Even if one were to assume that such purchase activities are covered within the scope of SEP, the immunity under *Explanation* 1(b) would still be available. Similar exclusion is generally

found in Article 7 of the DTAA as well and thus, even if SEP creates a business connection in India, there would be no Permanent Establishment in India in dealings with treaty countries. Thus, while the amendment is prospective, it may be regarded as clarificatory in nature.

The critical issue of applicability of SEP in case of import of goods from NR or transactions related thereto, where DTAA benefit is not available still remains unaddressed.

Increase in LTCG Tax Rates in case of Specified Fund and FII [S. 115AD]

Background

S. 115AD of the ITA deals with tax on income of FIIs and specified funds from certain securities and capital gains arising from their transfer.

FA (No. 2), 2024 amended S. 115A of the ITA to change the rate of tax on LTCG referred to in S. 112A of the ITA to 12.5% to bring it in line with rates applicable to residents. However, income by way of LTCG not referred to in S. 112A of the ITA were retained at 10%.

Proposed Amendment

It is proposed to increase the rate of tax on LTCG on securities not covered u/s. 112A of the ITA from 10% to 12.5% under S. 115AD(1) of the ITA.

This amendment is applicable from April 1, 2026 i.e. AY 2026-27 onwards.

Rationale of the Proposed Amendment

This amendment is intended to rationalise and bring parity in tax rate on LTCG between resident and NR as well as between listed and unlisted securities.

Our Comments

If the treaty provisions on capital gains are more beneficial, the same would be available by virtue of S. 90(2) of the ITA.

Multi-Year Arm's Length Price Determination [S. 92CA]

Background

TP provisions require computation of income arising from an international transaction or SDT having regard to the ALP. The provisions are contained under Chapter X of the ITA covering S. 92 to 92F of the ITA r.w.r 10A to 10E of the Rules.

S. 92CA of the ITA outlines the procedure for referring an international or specified domestic transaction to the TPO for determining its ALP. S. 92C of the ITA governs the computation of ALP.

The determination of ALP in TP provisions *inter alia* proceeds in the following manner:

- The AO, with the prior approval of the PCIT or CIT, refers the transaction to the TPO;

- The TPO determines the ALP and passes an order u/s. 92CA(3) of the ITA;
- The AO then computes the total income of the assessee for the relevant year based on the ALP determined by the TPO.

Proposed Amendments

It is proposed that to provide a mechanism whereby the ALP determined for an international transaction or SDT in a given year will apply to similar transaction for the next two consecutive years.

In this regard, it is proposed to make the following amendments

<u>Multi-Year ALP determination & Reference to TPO:</u>

- The assessee shall be required to exercise an option(s) to the above effect in a form, manner and within such time period as may be prescribed [new sub-section (3B) in S. 92CA of the ITA];

- The TPO shall by an order in writing, within one month from the end of the month in which such option is exercised, declare whether the option is valid subject to the conditions, as prescribed [new sub-section (3B) in S. 92CA of the ITA];

- If the TPO declares that the option exercised by the assessee is valid:
    - The ALP determined for an international or SDT in a given year will apply to similar transactions for the next two consecutive years [new sub-section (3B) in S. 92CA of the ITA];
    - The TPO will examine and determine the ALP in relation to such similar transaction for such two consecutive years, in the order u/s. 92CA(3) of the ITA [new sub-section (4A) in S. 92CA of the ITA];
    - The AO will recompute the total income for the two consecutive years proposed S. 155(21) of the ITA [new sub-section (4A) in S. 92CA of the ITA];
    - No further reference for ALP computation shall be made in relation to such transactions [new first proviso to sub-section (1) of S. 92CA of the ITA];
    - If a reference is made, the provisions of sub-section (1) will apply as if no reference was made [new second proviso to sub-section (1) of S. 92CA of the ITA];

- The provisions of exercising aforesaid and consequent proceedings shall not apply to any search cases/proceedings under Chapter XIV-B of the ITA;

- The CBDT, with prior approval of CG, has been given power to issue guidelines for the purpose of removing difficulty on implementation of S. 92CA(3B) and S. 92CA(4A), as proposed new insertion of S. 92CA(11) of the ITA.

<u>Re-computation of income u/s. 155:</u>

A new sub-section (21) is proposed to be inserted u/s. 155 of the ITA to provide that where the ALP determined for an international transaction or SDT for any PY and the TPO has declared an option exercised by the assessee as valid in respect of such transaction for two consecutive PYs, then:

- the AO shall recompute the total income of the assessee for such consecutive PYs, by amending the order of assessment or any intimation or deemed intimation u/s. 143(1) of the ITA:
  - in conformity with the ALP so determined by the TPO under sub-section (4A) of S. 92CA of the ITA in respect of such transaction;
  - taking into account the directions issued under sub-section (5) of S. 144C of the ITA, if any, for such PY;
- such recomputation shall be done within three months from the end of the month in which the assessment for such PY is completed;
- the first and second proviso to S. 92C(4) of the ITA shall apply to such recomputation;
- If the order of assessment or any intimation or deemed intimation for the said consecutive two years is not completed within said three months, the recomputation shall be made within three months from the issuance of the order or intimation.

This amendment is effective from April 1, 2026 i.e. AY 2026-27 onwards

Rationale of the Proposed Amendments

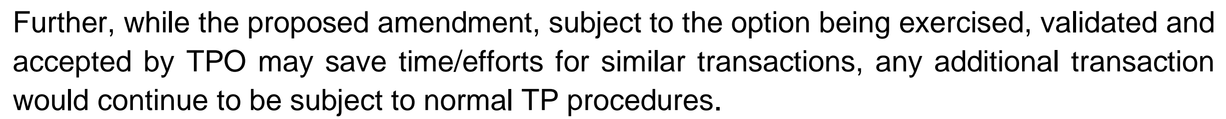
As per Budget Speech and EM, it is proposed to introduce a scheme for determining ALP of international transactions for a block period of three years in order to streamline the process of the TP and reduce yearly compliance and administrative burden for similar transactions. This will provide an alternative to yearly examination, aligning with global best practices.

Our Comments

The proposed amendment aims to carry out TP assessments in a block. However, it raises several ambiguities and questions, which are likely to be clarified once the relevant conditions, timelines, forms, etc. are prescribed.

A few questions that arise *prima facie* on perusal of the proposed amendments are as follows:

- Whether the provisions apply to TP proceeding where reference to the TPO was made prior to April 1, 2025, but the TP proceeding is still pending?
- What is the scope of 'similar transaction/(s)'? The EM indicates that following factors – same facts like enterprises with whom such transaction is done, proportionate quantum of transaction, location of associated enterprises. etc. and same arm's length analysis.
- Can the assessee withdraw the exercised option subsequently?
- If the option is exercised and the TPO declares the option to be valid, will the ALP determined by the TPO for the given year, be applied for next two consecutive years or will he only validate the TP method applied?


Further, while the proposed amendment, subject to the option being exercised, validated and accepted by TPO may save time/efforts for similar transactions, any additional transaction would continue to be subject to normal TP procedures.

Also, the provisions apply to future years (roll forward) and does not extend to past years (rollback).

TDS & TCS

Rationalisation of TDS Thresholds [S. 193, 194, 194A, 194B, 194BB, 194D, 194G, 194H, 194-I, 194J, 194K & 194LA] and Rates [S. 194LBC]

Background

There are various provisions of TDS, with different thresholds and multiple rates.

Proposed Amendments

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

S. No.	Current threshold	Proposed threshold	W.e.f
193 - Interest on securities	(i) Rs. 5000/- for Interest Income on any debenture issued by a company in which the public are substantially interested, received through account payee cheque, by an individual or HUF, who is resident in India. (ii) Nil in case of interest on any other securities.	Rs. 10,000/- for all types of interest on securities	April 1, 2025
194 – Dividend for an individual shareholder	Rs. 5,000/-	Rs. 10,000/-	April 1, 2025
194A - Interest other than Interest on securities	(a) When payer is bank, co-operative society and post office: (i) Rs. 50,000/- for senior citizens; (ii) Rs. 40,000/- for other than senior citizens;	(a) When payer is bank, co-operative society and post office: (i) Rs. 1,00,000/- for senior citizens; (ii) Rs. 50,000/- for other than senior citizens;	April 1, 2025

	(b) Rs. 5,000/- in other cases	(b) Rs. 10,000/- in other cases	
194B - Winnings from lottery, crossword puzzle, etc.	Rs. 10,000/- during the FY in aggregate	Rs. 10,000/- in respect of a single transaction	April 1, 2025
194BB - Winnings from horse race			
194D – Insurance commission	Rs. 15,000/-	Rs. 20,000/-	April 1, 2025
194G - Income by way of commission, prize etc. on lottery tickets	Rs. 15,000/-	Rs. 20,000/-	April 1, 2025
194H - Commission or brokerage	Rs. 15,000/-	Rs. 20,000/-	April 1, 2025
194-I Rent	Rs. 2,40,000/- during the FY	Rs. 50,000/- per month or part of a month	April 1, 2025
194J - Fee for professional or technical services	Rs. 30,000/-	Rs. 50,000/-	April 1, 2025
194K - Income in respect of units of a mutual fund or specified company or undertaking	Rs. 5,000/-	Rs. 10,000/-	April 1, 2025
194LA - Income by way of enhanced compensation	Rs. 2,50,000/-	Rs. 5,00,000/-	April 1, 2025

S. No.	Current rate	Proposed rate	W.e.f
194LBC – Income in respect of investment in securitization trust	(i) 25% where payee is a resident individual or HUF (ii) 30% in case of any other person as resident payee	10%	April 1, 2025

Rationale of the Proposed Amendments

As per EM, in order to improve ease of doing business and better compliance by taxpayers, it is proposed to rationalize certain rates of TDS and to increase threshold limit for applicability of the TDS provisions.

Our Comments

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

The amendments, though aim at reducing the number of different limits and rates, falls short of this objective as is clear from the foregoing tables.

Rationalisation of TCS Thresholds and Rates [S. 206C]

Background

S. 206C of the ITA contains provisions relating to collection of TCS by a seller.

Proposed Amendments

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

Sub-section	Existing Provisions	Proposed Amendment	W.e.f
(1)	(i) TCS is to be collected @ 2.5% on "timber obtained under a forest lease". (ii) TCS is to be collected @ 2.5% on "timber obtained by any mode other than under a forest lease". (iii) TCS is to be collected @ 2.5% on "Any other forest produce not being timber or tendu leaves". (iv) Forest Produce not defined	(i) TCS is to be collected @ 2% on "timber or any other forest produce (not being tendu leaves) obtained under a forest lease". (ii) TCS is to be collected @ 2% on "timber obtained by any mode other than under a forest lease". (iii) Proposed to be omitted. (iv) Forest Produce shall have the same meaning as defined in any State Act for the time being in force, or in the Indian Forest Act, 1927.	April 1, 2025
(1G)	(a) TCS is to be collected on the amount or aggregate of amounts exceeding Rs. 7,00,00/- received from buyer by: (i) the authorised dealer under the Liberalised Remittance Scheme	(a) Threshold is revised to Rs. 10,00,000/-.	April 1, 2025

	(ii) the seller of an overseas tour programme package (b) TCS is to be collected @ 0.5% on the amount or aggregate of amounts exceeding Rs. 7,00,000/- by the authorised dealer if the amount is remitted by the buyer out of a loan obtained from any financial institution as defined in S. 80E, for the purpose of pursuing any education	 (b) Proposed that TCS is not required to be collected on such transactions.	

Rationale of the Proposed Amendments

As per EM, the above amendments are proposed to bring more clarity, rationalise rates and thresholds and reduce compliance burden of the taxpayers.

Our Comments

These are welcoming amendments which brings more clarity and ease of compliance and doing business.

Removal of TCS on Sale of Goods [S. 206C(1H)]

Background

Presently, S. 206C(1H) of the ITA requires collection of TCS by any person (having turnover above Rs. 10 crores), being seller of any goods, if the amount of receipt from sale of goods (other than goods exported out of India and specifically covered u/s other provisions of S. 206C) during the year is more than Rs. 50 lakhs, at the rate of 0.1% on the amount exceeding Rs. 50 Lakhs. This provision was not applicable if TDS was deducted u/s. 194Q of the ITA by the buyer in respect of such goods.

Proposed Amendment

It is proposed to withdraw the said provision w.e.f April 1, 2025 and accordingly, the requirement to collect TCS on sale of goods shall not apply w.e.f April 1, 2025.

Consequential amendments have been brought in S.194Q of the ITA.

Rationale of the Proposed Amendment

As per EM, the said amendment is proposed since it is difficult for the seller to check whether the buyers have ensured the compliance of TDS deduction u/s. 194Q of the ITA. This results in both TDS and TCS being made applicable on the same transaction.

Our Comments

This is a welcome amendment as it will reduce compliance burden of the assessee.

Removal of Higher TDS/TCS Rate for Non-Filers of ROI [S. 206AB & 206CCA]

Background

Presently, S. 206AB & S. 206CCA of the ITA require deduction of TDS (u/s. 192, 192A, 194B, 194BA, 194BB, 194-IB, 194LBC, 194M or 194N) and collection of TCS at higher of:

- twice the rate prescribed in the ITA or rates in force, or
- five percent,

if the deductee has not filed ROI for the AY relevant to the PY immediately preceding the FY in which tax is required to be deducted, for which time limit for furnishing ROI under u/s. 139(1) has expired and the aggregate of TDS /TCS in his case is Rs. 50,000/- or more in the said PY.

Proposed Amendment

It is proposed to omit S. 206AB and S. 206CCA of the ITA w.e.f April 1, 2025.

In view of the aforesaid omission of S. 206AB, consequential amendments have been brought in S.194S of the ITA.

Rationale of the Proposed Amendment

As per EM, the foregoing provisions have been omitted since it is difficult for the deductor/collector, at the time of deduction/collection, to verify whether returns have been filed by the deductee/collectee, resulting in application of higher rates of deduction/collection, blocking of capital and increasing compliance burden.

Our Comments

This is a welcome amendment and will reduce compliance burden of the assessee.

Block Assessment

Search and Seizure [S. 132]

Background

Presently, S. 132(8) of the ITA provides the authorised officer a period of thirty days from the date of order of assessment, re-assessment or re-computation for the purpose of obtaining approval of the PCCIT or CCIT, PCIT or CIT, PDGIT or DGIT, PDIT or DIT for retaining the books of accounts and other documents seized along with reasons of such retention in writing.

Proposed Amendment

- The proposed amendment now allows the authorised officer to obtain approval from PCCIT or CCIT, PCIT or CIT, PDGIT or DGIT, PDIT or DIT within one month from the end of the quarter in which the order of assessment or reassessment or recomputation is made.
- The conditions of recording the reasons in writing for retaining the seized books of account or other documents for such additional period shall continue to apply.

Rationale of the Proposed Amendment

The rationale of this amendment, as stated in the EM, is as follows:

- In certain instances; say for an example, search assessment proceedings for a group of companies, the assessment orders of one assessee may be passed earlier than the assessment orders of another assessee.
- Further, the segregation of seized books of account or other documents pertaining to various assessees also creates a challenge when the searched premise is same.
- It is also the case that the seized books of account or other documents pertaining to the completed assessment cases may be required for assessment of ongoing/pending assessment cases.

Since the time limit of taking approval for retention will be different for different cases, the AOs are required to have constant vigil on the floating time-barring dates for taking the approval for retention of the seized books of account or other documents.

For the said reasons, the proposed amendment has provided relaxation with respect to the time limit for obtaining approval for retention.

Our Comments

- One of the reasons for granting the authorised officer with additional time for seeking the approval is to accommodate situations where seized books of account or other documents pertaining to the completed assessment were to be retained.

- However, the proviso to S. 132(8) of the ITA restricts the period of retention of books of accounts and other documents with respect to the years, for which all proceedings are completed, to 30 days from the date of completion of the proceedings.

- Hence, there is an ambiguity to the extent of rationale of the amendment as understood from EM and existing proviso to S. 132(8) of the ITA.

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

Search and Seizure – Other Procedural Amendments [S. 132]

Background

S. 132(9A), (9B) and (9D) of the ITA; *inter-alia* provide the authorised officer with a time limit of 60 days from the date on which the last of the authorisations for search was executed, for handing over the seized assets to Jurisdictional AO, provisionally attaching property and reference to valuation officer for computing fair market value of property respectively.

Explanation 1 to S. 132 of the ITA specifies the circumstances in which the last of authorisation will be deemed to be executed for the purpose of S. 132(9A), (9B) and (9D) of the ITA. Clause (a) of the *Explanation* states that in cases of search, last of authorisation will be on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of 'authorisation' has been issued.

Proposed Amendment

The proposed amendment has now substituted the word 'authorisation' with word 'authorisations' in clause (a) of the *Explanation* 1.

Rationale of the Proposed Amendment

S. 132(9A), (9B) and (9D) of the ITA deals with situations where there are multiple warrants of authorisations. *Explanation* 1 to the S. 132 of the ITA provides date for the last of authorisation in cases where multiple warrant of authorisations are issued, as envisaged in S. 132(9A), (9B) and (9D) of the ITA.

However, clause (a) to the *Explanation* still used the word 'authorisation' instead of 'authorisations'. Hence, the word 'authorisation' has been replaced with 'authorisations' in order to maintain consistency with the S. 132(9A), (9B) and (9D) of the ITA.

Our Comments

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

Application of Seized or Requisitioned Assets [S. 132B]

Background

Clause (ii) of *Explanation* 1 to S. 132B of the ITA gives reference to *Explanation* 2 to S. 158BE of the ITA for defining the term 'execution of an authorisation for search or requisition'.

Proposed Amendment

The proposed amendment has substituted the reference made to *Explanation* 2 to S. 158BE of the ITA with *Explanation* to S. 158B of the ITA.

Rationale of the Proposed Amendment

Explanation 2 to S. 158BE of the ITA defined the term 'authorisation deemed to be executed in search or requisition'. However, the said *Explanation* was removed w.e.f. September 1, 2024 vide FA (No. 2), 2024 and consequently, *Explanation* to S. 158B of the ITA defining 'last of the authorisations deemed to have been executed' was introduced w.e.f. September 1, 2024.

Hence, the proposed amendment is brought with an intention of updating the reference with respect to defining the term 'execution of an authorisation for search or requisition' stated in clause (ii) of *Explanation* 1 to S. 132B of the ITA.

Our Comments

It is uncertain as to what will be the definition of the term 'execution of an authorisation for search or requisition' for the period between September 1, 2024 to March 31, 2025, since *Explanation* 2 to S. 158BE of the ITA did not exist for the said period and the reference to *Explanation* to S. 158B of the ITA is to be effective from April 1, 2025.

Further, S. 132B and S. 158B of the ITA has now envisaged cases of multiple warrants of authorisations as against single authorisation prior to amendment.

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

Definitions [S. 158B]

Background

S. 158(b) of the ITA defines the term 'undisclosed income' for the purpose of Chapter XIV-B, to include any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this ITA, or any expense, exemption, deduction or allowance claimed under this ITA which is found to be incorrect, in respect of the block period.

Proposed Amendment

The proposed amendment has inserted the term VDA after the words 'money, bullion, jewellery' stated in clause (b) to S. 158 of the ITA.

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

Rationale of the Proposed Amendment

The EM is silent about the rationale for inserting VDA in the ambit of undisclosed income to be determined pursuant to search proceedings.

Our Comments

- The rationale behind inclusion of the term VDA to the definition of "undisclosed income" could probably be an attempt to unearth income derived from dealings in crypto currencies which is currently through an unregulated market.

- S. 158B of the ITA has been amended w.e.f. February 1, 2025, by inserting VDA in definition of undisclosed income. However, cross amendment has not been made in the charging S. 132(1)(c) of the ITA to include VDA in undisclosed income or property. In such a case, can a view be taken that search or seizure cannot be initiated on the basis of VDA allegedly undisclosed, since the term "VDA" has not been covered in the S. 132 of the ITA?

On the other hand, Revenue authorities may initiate a search or seizure on the basis of money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction representing wholly or partly income or property allegedly undisclosed or any expense, exemption, deduction or allowance claimed under this ITA allegedly found incorrect. However, in course of such proceedings, if any VDA is found allegedly undisclosed, the question which arises is as to whether the Revenue authorities could possibly treat the same as 'undisclosed income' in view of amended provisions of S. 158B of the ITA?

Assessment of Total Income as a result of Search [S. 158BA]

Background

S. 158BA(4) of the ITA provides that where any assessment under Chapter XIV-B is pending in the case of an assessee and a subsequent search is initiated or a requisition is made, then such assessment shall be duly completed first, and thereafter, the assessment in respect of such subsequent search or requisition shall be made.

Proposed Amendment

Under the proposed amendment, the word "pending" as referred in S. 158(4) of the ITA has been substituted with the words "required to be made".

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

Rationale of the Proposed Amendment

The rationale for substituting the word 'pending' with the words 'required to be made' is to cover cases where any assessment under Chapter XIV-B is required to be made but has not even been initiated as against the previous requirement of initiation of assessment.

Our Comments

With this amendment taking effect from February 1, 2025, the AO would be able to start a new block assessment based on the subsequent search / requisition only after completing not only the pending assessments (*viz.* assessments already initiated) but also those assessments which he is yet to make as per law (*viz.* mandatory assessments not initiated).

Assessment of Total Income as a result of Search – Other Procedural Amendments [S. 158BA]

Background

Sub-section (2) and Sub-section (3) of S. 158BA of the ITA provides that any assessment or reassessment or recomputation or a reference u/s. 92CA(1) of the ITA made or an order u/s. 92CA(3) of the ITA passed, which is pertaining to any AY falling in the block period, shall abate if the same is pending on the date of initiation of a search or making of a requisition.

Sub-section (5) of S. 158BA of the ITA provides that any assessment or reassessment abated under Sub-section (2) and (3) shall be revived on the date of receipt of the order of annulment of the search initiated or requisition made.

Proposed Amendment

Under the proposed amendment, in sub-section (5), the words "the assessment or reassessment relating to any AY" has been substituted with the words "the assessment or reassessment or recomputation or reference or order relating to any AY".

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

Rationale of the Proposed Amendment

The rationale of this proposed amendment, as stated in the EM is:

- Prior to the amendment, sub-section (5) of S. 158BA of the ITA did not contain provision for revival of the abated recomputation or reference made u/s. 92CA(1) or order passed u/s. 92CA(3).
- Hence to encompass all items mentioned in sub-sections (2) and (3) and to align sub-section (5) with these sub-sections, the amendment is being proposed so as to provide for revival of abated recomputation or abated reference or abated order as provided in sub-sections (2) and (3).

Our Comments

- The proposed amendment will take effect from February 1, 2025.
- S. 158BA of the ITA was introduced w.e.f. September 1, 2024, where sub-section (5) did not provide for revival of abated recomputation or reference made u/s. 92CA(1) or an order passed u/s. 92CA(3) of the ITA.
- Hence, during the period from September 1, 2024 to February 1, 2025, the recomputation or reference made u/s. 92CA(1) or an order passed u/s. 92CA(3) of the

ITA, once abated under sub-sections (2) and (3), could not be revived even if the search initiated or requisition made was annulled.

- It is to plug this loophole that the amendment is proposed to be made in sub-section (5).

Computation of Total Income of Block Period [S. 158BB]

Background

S. 158BB of the ITA was re-introduced in the ITA vide FA (No. 2), 2024, which provides for the computation of income of the block period.

Proposed Amendments

The table below broadly captures the amendments proposed to be made in S. 158BB of the ITA:

S. No.	Position prior to FB	Proposed Amendment
158BB(1)(i)	Total income disclosed in the return furnished under S. 158BC of the ITA.	Undisclosed income declared in the return furnished under S. 158BC of the ITA.
158BB(1)(ii)	Total income assessed under Sub-section (3) of S. 143 or S. 144 or S.147 or S.153A or S. 153C of the ITA prior to the date of initiation of the search or the date of requisition, as the case may be.	income assessed under Sub-section (3) of S. 143 or S. 144 or S. 147 or S. 153A or S. 153C of the ITA prior to the date of initiation of the search or the date of requisition, as the case may be.
158BB(1)(iii)	total income declared in the ROI filed under S. 139 or in response to a notice under Sub-section (1) of S. 142 or S. 148 of the ITA and not covered under clause (i) or clause (ii).	income declared in the ROI filed under S. 139 or in response to a notice under Sub-section (1) of S. 142 or S. 148 of the ITA prior to the date of initiation of the search or the date of requisition, and not covered under clause (i) or clause (ii).
158BB(1)(iv)	Where PY relating to search not ended, total income to be determined based on entries/transactions recorded in books and other documents on or before last date of authorization.	Income to be determined – (a) Where PY has ended but the due date for furnishing the return for such PY has not expired prior to the date of initiation of the search or the date of requisition, on the basis of entries/transactions recorded in books and other documents before the date of initiation of search/date of requisition; (b) Where PY relating to search not ended, for the period commencing from 1st April of such PY till the day

		immediately preceding the date of initiation of search or requisition, on the basis of entries/transactions recorded in books and other documents for such period on or before the day immediately preceding the date of initiation of search/the date of requisition; (c) in respect of period commencing from the date of initiation of the search/date of requisition and ending on the date of the execution of the last of the authorisations for search or requisition, on the basis of entries/transactions recorded in books and other documents for such period on or before the date of the execution of the last of the authorisations.
158BB(3)	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.	Income required to be determined during search relating to international transaction/ specified domestic transaction pertaining to PY in which last of authorisations were executed, then such income not to be considered for determining total income of the block period.
158BB(6)	For the purposes of Sub-section (1) and Sub-section (5), if the disclosed income under clause (i) of Sub-section (1)……	For the purposes of Sub-section (1) and Sub-section (5), if the undisclosed income declared under clause (i) of Sub-section (1)……

Rationale of the Proposed Amendments

- Amendment in S. 158BB(1)(i) of the ITA seeks to clarify that undisclosed income is required to be declared in the block return.
- Further, prior to the proposed amendment, income for the PY which has ended but the due date for furnishing the return for such year has not expired prior to the date of initiation of the search or the date of requisition, was not included. The proposed amendment provides clarity on computation of such income in S. 158BB(1)(iv) of the ITA.
- S. 158BB(3) of the ITA recognised the difficulty in assessing ALP of part period transactions i.e. from 1st April of PY in which last of the authorisations was executed till last date of authorisation. Therefore, it was proposed vide FA (No. 2), 2024 not to include any income pertaining to any international transactions or specified domestic transactions for such part period as income of block period. In order to maintain consistency with the language and intention of S. 158BB(3) of the ITA, it is now proposed to provide the

- reference to 'such income' instead of 'evidence' as provided earlier.
- S. 158BB(6) of the ITA has been amended to keep consistency with amendment made in S. 158BB(1)(i) of the ITA.

Our Comments

The above amendments in S. 158BB of the ITA would be deemed to have been amended w.e.f February 1, 2025.

Time-Limit for Completion of Block Assessment [S. 158BE]

Background

- Sub-section (1) of S. 158BE of the ITA provides that the time limit to pass an order u/s. 158BC of the ITA is within twelve months from the end of the month in which the last search authorisation u/s. 132 or requisition u/s. 132A was executed, notwithstanding S. 153 of the ITA.
- Sub-section (3) of S. 158BE of the ITA provides that the time limit to complete the assessment or reassessment for the block period u/s. 158BD shall be twelve months from the end of the month in which the notice u/s. 158BC is issued to the other person.
- Clause (i) of Sub-section (4) of S. 158BE of the ITA excludes the time during which the assessment proceedings are stayed due to a court order or injunction from the period of limitation under this section.

Proposed Amendments

- It is proposed to substitute "from the end of the month" with "from the end of the quarter" in sub-sections (1) and (3) of S. 158BE of the ITA.
- It is proposed to exclude the period commencing on the date on which stay on the proceedings was granted by an order or injunction of any court and ending on the date on which the certified copy of the order vacating the stay was received by the Jurisdictional PCIT / Jurisdictional CIT while calculating the limitation period.

Rationale of the Proposed Amendments

- **Amendment in sub-sections (1) and (3):** As per the EM, search and seizure operations are usually carried out in a group of cases that demand coordinated investigations and assessments. However, the present time-limit results in multiple time barring dates in one group of cases which leads to challenges in taking the cases to a logical conclusion. Hence, the time limit is proposed to be extended to overcome such challenges.

- **Amendment in sub-section (4):** Earlier this sub-section provided that the period during which the proceedings are stayed by an order or injunction of any court shall be excluded from the period of limitation provided for conclusion of

proceedings. However, there was an ambiguity as to what should be the commencement date and the end date of stay granted. For eliminating this ambiguity, this clarification has been proposed.

Our Comments

The proposed amendment in sub-sections (1) and (3) will take effect from February 1, 2025, while the amendment in sub-section (4) would take effect from April 1, 2025.

Levy of Interest and Penalty in Certain Cases [S. 158BFA]

Background

S. 158BFA(4)(ii) of the ITA excludes the time during which the assessment proceedings are stayed due to a court order or injunction from the period of limitation under this section.

Proposed Amendment

It is proposed to exclude the period commencing on the date on which stay on the proceedings was granted by an order or injunction of any court and ending on the date on which the certified copy of the order vacating the stay was received by the Jurisdictional PCIT/Jurisdictional CIT while calculating the limitation period.

Rationale of the Proposed Amendment

Earlier the section provided that the period during which the proceedings are stayed by an order or injunction of any court shall be excluded from the period of limitation provided for conclusion of proceedings. However, there was an ambiguity as to what should be the commencement date and the end date of stay granted. For eliminating this ambiguity, this clarification has been proposed.

Our Comments

The amendment will take effect from April 1, 2025.

Penalty Where Search Has Been Initiated [S. 271AAB]

Background

Sub-section (1A) of S. 271AAB of the ITA levies penalty at the rate of 30% or 60% of undisclosed income for specified PY, as the case may be, in respect of search initiated u/s. 132 of the ITA on or after December 15, 2016.

Proposed Amendment

S. 271AAB(1A) of the ITA is being amended so as to provide that its provisions shall not be applicable to the assessee, in whose case a search has been initiated u/s. 132 of the ITA, on or after September 1, 2024.

Rationale of the Proposed Amendment

- S. 158BFA of the ITA was introduced w.e.f. September 1, 2024 inter-alia, containing provisions for levying penalty in respect of search initiated

u/s. 132 of the ITA and proceedings conducted in accordance with S. 158BC of the ITA. Thus, effectively w.e.f. September 1, 2024, S. 271AAB of the ITA became redundant.

- The proposed amendment to S. 271AAB(1A) of the ITA has been brought to remove any ambiguous interpretation of its applicability to searches conducted on or after September 1, 2024.

Our Comments

This amendment will take effect retrospectively from September 1, 2024.

Other Procedure & Compliance

Extension of Time Limit for Filing of Updated Return [S. 139(8A) & 140B]

Background

- U/s. 139(8A) of the ITA, the updated return can be filed upto twenty four months from the end of the relevant AY, along with payment of additional tax. The additional tax is to be computed as under:

Time within which the updated ROI is furnished	Additional income tax[2]
After expiry of time u/s. 139(4)/139(5) of the ITA but before twelve months from the end of the relevant AY.	25% of the aggregate of tax and interest payable.
After twelve months from the end of the relevant AY but before twenty four months from the end of such AY.	50% of the aggregate of tax and interest payable.

- Further, as per clause (b) of the third proviso to S. 139(8A) of the ITA, taxpayer is not eligible to file updated return, if any proceeding for assessment or reassessment or re-computation or revision of income under the ITA is pending or has been completed for the relevant AY in his case.

Proposed Amendments

- Extension of time limit to file the updated return from existing twenty four months to forty eight months from the end of relevant AY. The additional tax henceforth would be computed as under:

Time within which the updated ROI is furnished	Additional income tax[3]
After expiry of time u/s 139(4)/139(5) of the ITA but before twelve months from the end of the relevant AY.	25% of the aggregate of tax and interest payable.
After twelve months from the end of the relevant AY but before twenty four months from the end of such AY.	50% of the aggregate of tax and interest payable.
After twenty four months from the end of the relevant AY but before thirty six months from the end of such AY.	60% of the aggregate of tax and interest payable.
After thirty six months from the end of the relevant AY but before forty eight months from the end of such AY.	70% of the aggregate of tax and interest payable.

[2] Includes surcharge & cess

[3] Includes surcharge & cess

- Further, two new provisos are proposed to be inserted in S. 139(8A) of the ITA, to provide that:
  - The taxpayer is not allowed to file the updated return if a show-cause notice u/s. 148A of the ITA has been issued in his case after thirty six months from the end of the relevant AY;
  - However, where subsequently an order is passed u/s 148A(3) of the ITA stating that it was not a fit case to issue notice u/s 148 of the ITA, in such a case, updated return may be filed before forty eight months from the end of the relevant AY.
- The proposed amendment will be effective from April 1, 2025.

Rationale of the Proposed Amendments

The rationale behind the proposed amendment as stated in the EM is of "further nudging voluntary compliance" by the assessees.

Our Comments

- By enhancing the time limit for filing the updated return, the taxpayer has been provided an opportunity to voluntarily disclose his/its correct income and avoid future litigations.

- In the first twenty four months, an updated return cannot be filed, *inter alia*, if "any proceeding for reassessment is pending" as per present clause (b) of the third proviso. Now, that condition continues also for filing updated return in the third and the fourth year. However, in the fourth year, an added condition is provided. An assessee cannot file updated return even if a mere show cause notice is issued u/s. 148A of the ITA. Pendency of proceedings by issuance of notice u/s. 148 of the ITA is not necessary for disqualifying filing of updated return. This position is tabulated below:

<table>
<tr><th colspan="5">Notice u/s. 148 is NOT issued. But SCN u/s 148A is issued in</th></tr>
<tr><th>1st Year</th><th>2nd Year</th><th>3rd Year</th><th>4th Year</th><th>Post 4 years</th></tr>
<tr><td colspan="3">Assessee can file updated return in such cases as the amendment talks about issuance of a show cause notice u/s 148A of the ITA after Thirty six months from the relevant AY.</td><td>Updated return cannot be filed. However, subsequently, if order u/s 148A(d) of the ITA is passed stating that it is not a fit case, then updated return can be filed.</td><td>Updated return cannot be filed, since 4 years have lapsed.</td></tr>
</table>

The above amendment takes effect from April 1, 2025. This means that after April 1, 2025, an assessee gets an ability to file updated ROI upto forty eight months from the end of any earlier AY, if otherwise eligible.

Reference to DRP [S. 144C]

Background

S. 144C(14B) and S. 144C(14C) of the ITA empower CG to make a scheme for faceless DRP proceedings. Proviso to S. 144C(14C) of the ITA provides the sunset date for issuance of such a scheme as March 31, 2025. No such scheme has been made so far in this behalf.

Proposed Amendment

- It is proposed to omit the proviso to S. 144C(14C) of the ITA, so as to enable CG to make a faceless DRP scheme at any time.
- The proposed amendment will be effective from April 1, 2025.

Notification of Schemes in Certain Cases [S. 253 & 255]

Background

S. 253(8)/(9) and 255(7)/(8) of the ITA empower CG to make a scheme for faceless ITAT Appeal proceedings. Provisos S. 253(9) and 255(8) of the ITA provides the sunset date for issuance of such a scheme as March 31, 2025. No such scheme has been made so far in this behalf.

Proposed Amendment

- It is proposed to omit the provisos to S. 253(9) and 255(8) of the ITA, so as to enable CG to make a faceless ITAT appeal scheme at any time.
- The proposed amendment will be effective from April 1, 2025.

Clarification Regarding Commencement Date and the End Date of the Period Stayed by Court while Computing the Limitation Period [S. 144BA, 153, 153B, 263, 264, and Rule. 68B of Schedule II of the ITA]

Background

The following sections specify the time limit for the completion of various proceedings, issue of directions, etc. :

- S. 144BA – Prescribes the time limit for the Approving Panel to issue directions on references made by the PCIT or CIT regarding impermissible avoidance arrangements specified in Chapter X-A.
- S. 153 – Provides for the time limits for completion of assessment, reassessment and recomputation by the AO.
- S. 153B – Provides for time limit for completion of assessment in case of search or requisition.
- S. 263 – Gives power to call for, examine and revise orders which are considered prejudicial to the interests of the revenue.
- S. 264 – Gives power to revise orders other than those u/s. 263 of the ITA either *suo moto* or on an application by the assessee.
- Rule 68B(2) of Schedule II – Provides the time limit for sale of attached immovable property.

All these provisions presently have a provision to exclude the period during which the relevant proceedings are stayed by an order or injunction of any Court while computing the limitation period.

Proposed Amendments

The amendment seeks to clarify the manner of computation of the period for which the stay has been granted by any court, which has to be excluded from the period of limitation for conclusion of proceedings under the respective sections. The proposed amendments have been tabulated as under:

<table>
<tr><th>S. No.</th><th>Scope</th><th>Read with</th><th>Existing Provision</th><th>Proposed Amendment</th></tr>
<tr><td>144BA</td><td>Time limit for issuing directions by Approving Panel</td><td>Clause (ii) of Explanation 1 to S. 144BA</td><td rowspan="5">Following period should be excluded while calculating the limiting period:

The period during which the proceeding is stayed by an order or injunction of any court</td><td rowspan="5">Following period should be excluded while calculating the limiting period:

The period commencing on the date on which stay on the proceedings was granted by an order or injunction of any court and ending on the date on which the certified copy of the order vacating the stay was received by the Approving Panel / Jurisdictional PCIT / Jurisdictional CIT.</td></tr>
<tr><td>153</td><td>Time limit for completion of assessment, reassessment recomputation</td><td>Clause (ii) of Explanation 1 to S. 153</td></tr>
<tr><td>153B</td><td>Time limit for completion of assessment in case of search or requisition</td><td>Clause (i) of Explanation to S. 153B</td></tr>
<tr><td>263</td><td>Time limit for concluding revisionary proceedings where orders passed was prejudicial to the interest of the revenue</td><td>Explanation to sub-section 3</td></tr>
<tr><td>264</td><td>Time limit for concluding revisionary proceedings where orders passed other than those u/s. 263</td><td>Explanation to sub-section 6</td></tr>
<tr><td>Rule 68B of Second Schedule</td><td>Time limit for sale of attached immovable property</td><td>Clause (i) & (ii) of Rule 68B(2) of Schedule II</td><td>Following period should be excluded while calculating the limiting period:</td><td>Following period should be excluded while calculating the limiting period:</td></tr>
</table>

S. No.	Scope	Read with	Existing Provision	Proposed Amendment
			(i) The period during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or (ii) The period during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or	(i) The period commencing on the date on which stay on levy of the said tax, interest, fine, penalty or another sum was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional PCIT/ jurisdictional CIT; or (ii) The period commencing on the date on which stay on the proceeding of attachment or sale of the immovable property was granted by an order or injunction of any court and ending on the date on which certified copy of the order vacating the stay was received by the jurisdictional PCIT or jurisdictional CIT; or".

These amendments will take effect from April 1, 2025.

Rationale of the Proposed Amendments

As stated in the EM, there was an ambiguity as to what should be the

commencement date and the end date of the period stayed by the court and the amendment is intended to remove any ambiguity in this behalf.

Our Comments

It may be worth noting that the **Allahabad HC** in the case of **CIT vs. Chandrabhan Bansal 46 taxmann.com 108 (All. HC)** and the **Delhi High Court** in the case of **Saheb Ram Omprakash Marketing P. Ltd. vs. CIT 398 ITR 292 (Del. HC)** has held that the period of limitation would restart from the date of the order of the court vacating the stay irrespective of whether the order was served on the PCIT or not. The effect of these decisions is now being nullified by virtue of the above proposed amendment.

Penalties and Prosecution

Extending the Processing Period of Application Seeking Immunity from Imposition of Penalty or Prosecution [S. 270AA]

Background

Presently, S. 270AA of the ITA *inter alia*, provides procedure of granting immunity by the AO from imposition of penalty u/s. 270A or proceedings u/s. 276C or u/s. 276CC of the ITA subject to fulfilment of conditions as under:

- Tax and interest payable as per order u/s. 143(3) or u/s. 147 of the ITA has been paid as specified in the notice of demand u/s. 156 of the ITA; and
- No appeal against the order u/s. 143(3) or u/s. 147 of the ITA has been filed.

S. 270AA(2) of the ITA provides that an application for granting immunity from imposition of penalty or prosecution shall be made within one month from the end of the month in which the aforesaid order u/s. 143(3) or u/s. 147 of the ITA has been received.

Further, S. 270AA(4) of the ITA provides that the AO shall pass an order accepting or rejecting the application, within a period of one month from the end of the month in which the application requesting immunity is received by the AO.

Proposed Amendment

It is proposed to amend S. 270AA(4) of the ITA to extend the timeline of passing the order by the AO from present one month to three months from the end of the month in which the application is received by the AO.

This amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendment

The proposed amendment intends to curb the challenges faced by the taxpayers in representing their case within the limited period of one month.

Penalty on Failure to Subscribe to the Eligible Issue of Capital [S. 271BB]

Background

Presently, S. 271BB of the ITA provides that the penalty would be levied for the failure to subscribe to any amount of subscription to the units issued under any scheme referred to in S. 88A(1) of the ITA.

However, S. 88A of the ITA has been omitted vide FA (No. 2), 1996 with retrospective effect from April 1, 1994.

Proposed Amendment

It is proposed to remove S. 271BB of the ITA.

This amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendment

As per the EM, in the absence of the parent section *viz.* S. 88A of the ITA, relevance of any penalty section in case of failure does not exist.

Penalties to be Imposed by AO [S. 271C, 271CA, 271D, 271DA, 271DB & 271E]

Background

Presently, S. 271C, 271CA, 271D, 271DA, 271DB and 271E of the ITA, *inter-alia*, provides that penalty under these sections shall be imposed by the JCIT. Although the assessment in such cases were being made by the AO, penalty under these sections could be imposed by JCIT.

Proposed Amendment

It is proposed to insert a proviso to S. 271C, 271CA, 271D, 271DA, 271DB and 271E of the ITA to provide that penalty under the said sections on or after April 1, 2025, shall be imposed by the AO in place of JCIT.

The amendment will take effect from April 1, 2025.

Rationale of the Proposed Amendment

The rationale of the proposed amendment is to streamline the process of levying penalty under the aforesaid sections of the ITA.

Our Comments

Presently, S. 274(2) of the ITA provides that no order imposing the penalty shall be made

- By Income Tax Officer, where the penalty exceeds Rs. 10,000/-;
- By the ACIT or DCIT, where the penalty exceeds Rs. 20,000/-, except with the prior approval of the JCIT.

Thus, the proposed amendment requires the AO to obtain prior approval of JCIT for passing the penalty order u/s. 271C, 271CA, 271D, 271DA, 271DB and 271E of the ITA where penalty amount exceeds the threshold limit specified u/s. 274(2) of the ITA.

It is a settled law that approval by higher authorities is for ensuring check on order passed by the lower authorities and such approval are required to be speaking and not mechanical. Thus, the assessee may seek approval granted by JCIT and thereafter take appropriate ground while challenging penalty.

Time Limit to Impose Penalties Rationalized [S. 275]

Background

Presently, the existing provisions of S. 275 of the ITA, *inter-alia*, provide for the limitation period for imposing penalties and it provides multiple timelines for imposition of penalties for cases pending in appeal before the ITAT, CIT(A) or JCIT(Appeals).

Proposed Amendment

It is proposed to substitute S. 275 of the ITA to provide new time limits for passing orders imposing penalties. It is proposed that no penalty order shall be passed after six months from the end of the quarter in which any of the following events occur:

- Completion of proceedings where the penalty was initiated, provided the assessment or order is not under appeal u/s. 246, 246A, or 253 of the ITA;
- Passing of a revision order u/s. 263 or 264 of the ITA if the assessment or order is a subject matter of revision;
- Receipt of an appeal order u/s. 246 or 246A of the ITA by the jurisdictional PCIT or CIT if no further appeal has been filed u/s 253 of the ITA.
- Receipt of an appeal order u/s. 253 of the ITA by the jurisdictional PCIT or CIT;
- Issuance of a penalty notice in any other case.

Further, it is proposed that order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be revised on the basis of assessment subject to fulfilment of certain conditions.

This amendment will take effect from the April 1, 2025.

Rationale of the Proposed Amendment

As per the EM, different time limits makes it difficult to keep track of multiple time barring dates for effective and efficient tax administration. Thus, the above amendment is proposed.

Our Comments

This is a welcome amendment as it seeks to clarify the time limit to pass the order of penalty in various scenarios.

Exemption from Prosecution for Delayed Payment of TCS in Certain Cases [S. 276BB]

Background

S. 276BB of the ITA imposes rigorous imprisonment from three months to seven years where the collector of TCS fails to deposit TCS so collected to the credit of CG in accordance with the timeline provided u/s 206C of the ITA.

Proposed Amendment

It is now proposed to insert a proviso whereby, the person will not be prosecuted if the deposit of TCS collected by the assessee is made to the credit of the CG at any time on or before the time prescribed for filing the statement of such quarter u/s. 206C(3) of the ITA.

This amendment will take effect from April 1, 2025.

Our Comments

There exists controversy as to whether the prosecution proceedings can apply in case of mere delay in depositing the collected TDS/TCS or should it be restricted to cases of non-deposit of TDS/TCS.

The proposed amendment seems to suggest that even in the case of mere delay in deposit of TCS with interest, the existing provision was applicable; and now, the provision will not apply only in case of depositing the TCS within the time limit of filing of quarterly TCS statement. Clearly, the amendment being only a proviso to the main provision, cannot expand the scope of the main provision. However, the proposed amendment is likely to add fuel to the said controversy.

Miscellaneous Amendments in Direct Tax

Inclusion of Securities Held by Investment Funds Within the Definition of Capital Asset [S. 2(14)]

Background

Presently, S. 2(14) of the ITA defines the term "Capital Asset" to, *inter alia*, mean the securities held by a Foreign Institutional Investor in accordance with the regulations made under the SEBI Act, 1992.

Proposed Amendment

The FB proposes to amend S. 2(14) of the ITA so to deem securities held by an investment fund specified in clause (a) of *Explanation* 1 to S. 115UB of the ITA in accordance with the regulations made under the SEBI Act, 1992 as 'capital asset'.

The proposed amendment shall be applicable from AY 2026-27 and onwards.

Rationale of the Proposed Amendment

As per the EM, there is some uncertainty in characterization of income of investment funds arising from transaction in securities as to whether it is capital gain or business income. With a view of providing certainty in respect of the above, the foregoing amendment is proposed deeming any security held by investment funds in accordance with the regulations made under the SEBI Act, 1992 as capital asset.

Our Comments

There is a doubt with regards to the head under which the income from securities held by the investment funds could be taxed. Can an AIF hold securities as a stock in trade? Should income from such securities such as interest as well as gains be taxed as Business Income or as Income from Other Sources/Capital Gains?

The proposed amendment puts the said ambiguity to rest by deeming the securities held by such funds as Capital Asset. However, with the said amendment, a question could arise as to whether the said deeming fiction would apply even while determining the tax head in the hands of the unit holders of such investment funds.

Amendment Pertaining to Exempt Income of Specified Persons [S. 10(23FE)]

Background

S. 10(23FE) of the ITA provides for exemption to specified persons on their income in the nature of dividend, interest, any sum referred to in S. 56(2)(xii) of the ITA and LTCG arising from specified

investments made in India, subject to fulfilment of conditions specified therein.

For the purpose of this section, "specified person" means wholly owned subsidiaries of Abu Dhabi Investment Authority, Sovereign Wealth Funds and Pension Funds satisfying the conditions as provided in *Explanation* 1 to S. 10(23FE) of the ITA. Aforesaid income from specified investments made by such persons is exempt from tax if the investment is made on or after April 1, 2020 and before March 31, 2025 and is held for atleast three years.

Proposed Amendments

- The FB proposes to provide that LTCG arising out of such specified investments shall be eligible for exemption even if such LTCG is deemed as Short Term Capital Gain ("STCG") u/s. 50AA of the ITA.
- It is further proposed to extend the date of investment from March 31, 2025 to March 31, 2030.

The proposed amendments will take effect from April 1, 2025 and therefore, applicable from AY 2025-26 and onwards.

Rationale of the Proposed Amendments

As per the EM, the amendment with respect to the extension of the date of investment has been proposed considering the recommendations received to extend the deadline to invest in India keeping in view the long-term nature of infrastructure investments and the role of specified persons in financing such infrastructure projects.

Further, vide FA (No. 2), 2024, S. 50AA of the ITA was amended re-classifying capital gains arising from unlisted bond or an unlisted debenture which is transferred or redeemed or matures on or after the July 23, 2024 as STCG, irrespective of the holding period. This had resulted in the LTCG from investment made in eligible unlisted debt investments to be taxable in the hands of specified persons which prior to such amendments were exempted in their hands. The amendment proposes to restore such exemption and nullify the effect of S. 50AA of the ITA to these funds.

The said amendment is proposed to take effect from AY 2025-26 to negate the impact of amendment made in S. 50AA of the ITA which became effective from July 23, 2024.

Our Comments

The proposed amendment once again expands the scope of exemption available to sovereign funds and pension funds which was curtailed due to amendment to S. 50AA of the ITA by FA (No. 2), 2024. The amendment also is expected to encourage these specified persons to invest into infrastructure sector in India which will give a much-needed boost to Indian economy.

Special Provision in Respect of Specified Business [S. 80-IAC]

Background

Presently, S. 80-IAC of the ITA provides a tax deduction for eligible startups, allowing them to claim 100% of profits and gains from their business for three consecutive AYs. The benefit is available subject to specified conditions. Earlier, one of the eligibility conditions for a startup was that it must be incorporated on or after April 1, 2016, but before April 1, 2025.

Proposed Amendment

It is proposed to amend the above section to extend the eligibility for start-ups incorporated on or after April 1, 2016, but before April 1, 2030.

Rationale of the Proposed Amendment

As per the EM, the rationale for the proposed amendment is to extend the benefit for another five years i.e. making the benefit available to eligible start-ups incorporated before April 1, 2030.

Our Comments

This is a welcome move. The proposed amendment would extend the eligibility period, allowing startups incorporated before April 1, 2030, to avail the benefits.

Tax on Income of Unit Holder and Business Trust [S. 115UA]

Background

Presently, S. 115UA(2) of the ITA provides that the total income of a business trust shall be charged to tax at the MMR, subject to the provisions of S. 111A and 112 of the ITA.

Proposed Amendment

The FB proposes to amend S.115UA(2) of the ITA to provide that the total income of a business trust shall be charged to tax at the MMR, subject to the provisions of S. 111A, 112 as well as 112A of the ITA.

This amendment will take effect from April 1, 2026, and shall accordingly apply in relation to the AY 2026-27 and onwards.

Rationale of the Proposed Amendment

As per EM, the rationale for the proposed amendment to include the reference to S. 112A of the ITA in S. 115UA(2) of the ITA is to provide lower taxability for equity share in a company or a unit of an equity-oriented fund or a unit of a business trust in the hands of business trust.

Our Comments

This provision focuses on rationalising the taxability of business trusts by ensuring that the LTCG u/s. 112A of the ITA is taxed at the rate of 12.50% and not at MMR. Omission of

reference to S. 112A of the ITA in S. 115UA(2) of the ITA hitherto created ambiguity as to whether or not income of business trusts falling u/s. 112A of the ITA would be subject to MMR. Though there was already a school of thought that 112A of the ITA being a specific provision, LTCG falling under said section would continue to be taxed only at specified rates. The said amendment puts this issue at rest. However, since the amendment is effective only prospectively from AY 2026-27, the tax treatment for the earlier period is still open to debate.

Appealable Orders Before CIT(A) [S. 246A]

Background

S. 246A of the ITA provides the list of orders against which the assessee may appeal to the CIT(A). Presently, the list of appealable orders *inter alia* includes an order imposing penalty u/s. 275(1A) of the ITA and order made by DCIT imposing penalty u/s. 271C, 271CA, 271D and 271E of the ITA.

Proposed Amendment

It is proposed to amend S. 246A of the ITA whereby the order imposing penalty u/s 275(1A) of the ITA is substituted to order imposing penalty u/s. 275(2) of the ITA and in so far, the order passed by DCIT imposing penalty u/s. 271C, 271CA, 271D and 271E of the ITA is concerned, the reference to 'DCIT' is removed.

This amendment is effective from April 1, 2025.

Rationale of the Proposed Amendment

The proposed amendment intends to make a consequential amendment to the amendments proposed in S. 275 and S. 271C, 271CA, 271D and 271E of the ITA.

Virtual Digital Asset [S. 2(47A)] & Obligation to Furnish Information [S. 285BAA]

Background

FA, 2022 introduced taxation of VDAs under the ITA. S. 2(47A) of the ITA defines the term 'virtual digital asset'. S. 115BBH of the ITA provides for taxation of income from transfer of such VDA at a flat rate of 30%. Further, to capture VDA transactions details, S. 194S of the ITA provides for TDS on payment of consideration for transfer of VDA.

Proposed Amendments

It is now proposed to insert sub-clause (d) in the definition of VDA [S. 2(47A) of the ITA] to cover any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not already covered in the pre-amended definition.

It is further proposed to insert a new S. 285BAA of the ITA to cast an obligation on any person, being the 'reporting entity', to furnish information of a transaction dealing with crypto-asset in a statement within prescribed time, form and manner.

Search provisions have also been amended to include VDA within the ambit of "Undisclosed Income". (Refer Chapter - Block Assessment)

The proposed amendments will take effect from April 1, 2026.

Our Comments

The proposed amendment seeks to categorically bring crypto-asset within the framework of VDA taxation, removing any ambiguity under the existing VDA definition.

The proposed reporting obligations seems to be aligned with the global movement on Crypto-Asset Reporting Framework by Organisation for Economic Cooperation and Development (OECD).

Further, in March 2023, the Prevention of Money Laundering Act, 2002 (PMLA) was updated to regulate cryptocurrencies and digital assets in line with global standards set by Financial Action Task Force (FATF). FATF, mandates Crypto Travel Rules which requires virtual asset service providers like banks, exchanges, custodial solutions and financial service providers to identify and share the origins and destinations of crypto transactions above a specific threshold. The reporting obligation under proposed S. 285BAA of the ITA might support this effort or multiply the reporting requirements under different statutes.

Goods and Services Tax

Restriction of Input Tax Credit on “Plant and Machinery” [S. 17(5)(d)]

Effective dates of proposals: Shall come into force on such date as the CG may appoint, by Notification in the Official Gazette. The provisions will be made effective from such notified date, or the date as specified in the respective provision.

Background

S. 17(5)(d) of the CGST Act restricts tax credit on goods or services used for construction of immovable property (other than **plant or machinery**). The expression “plant or machinery” was not defined in the CGST Act rather, the expression "plant and machinery” was defined in the Act.

In the above background, the **Hon’ble Supreme Court** in the case of **Chief Commissioner of CGST vs. Safari Retreats Private Limited (2024) (10) TMI 286 (SC)** held that the term “plant” in S. 17(5)(d) of the CGST Act could not be restricted to the definition of "plant and machinery", which excludes land, buildings, or other civil structures. The Court held that in certain cases, a building could be considered a plant, thereby making it eligible for ITC under S. 17(5)(d) of the CGST Act.

Proposed Amendments

- It has been proposed to substitute the words “plant or machinery” with the words “plant and machinery” retrospectively w.e.f. July 1, 2017.
- Further, an explanation has been proposed to be added in S. 17 of the CGST Act which specifies that this amendment overrides any contrary interpretation arising from any judgment, decree, or order of any court or authority.

Rationale of the Proposed Amendments

The above amendment has been moved to nullify the judgement of the Supreme Court as discussed above.

Our Comments

The above amendment is on expected lines. The Government did not intend to permit credit in circumstances allowed by the Supreme Court. The words “plant or machinery” in S. 17(5)(d) of the CGST Act was only an anomaly which has now been corrected.

However, it is to be noted that the judgement had also made certain observations with respect to the phrase “on own account” used in S. 17(5)(d) of the CGST Act. There has been no recommendation to overcome the said observations.

Conditions for Issuance of GST Credit Note [S. 34]

Background

S. 34 of the CGST Act specifies certain situations in which a GST credit note may be issued by the supplier for reduction of GST liability.

Proposed Amendment

- It has been proposed that a reduction of GST liability through a GST credit note shall only be allowed in case:
  - ITC as attributable to such credit note has been reversed by the recipient if the same was availed earlier (in case of registered person).
  - Incidence of tax on such supply has not been passed on to any other person, in other cases. (This provision already existed in the existing provisions as well).

Rationale of the Proposed Amendment

The said amendment has been proposed to ensure that reduction of GST is not claimed by the supplier where credit of such GST has been availed by the recipient leading to revenue leakage for the Government.

Our Comments

Similar provisions already existed in S. 15(3)(b) of the CGST Act which allowed for post supply discount (by issuance of GST credit note).

The said provisions have also been inserted in S. 34 of the CGST Act to provide legal mandate to reverse ITC in case GST credit note is being issued in other cases as well (such as sales return) with an aim to plug revenue leakage.

It is to be noted that there was no mechanism under the GST law for the supplier to know if the recipient had reversed ITC so far. However, with the implementation of Invoice Management System, there is now an appropriate mechanism in place for the supplier to know if the recipient has reversed the corresponding ITC.

Pre-deposit in Case of Appeals Relating to Only Penalty [S. 107 & S. 112]

Background

S. 107 of the CGST Act specifies the provisions for filing an appeal before the Appellate Authority on payment of pre-deposit amounting to ten percent of the disputed **tax** amount.

Pre-deposit in case demand only relates to penalty was 25% only in cases of detention, seizure and release of goods and conveyances in transit. In other cases where demand was only related to penalty, there was no specific provision requiring any pre-deposit.

Likewise, S. 112 of the CGST Act specifies the provisions for filing an appeal before the Appellate Tribunal on payment of an

additional amount equivalent to ten percent of the disputed **tax** amount.

In cases where demand was only related to penalty, there was no specific provision requiring any pre-deposit.

Proposed Amendments

- It has been proposed to substitute the proviso to S. 107(6) of the CGST Act to provide for the requirement of pre-deposit of ten per cent of the penalty amount in all cases for filing an appeal before the Appellate Authority against an order which involves only demand of penalty.
- Similar proviso has been inserted in S. 112(8) of the CGST Act to provide for an additional payment of ten percent as pre-deposit in case demand confirmed only relates to penalty.

Our Comments

This will lead to additional working capital blockages for the assesses who will be litigating demand of penalty before the Appellate Authority/Appellate Tribunal.

Enabling Provision for Track and Trace Mechanism [S. 148A & 122B]

Background

The Government has been steadfast in introducing checks to prevent evasion of GST. One such measure in this regard was the introduction of E-way bill in 2018 for supply of goods. The GST Council in the 55th GST Council meeting has now proposed to insert enabling provisions to provide a "track and trace mechanism" for evasion prone goods.

The system will be based on a Unique Identification Marking (digital stamping) which shall be affixed on the goods. This will provide a legal framework for developing a mechanism for tracing specified commodities throughout the supply chain.

Proposed Amendments

- It has been proposed to insert a new S. 148A in the CGST Act so as to provide for an enabling provision for the implementation of track and trace mechanism for ensuring effective monitoring and control of supply of specified commodities.

- It has also been proposed to insert S. 122B in the CGST Act to provide for penal provisions for violations relating to track and trace mechanism which will be as follows:
  - One lakh rupees
  - Ten percent of the tax payable on such goods, whichever is higher.

Rationale of the Proposed Amendments

The said amendment has been proposed to strengthen monitoring on evasion prone goods such as cigarettes and pan masala which has been a challenging sector for the government to monitor even during the pre-GST excise period.

Our Comments

Although the said mechanism will augment Government revenue from the targeted sectors, the same will lead to additional compliance burden for the specified industries who may have to undertake integration with the existing systems.

Omissions of Provisions Related to Time of Supply of Vouchers [S. 12 & 13]

Background

The taxability of vouchers has consistently been a subject of debate since the inception of GST with several assesses filing a writ before various High Courts on the said issue.

To bring clarity to the aforesaid debate, the GST Council, in the 55th GST Council meeting had proposed to amend the GST Act to specify that the transactions in vouchers shall neither be treated as supply of goods nor supply of services. Circular No. 243/37/2024-GST dated December 31, 2024, was also issued clarifying the same.

Accordingly, the Council had also proposed for the deletion of provisions relating to the time of supply of in case of vouchers.

Proposed Amendment

It is proposed to omit S. 12(4) and S. 13(4) from the CGST Act which provide for time of supply with respect to vouchers issued for goods and services respectively.

Rationale of the Proposed Amendment

The said amendment has been proposed to settle the issues relating to taxability of vouchers since different positions were being adopted by trade and industry leading to ambiguity and litigation.

Our Comments

The underlying goods / services would now be taxable under the normal provisions of time of supply as per S. 12 / 13 of the CGST Act.

Certain SEZ or FTWZ Transactions Neither Qualifying as Supply of Goods or Services [Schedule III]

Proposed Amendment

It is proposed to amend Schedule III of the CGST Act w.e.f. July 1, 2017, by inserting a new clause (aa) in paragraph 8. This amendment stipulates that the supply of goods stored in a SEZ or a FTWZ to any person, either before clearance for export or to the Domestic Tariff Area, shall be treated neither as a supply of goods or services.

Our Comments

GST will not be leviable on supply of goods stored in SEZ or FTWZ, either before clearance for export or to the Domestic Tariff Area bringing the same at par with supply of warehoused goods before clearance for home consumption.

Input Service Distributor [S. 2(61) & 20]

Background

As per the FA, 2024, the definition of Input service distributor was expanded to cover Reverse charge paid under the CGST / SGST Act.

Proposed Amendment

It has now been proposed to amend the definition of ISD and S. 20 of the CGST Act which provides for manner of distribution of credit by ISD to include distribution of credit with respect to reverse charge paid under the IGST Act.

Rationale of the Proposed Amendment

This is only a correction of anomaly to also cover taxes paid under IGST under S. 5(3) and 5(4) of the IGST Act.

Our Comments

ISD mechanism will become mandatory from April 1, 2025. Even though trade and industry who were distributing credit through ISD mechanism were already distributing inter-state ITC whose tax was paid under reverse charge mechanism by raising a tax invoice from normal registration to ISD registration, the act now explicitly provides for the distribution of inter-state ITC by ISD for reverse charge transactions.

Customs

Time limit Specified for Completion of Provisional Assessment [S. 18(1B) & 18(1C)]

Background

S. 18 of the Customs Act, 1962 allows provisional assessment of custom duties on goods being imported in case determination of final value is not possible. Provisional assessment allows goods to be released from customs while the final assessment is pending, so that business operations and trade can continue without unnecessary delays. The provisional amount assessed in provisional assessment may change once the final assessment is made.

Currently there is no time limit for finalization of provisional assessment.

Proposed Amendments

- It is proposed to insert a new sub-section (1B) in S. 18 of the Customs Act, 1962 to establish a definite time limit of two years for finalization of provisional assessment, with an extension of up to one additional year. In case of pending cases, the time-limit shall be reckoned from the date of assent of the FB.
- A new sub-section (1C) in S. 18 of the Customs Act, 1962 is also being inserted to provide for certain grounds on which the time limit of two years for finalizing provisional assessment shall remain suspended.

Rationale of the Proposed Amendments

The said amendment has been made considering there were inordinate delays in finalization of provisional assessment in certain cases leading to uncertainty and delays for the trade and industry.

Our Comments

This is a welcome move as it will enhance the ease of doing business. By establishing a clear and reasonable time frame for finalizing provisional assessments, businesses will have more certainty and predictability, reducing the risk of prolonged delays.

Revision of Bill of Entry Post Clearance [S. 18A]

Background

Under the current framework under Customs, S. 149 of the Customs Act, 1962 allows amendments to Bill of Entry after clearance, but under condition that sufficient documentary evidence is available for amendment of bill of entry. S. 149 of the Customs Act, 1962 also provides discretionary power to the customs officer to reassess the bill of entry.

Proposed Amendment

It is proposed to insert a new S.18A after S. 18 of the Customs Act, 1962, allowing importers and exporters to voluntarily revise any entry made concerning the goods after clearance. This section will treat the revised entry as a self-assessment, permitting the payment of duty or considering the revised entry as a refund claim under S. 27 of the Customs Act, 1962. It also outlines specific situations where this provision will not be applicable.

Rationale of the Proposed Amendment

The said amendment has been made to facilitate self-assessment of duties in case revision of bill of entry vis-à-vis the current framework under S. 149 of the Customs Act, 1962 where reassessment could only be undertaken by involvement of Customs officer.

Our Comments

This is welcome provision for the assesses which will promote voluntary compliance and reduce prolonged disputes since historically rectifying errors at the time of filing bill of entry was a difficult and lengthy process.

Major Rationalisation of Customs Tariff Structure

Proposed Amendments

- Reduction from 22 to 8 tariff rates including zero rate over last two budgets.
- Basic Customs Duty has been reduced for certain goods.
  - To maintain the same effective rate of tax, Agricultural Infrastructure and Development Cess (AIDC) levied/increased.
- Goods imported will now attract not more than one cess or surcharge.
  - Social Welfare Surcharge (SWS) proposed to be exempted on 82 tariff line items.
- Reduction in basic Customs Duty rate to support domestic manufacturing and value addition for certain specified goods (w.e.f. February 2, 2025)
  - Critical minerals
  - Textile products
  - Electronic goods
  - Capital goods for EV battery and mobile phone battery manufacturing
- Validity period for exemption of most products due to expire on March 31, 2025, extended for a further period as notified.

Trust you find the above useful.
Best Regards

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