**Direct Tax (Paper 15)**

## Rate of Income Tax

### Default Tax Regime for Individual / HUF / AOP / BOI / AJP [Sec. 115BAC]

***Applicable to***

Individual / HUF / AOP (other than co-operative society) / BOI / AJP

***Rate of Tax***

Under this tax regime, income tax shall be computed at the option of the assessee considering the following rate:

| Total income | Rate of tax |
|---|---|
| Upto ₹ 3,00,000 | Nil |
| From ₹ 3,00,001 to ₹ 6,00,000 | 5% |
| From ₹ 6,00,001 to ₹ 9,00,000 | 10% |
| From ₹ 9,00,001 to ₹ 12,00,000 | 15% |
| From ₹ 12,00,001 to ₹ 15,00,000 | 20% |
| Above ₹ 15,00,000 | 30% |

*Taxpoint: If a person opts for this regime, ₹ 3,00,000 shall be considered as basic exemption limit irrespective of his age. In other words, for all category of individual i.e, senior citizen, super senior citizen and others, basic exemption limit is ₹ 3,00,000*

***Rebate u/s 87A for tax computed as per sec. 115BAC***

Applicable to: Resident Individual

Conditions to be satisfied: Total income of the assessee does not exceed ₹ 7,00,000.

Quantum of Rebate: **Lower** of the following:

a. 100% of tax liability as computed above; or
b. ₹ 25,000/-

Marginal relief is available even total income exceeds ₹ 7,00,000 [available upto ₹ 7,27,770]

Marginal relief = Positive value of (Tax on income – Income in excess of ₹ 7,00,000)

**Example**

| Particulars | Case 1 | Case 2 | Case 3 | Case 4 |
|---|---|---|---|---|
| Assessee | Individual | Individual | Senior Citizen | Individual |
| Residential status | Resident | Resident | | Resident |
| Regime | Default | Default | Default | Default |
| Total Income (₹) | 6,00,000 | 6,80,000 | 7,10,000 | 7,30,000 |
| Tax on above | 15,000 | 23,000 | 26,000 | 28,000 |
| **Rebate u/s 87A** | **15,000** | **23,000** | **16,000** | **Nil** |
| Reason | | | [₹ 26,000 – (₹ 7,10,000 - ₹ 7,00,000)], is positive | [₹ 28,000 – (₹ 7,30,000 - ₹ 7,00,000)], is negative |
| Tax after rebate | Nil | Nil | 10,000 | 28,000 |

***Surcharge on tax after rebate u/s 87A***

Surcharge at the following rate is also payable on tax as computed above after rebate u/s 87A

| Total Income | Rate of Surcharge |
|---|---|
| Total income does not exceed ₹ 50 lacs | Nil |
| Total income exceeds ₹ 50 lacs but does not exceed ₹ 1 crore | 10% of tax |
| Total income exceeds ₹ 1 crore but does not exceed ₹ 2 crores | 15% of tax |
| Total income exceeds ₹ 2 crores | 25% of tax* |

Subject to Marginal Relief.

* Where the total income includes dividend, any income chargeable u/s 111A, 112 and 112A, the surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, surcharge higher than 15% is applicable only on tax on income other than dividend, income covered u/s 111A, 112 and 112A. Moreover, in case of an AOP consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed 15%.

***Health & Education Cess***

Applicable on: All assessee

Rate of cess: 4% of Tax liability after Surcharge

## OLD TAX REGIME

Where an assessee opt for old regime of taxation (or want to shift from default tax regime to alternative regime), then he should exercise the option in the prescribed manner:

| | |
|---|---|
| Where the person not having aforesaid income | Alongwith the return of income to be furnished u/s 139(1) for a previous year relevant to the assessment year. He may choose to pay tax under default tax regime u/s 115BAC in one year and exercise the option to shift out of default tax regime in another year. |
| Where the person has income from business or profession | Within the due date specified u/s 139(1) for furnishing the returns of income for any previous year relevant to the assessment year **and** such option **once** exercised shall apply to subsequent assessment years.<br>Such person who has exercised the above option of shifting out of the default tax regime for any previous year shall be able to withdraw such option **only once** and pay tax under the default tax regime u/s 115BAC for a previous year other than the year in which it was exercised.<br>Thereafter, such person shall **never** be eligible to exercise option under this section, except where such person ceases to have any business income in which case, option would be available. |

In that case, following tax rates are applicable:

**Individual/HUF/Association of Persons/Body of Individuals/Artificial Juridical Person**

***In case of Super Senior citizen***

| Total Income Range | Rates of Income Tax |
|---|---|
| Up to ₹ 5,00,000 | Nil |
| ₹ 5,00,001 to ₹ 10,00,000 | 20% of (Total income – ₹ 5,00,000) |
| ₹ 10,00,001 and above | ₹ 1,00,000 + 30% of (Total income – ₹ 10,00,000) |

*Super Senior Citizen* means an individual who is resident in India and is of at least 80 years of age at any time during the relevant previous year (i.e. any resident person, male or female, born before 02-04-1944).

***In case of Senior citizen***

| Total Income Range | Rates of Income Tax |
|---|---|
| Up to ₹ 3,00,000 | Nil |
| ₹ 3,00,001 to ₹ 5,00,000 | 5% of (Total Income – ₹ 3,00,000) |
| ₹ 5,00,001 to ₹ 10,00,000 | ₹ 10,000 + 20% of (Total income – ₹ 5,00,000) |
| ₹ 10,00,001 and above | ₹ 1,10,000 + 30% of (Total income – ₹ 10,00,000) |

*Senior Citizen* means an individual who is resident in India and is of at least 60 years of age at any time during the relevant previous year. (i.e., a resident person, male or female, born on or after 02-04-1944 but before 02-04-1964)

**In case of other Individual[1] / HUF / Association of Persons / Body of Individuals / Artificial Juridical Person**

| Total Income Range | Rates of Income Tax |
|---|---|
| Up to ₹ 2,50,000 | Nil |
| ₹ 2,50,001 to ₹ 5,00,000 | 5% of (Total Income – ₹ 2,50,000) |
| ₹ 5,00,001 to ₹ 10,00,000 | ₹ 12,500 + 20% of (Total income – ₹ 5,00,000) |
| ₹ 10,00,001 and above | ₹ 1,12,500 + 30% of (Total income – ₹ 10,00,000) |

[1]. born on or after 02-04-1964 or non-resident individual

***Rebate u/s 87A***

Applicable to: Resident Individual

Conditions to be satisfied: Total income of the assessee does not exceed ₹ 5,00,000.

Quantum of Rebate: **Lower** of the following:

a. 100% of tax liability as computed above; or

b. ₹ 12,500/-

***Surcharge on tax after rebate u/s 87A***

Surcharge at the following rate is also payable on tax as computed above after rebate u/s 87A

| Total Income | Rate of Surcharge |
|---|---|
| Total income does not exceed ₹ 50 lacs | Nil |
| Total income exceeds ₹ 50 lacs but does not exceed ₹ 1 crore | 10% of tax |
| Total income exceeds ₹ 1 crore but does not exceed ₹ 2 crores | 15% of tax |
| Total income exceeds ₹ 2 crores but does not exceed ₹ 5 crores | 25% of tax* |
| Total income exceeds ₹ 5 crores | 37% of tax* |

Surcharge is subject to marginal relief.

* Where the total income includes dividend, any income chargeable u/s 111A, 112 and 112A, the surcharge on the amount of income-tax computed on that part of income shall not exceed 15%. In other words, surcharge higher than 15% is applicable only on tax on income other than dividend, income covered u/s 111A, 112 and 112A. Moreover, in case of an AOP consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed 15%.

***Health & Education Cess***

Applicable on: All assessee

Rate of cess: 4% of Tax liability after Surcharge

**Firm or Limited Liability Partnership (LLP)**

A partnership firm (including limited liability partnership) is taxable at the rate of 30%

*Surcharge*: 12% of income-tax (if total income exceeds ₹ 1 crore otherwise Nil)

*Marginal Relief*: Available

*Health & Education Cess*: 4% of tax liability after surcharge

**Company**

| *Company* | *Rate* |
|---|---|
| In the case of a domestic company | |
| - Where its total turnover or gross receipts during the previous year 2021-22 does not exceed ₹ 400 crore | 25% |
| - In any other case | 30% |
| In the case of a foreign company | 40% |

Surcharge

| Total Income | Domestic Company | Foreign Company |
|---|---|---|
| If total income exceeds ₹ 10 crore | 12% | 5% |
| If income exceeds ₹ 1 crore but does not exceed ₹ 10 crore | 7% | 2% |
| If income does not exceed ₹ 1 crore | Nil | Nil |

*Marginal Relief*: Available at both points (i.e., income exceeds ₹ 1,00,00,000 or ₹ 10,00,00,000)

Health & Education Cess: 4% of tax liability after surcharge

## Sec. 115BAC

W.e.f. A.Y. 2024-25, it is provided that the rates provided u/s 115BAC(1A) shall be the rates applicable for determining the income-tax payable in respect of the total income of a person, being an individual or Hindu undivided family or association of persons [other than a cooperative society], or body of individuals, whether incorporated or not, or an artificial juridical person. Thus, rates given in sec. 115BAC(1A) are the default rates.

However, if an option is exercised u/s 115BAC(6), then nothing contained in sec. 115BAC(1A) shall be applicable in respect of such person. In such case, the tax rates applicable in earlier regime would be applicable.

## Sec. 9

***Extending deeming provision u/s 9 to gift to not-ordinarily resident***

Under the Act, income which, inter-alia, is deemed to accrue or arise in India during a year is chargeable to tax. Section 9(1) is a deeming provision providing the types of income deemed to accrue or arise in India. Section 9(1)(viii) provide that the any sum of money exceeding ₹ 50,000, received by a non-resident without consideration from a person resident in India, shall be income deemed to accrue or arise in India.

The above provision was introduced as an anti-abuse provision, as certain instances were observed where gifts were being made by persons residents in India to non-residents and were claimed to be non-taxable in India by such non-residents.

However, it has been noticed that certain persons being not ordinarily residents are receiving the gifts from persons resident in India and not paying tax on it.

Thus, the aforesaid deeming provision has been amended to include any sum of money exceeding ₹ 50,000, received by a **not ordinarily resident**, without consideration from a person resident in India under its umbrella.

## Sec. 10

***Amendment to sec. 10(4D)***

The definition of specified fund u/s 10(4D) has been modified to include the reference of International Financial Service Centre Authority (IFSCA) Fund Management Regulation, 2022 with effect from assessment year 2324

***Amendment to sec. 10(4E)***

Income of non-residents on transfer of Offshore Derivative Instruments (ODI) entered into with IFSC Banking unit is exempt u/s 10(4E). Under the ODI contract, the IFSC Banking Unit (IBU) makes the investments in permissible Indian Securities. Income earned by the IBU on such investments is taxed as capital gains, interest, dividend u/s 115AD. After the payment of tax, the IBU passes such income to the ODI holders. Presently, the exemption is provided only on the transfer of ODIs and not on the distribution of income to the non-resident ODI holders, hence this distributed income is taxed twice in India i.e. first when received by the IBU and second, when the same income is distributed to non-resident ODI holders.

Therefore, in order to remove the double taxation, clause (4E) has been amended, to provide exemption to any income distributed on the offshore derivative instruments, entered into with an offshore banking unit of an International Financial Services Centre as referred to in sec. 80LA(1A), which fulfils such conditions as may be prescribed. It has also been provided that such exempted income shall include only that amount which has been charged to tax in the hands of the IFSC Banking Unit u/s 115AD

***Amendment to sec. 10(4G)***

The provision has been extended to provide exemption pertaining to any income received by non-resident from such activity as may be notified by the Central Government

***Insertion of sec. 10(4H)***

Any income of a non-resident or a Unit of an International Financial Services Centre as referred to in sec. 80LA(1A), engaged primarily in the business of leasing of an aircraft, by way of capital gains arising from the transfer of equity shares of domestic company, being a Unit of an International Financial Services Centre, engaged primarily in the business of lease of an aircraft which has commenced operations on or before 31-03-2026.

Such capital gains would arise within the

a. period of 10 assessment years beginning with the assessment year relevant to the previous year in which the domestic company has commenced operations; or
b. period of 10 assessment years beginning with the assessment year 2024-25, where the period referred to in clause (a) ends before 01-04-2034.

***Taxpoint***: "Aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof

***Rationalisation of exempt income under life insurance policies [Sec. 10(10D)]***

Sec. 10(10D) provides for income-tax exemption on the sum received under a life insurance policy, including bonus on such policy. There is a condition that the premium payable for any of the years during the terms of the policy should not exceed 10% of the actual capital sum assured.

It may be pertinent to note that the legislative intent of providing exemption u/s 10(10D) has been to further the welfare objective by subsidising the risk premium for an individual’s life and providing benefit to small and genuine cases of life insurance coverage. However, over the years it has been observed that several high net worth individuals are misusing the exemption by investing in policies having large premium contributions (as it is acting as an investment policy) and claiming exemption on the sum received under such life insurance policies.

In order to prevent the misuse of exemption, Finance Act, 2021, amended sec. 10(10D) to, inter-alia, provide that the sum received under a ULIP (barring the sum received on death of a person), issued on or after 01-02-2021 shall not be exempt if the amount of premium payable for any of the previous years during the term of such policy exceeds ₹ 2,50,000. It was also provided that if premium is payable for more than one ULIPs, issued on or after 01-02-2021, the exemption shall be available only with respect to such policies where the aggregate premium does not exceed ₹ 2,50,000 for any of the previous years during the term of any of the policy. Circular no 02 of 2022 dated 19.01.2022 was issued to explain how the exemption is to be calculated when there are more than one policies.

After the enactment of the above amendment, while ULIPs having premium payable exceeding ₹ 2,50,000/- have been excluded from the purview of sec. 10(10D), all other kinds of life insurance policies are still eligible for exemption irrespective of the amount of premium payable.

In order to curb such misuse, it has been amended to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above ₹ 5,00,000 in a year. This income shall be taxable under the head “income from other sources”. Deduction shall be allowed for premium paid, if such premium has not been claimed as deduction earlier.

The amended provision shall apply for policies issued on or after 01-04-2023. There will not be any change in taxation for polices issued before this date. However, income shall be exempt if received on the death of the insured person.

***Sum received from Agniveer Corpus Fund [Sec. 10(12C)]***

A new clause (12C) in section 10 of the Act has been inserted to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.

***Removal of exemption of news agency u/s 10(22B)***

Sec. 10(22B), inter-alia, provides exemption to any income of a notified news agency which is set up in India solely for collection and distribution of news. This is subject to condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

In accordance with the stated policy of the Government of phasing out of exemptions and deductions under the Act, the exemption available to news agencies u/s 10(22B) has been withdrawn from the assessment year 2024-25.

***Amendment to sec. 10(23FE)***

The exemption has been extended to cover any sum referred to in sec. 56(2)(xii)

***Extending scope of exemption to Sikkimese woman marrying non-Sikkimese and an individual domiciled in Sikkim [Sec. 10(26AAA)]***

The provision has been amended to provide exemption to:

a. A Sikkimese woman marrying a non-Sikkimese on or after 01-04-2008
b. An individual who was domiciled in Sikkim on or before 26-04-1975
c. An individual whose specified ancestors were domiciled in Sikkim on or before 26-04-1975

***Dividend income of a unit of any International Financial Service Centre [Sec. 10(34B)]***

A new clause has been inserted to sec. 10 to provide exemption of dividend income of a unit of any IFSC (primarily engaged in the business of leasing of an aircraft) from a company being a unit of an IFSC (primarily engaged in the business of leasing of an aircraft)

***Exemption to development authorities etc. [Sec. 10(46)/46(A)]***

Sec. 10(46) provides exemption to any specified income arising to a body or authority or Board or Trust or Commission, or a class thereof which:

a. has been established or constituted by or under a Central, State or Provincial Act, or constituted by the Central Government or a State Government, with the object of regulating or administering any activity for the benefit of the general public;
b. is not engaged in any commercial activity; and
c. is notified by the Central Government in the Official Gazette for the purposes of this clause.

The restriction on undertaking commercial activities by anybody or authority or Board or Trust or Commission notified u/s 10(46) has been a litigated issue. Recently, Hon'ble Supreme Court of India in the case of Assistant Commissioner of Income-tax (Exemptions) -vs.- Ahmedabad Urban Development Authority in Civil Appeal No 21762 of 2017 vide its order dated 19.10.2022 held that in sub-clause (b) of sec. 10(46), "commercial" has the same meaning as "trade, commerce, business" in sec. 2(15) of the Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration – i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity".

However, the Hon'ble Court has also made a fine distinction in respect of statutory authorities, boards etc. which have been established by the State government or Central governments, for achieving essentially "public functions/services". In such cases, the court have held that the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the mischief of business or commercial receipts as their objects are essential for advancement of public purposes/ functions.

In view of the above, it has been amended so as to exclude income of a body or authority or Board or Trust or Commission, not being a company, from the scope of sec. 10(46) and insert a new clause (46A) in section 10 of the Act for their income.

The new clause (46A) has been inserted to exempt any income arising to a body or authority or Board or Trust or Commission, not being a company, which has been established or constituted by or under a Central or State Act with one or more of the following purposes, namely:

a) dealing with and satisfying the need for housing accommodation;
b) planning, development or improvement of cities, towns and villages;
c) regulating, or regulating and developing, any activity for the benefit of the general public; or
d) regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

It is also required to be notified by the Central Government in the Official Gazette for the purposes of this clause. Consequential amendment has also been made in the Explanation to the nineteenth proviso of sec. 10 (23C). Similarly, consequential amendment has also been made in sec. 11(7) of the Act.

***Exemption to credit guarantee funds [Sec. 10(46B)]***

Sec.10(46B) has been inserted to provide exemption for any income accruing or arising to the following:

a) National Credit Guarantee Trustee Company Limited, being a company established and wholly financed by the Central Government for the purposes of operating credit guarantee funds established and wholly financed by the Central Government; or
b) a credit guarantee fund established and wholly financed by the Central Government and managed by the National Credit Guarantee Trustee Company Limited; or
c) Credit Guarantee Fund Trust for Micro and Small Enterprises, being a trust created by the Government of India and the Small Industries Development Bank of India established u/s 3(1) of the Small Industries Development Bank of India Act, 1989

***Specifying time limit for bringing consideration against export proceeds into India [Sec. 10AA]***

The existing provisions of the sec. 10AA, inter alia, provides 15-year tax benefit to a unit established in a SEZ which begins to manufacture or produce articles or things or provide any services on or after 01.04.2005. The deduction is available for units that begin operations before 01.04.2020, which has been extended to 30.09.2020 through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and is allowed in the specified manner therein.

However, the said section does not provide for the condition to file return before due date provided u/s 139(1) for claiming deduction as is provided for similar deductions. Sec. 143(1) however provides that the deduction u/s 10AA shall be eligible if such return is filed before the due date. Hence, it has been amended to align the two provisions by inserting a proviso to sec. 10AA(1) to provide that no deduction under the said section shall be allowed to an assessee who does not furnish a return of income on or before the due date specified u/s 139(1).

Further, it has been observed that there is no time-limit prescribed in the Act for timely remittance of the export proceeds from sale of goods or provision of services by SEZ Units for claiming deduction under the said section as is provided under other similar export related deductions in the Act. Hence, a new sub-section has been inserted to provide that the deduction u/s 10AA shall be available for such unit, if the proceeds from sale of goods or provision of services is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of 6 months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

For the purpose of this newly inserted sub-section, the expression “competent authority” shall mean the Reserve Bank of India or such authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

Also, it is provided that if the export proceeds from sale of goods or provision of services shall be deemed to have been received in India where such proceeds from sale of goods or provision of services are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Further, clause (i) of Explanation 1 of the said section has been substituted to define the term "convertible foreign exchange" and give reference to new sub section (4A) in the definition of "Export Turnover".

Further, consequential amendment has been made in sec. 155(11A), to insert sec. 10AA to allow the Assessing Officer to amend the assessment order later where the export earning is realized in India after the permitted period.

## Trust

***Rationalisation of the provisions of Charitable Trust and Institutions***

Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sec. 10(23C)(iv) or (v) or (vi) or (via) or any trust or institution registered u/s 12AA or 12AB is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes-

- Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sec. 10(23C) (hereinafter referred to as trust or institution under first regime); and
- Regime for the trusts registered u/s 12AA/12AB of the Act (hereinafter referred to as trust or institution under the second regime).

Section 12A of the Act, inter alia, provides for procedure to make application for the registration of the trust or institution to claim exemption u/s 11 and 12. Section 12AB is the new section which comes into effect from the 1st April, 2021.

*Depositing back of corpus and repayment of loans or borrowings*

Under the existing provisions of the Act, corpus donations received by trusts and institutions under both regimes are exempt as follows:

a. Explanation 1 to the third proviso to sec. 10(23C) provides that income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sec. 11(5) maintained specifically for such corpus.
b. Clause (d) of sec. 11(1) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sec. 11(5) maintained specifically for such corpus.
c. Application out of corpus shall not be considered as application for charitable orreligious purposes for the purposes of third proviso of sec. 10(23C) and clauses (a) and (b) of sec. 11. However, when it is invested or deposited back, into one or more of the forms or modes specified in sec. 11(5) maintained specifically for such corpus, from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.
d. Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso to sec. 10(23C) and clauses (a) and (b) of sec. 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.

While implementing the recent changes vide the Finance Act, 2021 to the provisions related to corpus and loan or borrowing, it has come to the notice that application from corpus or loan or borrowings have already been claimed as application prior to 01.04.2021. Hence, allowing such amount to be application again as investment or reposting back in corpus or repayment of loan or borrowing will amount to double deduction.

It was also noted that, a trust may invest or deposit back the amount in to corpus or repay the loan after many years of application from the corpus or loan and claim such repayment of loan or investment/depositing back in to corpus as application for charitable or religious purposes. Availability of indefinite period for the investment or depositing back to the corpus or repayment of loan will make the implementation of the provisions quite difficult.

Further, it was noted that conditions that are required to be satisfied in the case of application for charitable or religious purposes must also be satisfied while making the application from the corpus or loan or borrowing. These conditions are as follows:

i. Such application should not be in the form of corpus donation to another trust [twelfth proviso to sec/. 10(23C) for the trust or institution under first regime and Explanation 2 to sec. 11(1) for the trust or institution under second regime];
ii. TDS, if applicable, should be deducted on such application [thirteenth proviso to sec. 10(23C) for the trust or institution under first regime and Explanation 3 to sec. 11(1) for the trust or institution under second regime];
iii. Application whereby payment or aggregate of payments made to a person in a day exceeds ₹ 10,000 in other than specified modes (such as cash) is not allowed (thirteenth proviso to sec. 10(23C) for the trust or institution under first regime and Explanation 3 to sec. 11(1) for the trust or institution under second regime);
iv. Carry forward and set off of excess application is not allowed [Explanation 2 to sec. 10(23C) for the trust or institution under first regime and Explanation 5 to sec. 11(1) for the trust or institution under second regime];
v. Application is allowed in the year in which it is actually paid [Explanation 3 to sec. 10(23C) for the trust or institution under first regime and Explanation to section 11 for the trust or institution under second regime];
vi. Application should not directly or indirectly benefit any person referred to in sec. 13(1) and the income of the trust or institution should not enure any benefit to such person [twenty-first proviso to sec. 10(23C) for the trust or institution under first regime and clause (c) of sec. 13(1) for the trust or institution under second regime];
vii. Application should be in India except with the approval of the Board in accordance with the provisions of sec. 11(1)(c).

In order to ensure proper implementation of both the exemption regimes, it has been amended to provide that application out of corpus or loans or borrowings before 01.04.2021 should not be allowed as application for charitable or religious purposes when such amount is deposited back or invested in to corpus or when the loan or borrowing is repaid. It is further amended to provide that if the trust or institution invests or deposits back the amount in to corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes. It is also proposed to provide that where the application from corpus or loan did not satisfy the conditions as stated above, the repayment of loan or investment/depositing back in to corpus of such amount will not be treated as application.

In view of the above, the following amendments were made:

i. second proviso to clause (i) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted so as to provide that the provisions of the first proviso shall apply only if there was no violation of the conditions specified in the twelfth, thirteenth and twenty- first proviso to, and Explanation 2 and Explanation 3 of, sec. 10(23C), at the time the application was made from the corpus;

ii. third proviso to clause (i) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted so as to provide that the amount invested or deposited back shall not be treated as application for charitable or religious purposes under the first proviso unless such investment or deposit is made within a period of five years from the end of the previous year in which such application was made from corpus;

iii. a fourth proviso to clause (i) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted so as to provide that nothing contained in the first proviso shall apply where application from corpus is made on or before 31-03-2021;

iv. a second proviso to clause (ii) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted so as to provide that the provisions of the first proviso shall apply only if there was no violation of the conditions specified in the twelfth, thirteenth and twenty- first proviso to, and Explanation 2 and Explanation 3 of, sec. 10(23C), at the time the application was made from loan or borrowing;

v. a third proviso to clause (ii) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted to provide that the amount repaid shall not be treated as application for charitable or religious purposes under the first proviso, unless such repayment is made within a period of five years from the end of the previous year in which such application was made from loan or borrowing;

vi. a fourth proviso to clause (ii) of Explanation 2 to the third proviso of sec. 10(23C) has been inserted to provide that nothing contained in the first proviso shall apply where application, from any loan or borrowing is made on or before 31-03-2021;

vii. a second proviso to clause (i) of Explanation 4 to sec. 11(1) has been inserted so as to provide that the provisions of the first proviso shall apply only if there was no violation of the conditions, specified in clause (c) of, and Explanations 2, 3 and 5 of, sub-section (1) and Explanation to sec. 11 of the Act and sec. 13(1)(c), at the time the application was made from the corpus;

viii. a third proviso to clause (i) of Explanation 4 to sec. 11(1) has been inserted so as to provide that the amount invested or deposited back shall not be treated as application for charitable or religious purposes under the first proviso unless such investment or deposit is made within a period of five years from the end of the previous year in which such application was made from corpus;

ix. a fourth proviso to clause (i) of Explanation 4 to sec. 11(1) has been inserted so as to provide that nothing contained in the first proviso shall apply where application from corpus is made on or before 31-03-2021;

x. a second proviso to clause (ii) of Explanation 4 to sec. 11(1) has been inserted so as to provide that the provisions of the first proviso shall apply only if there was no violation of the conditions, specified in clause (c) of, and Explanations 2, 3 and 5 of, sub-section (1) and Explanation to sec. 11 or sec. 13(1)(c), at the time the application was made from loan or borrowing;

xi. a third proviso to clause (ii) of Explanation 4 to sec. 11(1) has been inserted so as to provide that the amount repaid shall not be treated as application for charitable or religious purposes under the first proviso unless such repayment is made within a period of 5 years from the end of the previous year during which such application was made form loan or borrowing;

xii. a fourth proviso to clause (ii) of Explanation 4 to sec. 11(1) has been inserted so as to provide that nothing contained in the first proviso shall apply where application from any loan or borrowing is made on or before the 31-03-2021.

***Treatment of donation to other trusts:***

The income of the trusts and institutions under both regimes is exempt subject to the fulfilment of certain conditions. Some of such conditions are as follows:

a. at least 85% of income of the trust or institution should be applied during the year for the charitable or religious purposes to ensure bare minimum application for charitable or religious purposes.
b. Trusts or institutions are allowed to either apply mandatory 85% of their income either themselves or by making donations to the trusts with similar objectives.

c. If donated to other trusts or institutions, the donation should not be towards corpus to ensure that the donations are applied by the donee trust or institutions.
d. Thus, every trust or institution under both the regimes is allowed to accumulate 15% of its income each year.

Instances have come to the notice that certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer. By forming multiple trusts and accumulating 15% at each stage, the effective application towards the charitable or religious activities is reduced significantly to a lesser percentage compared to the mandatory requirement of 85%.

In order to ensure intended application toward charitable or religious purpose, it is amended to provide that only 85% of the eligible donations made by a trust or institution under the first or the second regime to another trust under the first or second regime shall be treated as application only to the extent of 85% of such donation.

*Omission of redundant provisions related to roll back of exemption*

There are roll back provisions for the trust or institutions under the second regime. Sec. 12A(2) provides that where an application for registration u/s 12AB has been made, the exemption shall be available with respect to the assessment year relevant to the financial year in which the application is made and subsequent assessment years.

Second proviso to sec. 12A(2) provides that where registration has been granted to the trust or institution u/s 12AA or 12AB, then, the provisions of sec. 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration if the objects and activities of such trust or institution remain the same for such preceding assessment year.

Third proviso to sec. 12A(2) provides that that no action u/s 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for nonregistration of such trust or institution for the said assessment year.

Fourth proviso to sec. 12A(2) provides that provisions contained in the second and third proviso to sec. 12A(2) shall not apply in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time u/s 12AA or 12AB.

Second, third and fourth proviso to sec. 12A(2) discussed above have become redundant after the amendment of sec. 12A by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Now the trusts and institutions under the second regime are required to apply for provisional registration before the commencement of their activities and therefore there is no need of roll back provisions provided in second and third proviso to sec. 12A(2).

With a view to rationalise the provisions, the second, third and fourth proviso to sec. 12A(2) has been omitted.

*Combining provisional and regular registration in some cases*

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration by amending the first and second proviso to sec. 10(23C), sec. 12A(1)(ac) and first and second proviso to sec. 80(5). The amended provisions, inter-alia, provide the following:

a. New trusts or institutions under both regimes as well u/s 80G regime need to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval shall be valid for a period of 3 years.

b. Provisionally registered/approved trusts or institutions under both regimes and sec. 80G regime will again need to apply for regular registration/approval at least 6 months prior to expiry of period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier. Regular registration/approval shall be valid for a period of 5 years.
c. The trusts and institutions under both regimes and sec. 80G regime will need to apply at least six months prior to the expiry of regular registration/approval.

It has also been brought to the notice that trusts and institutions under both the regimes are facing the following difficulties:

a. Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for that year in which they are formed or incorporated since they need to apply one month before the previous year for which exemption is sought.
b. Besides trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular) simultaneously.

In order to ensure rationalisation of the provisions, it is amended to allow for direct final registration/approval in such cases. To achieve this, following amendments has been made:

i. The trusts and institutions under the first regime shall be allowed to make application for the provisional approval only before the commencement of activities under sub-clause (A) of clause (iv) of the first proviso to sec. 10(23C).
ii. Similarly trusts and institutions under the second regime shall be allowed to make application for the provisional registration only before the commencement of activities under item (A) of sub-clause (vi) of sec. 12A(1)(ac).
iii. Similarly trusts and institutions u/s 80G regime shall be allowed to make application for the provisional approval only before the commencement of activities under sub-clause (A) of clause (iv) of the first proviso to sec. 80G(5).
iv. The trusts and institutions under first regime, which have already commenced their activities, shall make application for a regular approval under sub-clause (B) of clause (iv) of the first proviso to sec. 10(23C).
v. The trusts and institutions under second regime, which have already commenced their activities, shall make application for a regular registration under item (B) of sub-clause (vi) of sec. 12A(1)(ac).
vi. The trusts and institutions u/s 80G regime, which have already commenced their activities, shall make application for a regular approval under sub-clause (B) of clause (iv) of the first proviso to sec. 80G(5).
vii. Such application shall be examined by the Principal Commissioner or Commissioner as per the procedure provided under clause (ii) of the second proviso to sec. 10(23C) for the trusts and institutions under the first regime, under clause (b) of sec. 12AB(1) for the trusts and institutions under the second regime and under clause (ii) of the second proviso to sec. 80G(5).
viii. Where the Principal Commissioner or Commissioner is satisfied about the objects and genuineness of the activities and compliance of other requirements provided in law, registration or approval in such cases shall be granted for 5 years.
ix. The Principal Commissioner or the Commissioner shall pass and order granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received.

*Specified violations u/s 12AB and fifteenth proviso to sec. 10(23C)*

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration by amending the first and second proviso to sec. 10(23C), and sec.

12A(1)(ac). Now the new trusts are required to apply for the provisional registration/approval which is valid for a period of 3 years or till six months from the commencement of activities whichever is earlier. The trusts and institutions under both regimes, already registered or approved, were required to furnish the application in form 10A for re-registration/approval. The process of granting the provisional approval/registration for the new trusts and re-registration/approval for the trusts already registered is automated. Application is filed by the trust or institution on e-filing portal and
provisional approval/registration or the approval/registration in such cases is granted in an automated manner without verification.

It has come to the notice that in some cases the form furnished by the trusts for provisional approval/registration and for re-registration/approval are defective and since the process of registration/approval/provisional registration/approval is automated, registration has been granted by the CPC. At present the approval/registration and the provisional approval/registration of the trusts can be cancelled by the PCIT/CIT for certain specified violations.

In order to rationalise the provisions, it has been amended that:

a. clause (g) in Explanation 2 to the fifteenth proviso of sec. 10(23C) has been inserted to provide that the "specified violation" shall also include the case where the application referred to in the first proviso is not complete or it contains false or incorrect information.
b. similarly, clause (g) in Explanation to sec. 12AB(4) has been inserted to provide that "specified violation" shall also include the case where the application referred to in sec. 12A(1)(ac) is not complete or it contains false or incorrect information.

*Trusts or institutions not filing the application in certain cases*

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 amended the provisions related to application for registration by amending the first and second proviso to sec. 10(23C), sec. 12A(1)(ac). The amended provisions provide the following:

a. All the existing trusts and institutions under the first and second regime are required to apply for re-registration/approval on or before 31.03.2021. The due date for re-registration/approval has been extended by the Central Board of Direct Taxes till 25.11.2022 vide Circular No. 22 of 2022 dated 01.11.2022. Such re-registration/approval shall be valid for a period of 5 years.
b. New trusts and institutions under the first and second regime are required to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. Such provisional registration/approval shall be valid for a period of 3 years.
c. Provisionally registered/approved trusts and institutions under the first and second regime will again need to apply for regular registration/approval at least six months prior to expiry of the period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier.
d. The trusts and institutions under the first and second regime are required to apply at least six months prior to the expiry of re-registration/approval.

Instances have come to the notice where certain trusts and institutions under the first and second regime have not applied for the regular registration after taking the provisional registration. Further some trusts and institutions under the first and second regime have not applied for the re-registration/approval. Further, there may be possible instances where the trusts and institutions under the first or second regime will not apply for re-registration after the expiry of 5 years/3 years. This will result in the following unintended consequences:

a. Once a trust or institution under the first or second regime enters in-to exemption regime, it is allowed to exit on payment of tax at the rate of maximum marginal rate on its accreted income (difference between the fair market value of assets and liabilities). This is because of the reason that the income of the trust or institution has been exempted from tax and the accreted income of the trust represents the income on which tax has not been paid and appreciation thereof.
b. By not applying for re-registration/approval or registration/approval, the trust gets an easy route to exit without payment of the tax on accreted income.

A trust or institution under the first or second regime may voluntarily wind up its activities and dissolve or may also merge with any other non-charitable institution, or it may convert into a non-charitable organization. In order to ensure that the benefit conferred over the years by way of exemption is not misused and to plug the gap in law that allowed the trusts and institutions having built up corpus/wealth through exemptions being converted into non-charitable organisation with no tax consequences, a new Chapter XIIEB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act by the Finance Act, 2016.

This chapter seeks to impose a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a noncharitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation.

The main elements of these provisions are:

i. The accretion in income (accreted income) of the trust or institution is taxable on conversion of trust or institution into a form not eligible for registration u/s 12AA or 12AB or on merger into an entity not having similar objects and registered u/s 12AA or 12AB or on non-distribution of assets on dissolution to any charitable institution registered u/s 12AA or approved u/s 10(23C) within a period of 12 months from the end of the month of dissolution.
ii. Accreted income is the amount of aggregate of Fair Market Value (FMV) of total assets as reduced by the liability as on the specified date. The method of valuation has been prescribed in rules.
iii. The taxation of accreted income is at the maximum marginal rate.
iv. This levy is in addition to any income chargeable to tax in the hands of the entity.

Vide Finance Act, 2022, the provisions of section 115TD, 115TE and 115TF have been amended to make them applicable to any trust or institution under the first regime as well.

The provisions of sec. 115TD has been amended by inserting clause (iii) in sec. 115TD(3) to provide that the provisions of Chapter XII-EB shall be applicable if any trust or institution under the first or second regime fails to make an application in accordance with the provisions of clause (i) or clause (ii) or clause (iii) of the first proviso to sec. 10(23C) or in accordance with sub-clause (i) or sub-clause (ii) or sub-clause (iii) of sec. 12A(1)(ac), within the period specified in the said clauses or sub-clauses. Upon violation of these, it shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which such period expires.

Further clause (ii) of sec. 115TD(5) has been amended to provide that principal officer or the trustee of the specified person, as the case may be, and the specified person shall also be liable to pay the tax on accreted income to the credit of the Central Government within fourteen days from the end of the previous year in a case referred to in clause (iii) of sec. 115TD(3).

Sub-clause (c) in clause (i) to the Explanation to sec. 115TD has been inserted to provide that date of conversion shall also mean the last date for making an application for registration under sub-clause (i) or sub-clause (ii) or sub-clause (iii) of sec. 12A(1)(ac) or for making an application for approval under clause (i) or clause (ii) or clause (iii) of the first proviso to sec. 10(23C), as the case may be, in a case referred to in clause (iii) of sec. 115TD(3).

*Alignment of the time limit for furnishing the form for accumulation of income and tax audit report*

The trusts and institutions under the first regime are required to get their accounts audited as per the provisions of clause (b) of the tenth proviso to sec. 10(23C). The trusts and institutions under second regime are required to get their accounts audited as per the provisions of sub-clause (ii) of clause (b) of sec. 12A(1). The audit report under both the regimes is required to be furnished at least one month before the due date for furnishing the return of income.

Explanation 3 to the third proviso of sec. 10(23C) provides that where the trust or institution under the first regime accumulates or sets apart its income, such trust or institution is required to furnish a statement in the prescribed form (Form 10) on or before the due date specified u/s 139(1) for furnishing the return of income for the previous year.

Sec. 11(2)(c) provides that where the trust or institution under the second regime accumulates or sets apart its income, such trust or institution is required to furnish a statement in the prescribed form (Form 10) on or before the due date specified u/s 139(1) for furnishing the return of income for the previous year.

Clause (2) of Explanation 1 to sec. 11(1) provides that where the trust or institution under the second regime deems certain income to be applied, such trust or institution is required to furnish a statement in the prescribed form (Form 9A) on or before the due date specified u/s 139(1) for furnishing the return of income for the previous year.

The due date for furnishing form 9A and form 10 is same as the due date of furnishing the return of income. The trusts are also required to furnish audit report in form 10B/10BB one month before the due date for furnishing return of income. The auditors are required to report the details of form 10/9A in the audit report. Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report.

In order to rationalise the provisions, it is amended to provide for filing of Form No. 10A/9A at least two months prior to the due date specified u/s 139(1) for furnishing the return of income for the previous year.

*Denial of exemption where return of income is not furnished within time*

As per the provisions of twentieth proviso to sec. 10(23C), if the return of income is not furnished by a trust or institution under first regime within the time u/s 139, exemption under sub-clause (iv)/(v)/(vi)/(via) of sec. 10(23C) shall not be available to such trust or institution.

Similarly, as per the provisions of sec. 12A(1)(ba), if the return of income is not furnished by a trust or institution under the second regime within the time u/s 139, exemption u/s 11 and 12 shall not be available to such trust or institution.

Sec. 139 was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.

This resulted in unintended consequences of allowing exemption u/s 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of sec. 10(23C) will be available to the trusts where they furnish updated return of income. Accordingly, it is clarified that the exemption under these sections will be available only if the return of income has been furnished within the time allowed u/s 139(1) or 139(4).

## Salaries

***Govt contribution to Agniveer Corpus Fund***

Government contribution to Agniveer Corpus Fund account of an individual shall be included in the income of the assessee under the head Salaries. However, deduction u/s 80CCH(2) shall be available to the assessee.

***Valuation Rule for Rent Free Accommodation***

W.e.f. 01-09-2023, revised rule of valuation shall be applicable. The amended position is mentioned here-in-below:

| City in which accommodation is provided | Accommodation is owned by the employer | Accommodation is not owned by the employer |
|---|---|---|
| Having population *exceeding 40 lacs* as per 2011 census | 10% of salary for the period during which the employee *occupied* the said accommodation. | Rent paid or payable by the employer or 10% of salary, whichever is lower. |
| Having population *exceeding 15 lacs but not exceeding 40 lacs* as per 2011 census | 7.5% of salary for the period during which the employee *occupied* the said accommodation. | |
| Any other city | 5% of salary for the period during which the employee *occupied* the said accommodation. | |

***Taxpoint*:**

**a.** **Cap on Valuation in subsequent year(s):** W.e.f. 01-09-2023, where the same accommodation is continued to be provided to the same employee for more than one previous year, the aforesaid calculation shall be restricted to the amount calculated as per following formula:

$$\text{Amount calculated for the first P.Y.} \times \frac{\text{CII for the P.Y. for which the amount is calculated}}{\text{CII for the P.Y. in which the accommodation was initially provided to the employee}}$$

- CII – Cost Inflation Index as notified for the purpose of sec. 48
- First previous year means the previous year 2023-24, or the previous year in which the accommodation was provided to the employee, whichever is later.

**Provision Illustrated**

| Particulars | P.Y.2023-24 | P.Y.2024-25 |
|---|---|---|
| Cost Inflation Index (CII) | 348 | 370 (assumed) |
| Salary | ₹ 20,00,000 | ₹ 28,00,000 |
| Valuation of RFA, say 10% of salary [a] | ₹ 2,00,000 | ₹ 2,80,000 |
| Valuation after applying inflation linked capping [b] | ₹ 2,00,000<br>As it is first P.Y. | ₹ 2,12,644<br>i.e., ₹ 2,00,000 x 370 / 348 |
| **Valuation to be taken [Lower of (a) and (b)]** | **₹ 2,00,000** | **₹ 2,12,644** |

**b)** The valuation rule is not applicable where any accommodation is provided to an employee working at a mining site; or an on-shore oil exploration site; or a project execution site; or a dam site; or a power generation site; or an off-shore site, which

**a.** being of a temporary nature and having plinth area not exceeding 800 sq.ft. (w.e.f. 01-09-2023 - 1000 sq. ft) is located not less than 8 kms away from the local limits of any municipality or a cantonment board; or

**b.** is located in a remote area.

W.e.f. 01-09-2023, "remote area", means any area other than an area which is located:

i. within the local limits of; or

ii. within a distance, measured aerially, of 30 kilometers from the local limits of,

any municipality or a cantonment board having a population of 1,00,000 or more based on the 2011 census

***Amendment to sec. 28(iv)***

Section 28 provides for income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". Clause (iv) of this section brings to chargeability the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. This provision was inserted through the Finance Act 1964 and the Circular no 20D dated 7th July 1964 issued to explain the provisions of this Act stated clearly that the benefit could be in cash or in kind. Therefore, the intention of the legislation while introducing this provision was also to include benefit or perquisite whether in cash or in kind.

However, Courts[1] have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of sec. 28 of the Act.

In order to align the provision with the intention of legislature, clause (iv) of sec. 28 has been amended to clarify that provisions of said clause also applies to cases where benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.

***Ease in claiming deduction on amortization of preliminary expenditure [Sec. 35D]***

Section 35D provides for amortization of certain preliminary expenses which are incurred prior to the commencement of business or after commencement, in connection with extension of undertaking or setting up of a new unit. This includes expenditure in connection with preparation of feasibility report, project report etc.

The section inter-alia provides that the work in connection with the preparation of feasibility report or the project report or the conducting of market survey or of any other survey or the engineering services would need to be carried out either by the assessee himself or by a concern which is approved by the Board.

In order to ease the process of claiming amortization of these preliminary expenses, sec. 35D has been amended to remove the condition of activity in connection with these expenses to be carried out by a concern approved by the Board. Instead, the assessee shall be required to furnish a statement containing the particulars of this expenditure within prescribed period to the prescribed income-tax authority in the prescribed form and manner.

***Promoting timely payments to Micro and Small Enterprises [Sec. 43B]***

Section 43B provides for certain deductions to be allowed only on actual payment. Further, the proviso of this section allows deduction on accrual basis, if the amount is paid by due date of furnishing of the return of income.

In order to promote timely payments to micro and small enterprises, sec. 43B has been amended to include payments made to such enterprises within the ambit of sec. 43B.

Accordingly, a new clause (h) has been inserted in sec. 43B to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in sec. 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. However, the proviso to sec. 43B shall not apply to such payments.

Sec. 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the amended sec. 43B will allow the payment as deduction only on payment basis. It can be allowed on accrual basis only if the payment is within the time mandated u/s 15 of the MSMED Act.

***Non-Banking Financial Company (NBFC) categorization [Sec. 43B and 43D]***

Sec. 43B provides, inter-alia, that any sum payable by the assessee as interest on any loan or borrowing from a Deposit taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking

[1] CIT -vs.- Mahindra & Mahindra Ltd (2018) (SC)

Financial Company shall be allowed as deduction on payment basis. It can be allowed on accrual basis if it is actually paid on or before the due date of furnishing the return of income of the relevant previous year.

Sec. 43D provides, inter-alia, for special provision in case of income of deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company. Interest income in relation to certain categories of bad or doubtful debts received by such deposit-taking Non-Banking Financial Company and Systemically Important Non-Deposit taking Non-Banking Financial Company, shall be chargeable to tax in the previous year in which it is credited to its profit and loss account for that year or actually received, whichever is earlier.

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

In view of the above, sec. 43B and sec. 43D has been amended to substitute the words, "a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company", for the words "such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf".

***Increasing threshold limits for presumptive taxation schemes [Sec. 44AD and Sec. 44ADA]***

The existing provisions of Section 44AD of the Act, inter-alia, provide for a presumptive income scheme for small businesses. This scheme applies to certain resident assessees (i.e., an individual, HUF or a partnership firm other than LLP) carrying on eligible business and having a turnover or gross receipt of ₹ 2 crore or less. Under this scheme, a sum equal to 8% or 6% of the turnover or gross receipts is deemed to be the profits and gains from business subject to certain conditions. If assessee has claimed to have earned higher sum than 8% or 6%, then that higher sum is taxable.

Similarly, sec. 44ADA provides for a presumptive income scheme for small professionals. This scheme applies to certain resident assessees (i.e., an individual, partnership firm other than LLP) who are engaged in specified profession and whose total gross receipts do not exceed ₹ 50 lakh in a previous year. Under this scheme, a sum equal to 50% of the gross receipts is deemed to be the profits and gains from business. If assessee has claimed to have earned higher sum than 50%, then that higher sum is taxable.

Under section 44AB, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceeds ₹ 1 crore in any previous year. The limit is raised to ₹ 10 crore where at least 95% of receipts/payments are in non-cash mode. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipts in profession exceeds, ₹ 50 lakh in any previous year. Those opting for and fulfilling the conditions laid in the presumptive scheme are exempt from audit under this section.

In order to ease compliance and to promote non-cash transactions, it is amended to increase the threshold limits for presumptive scheme in sec. 44AD and sec. 44ADA of the Act on fulfilment of certain conditions. It is provided that:

- under section 44AD, for eligible business, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total turnover or gross receipts, a threshold limit of ₹ 3 crore will apply.
- under section 44ADA, for professions, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts, a threshold limit of ₹ 75 lakh will apply.
- the receipt by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the receipt in cash.
- provision of sec. 44AB shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sec. 44AD and 44ADA, as the case may be.

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

Sec. 44BB provides for presumptive scheme in the case of a non-resident assessee who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils. Under the scheme, a sum equal to 10% of the aggregate of the amounts specified in sub-section (2) of the said section is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Section 44BBB provides for presumptive scheme in the case of a nonresident foreign company who is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government. Under this scheme, a sum equal to 10% of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning is deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

Both sections provide that an assessee may claim lower profits and gains than the profits and gains specified if he keeps and maintains such books of account and other documents specified u/s 44AA and gets his accounts audited and furnishes a report of such audit as required u/s 44AB.

In this context, It has been noted that taxpayers opt in and opt out of presumptive scheme in order to avail benefit of both presumptive scheme income and non-presumptive income. In a year when they have loss, they claim actual loss as per the books of account and carry it forward. In a year when they have higher profits, they use presumptive scheme to restrict the profit to 10% and set off the brought forward losses from earlier years. Conceptually, if assessee is maintaining books of account and claiming losses as per such accounts, he should also disclose profits as per accounts. There is no justification for setting off of losses computed as per books of account with income computed on presumptive basis.

To avoid such misuse, sec. 44BB and sec. 44BBB has been amended to provide that notwithstanding anything contained in sec. 32(2) and sec. 72(1), where an assessee declares profits and gains of business for any previous year in accordance with the provisions of presumptive taxation, no set off of unabsorbed depreciation and brought forward loss shall be allowed to the assessee for such previous year.

## Capital Gains

Cost inflation index for the financial year 2023-24 is 348

***Alignment of provisions of sec. 45(5A) with the TDS provisions of sec. 194-IC***

The existing provisions of sec. 45(5A), inter alia, provide that on the capital gain arising to an assessee (individual and HUF), from the transfer of a capital asset, being land or building or both, under a Joint Development agreement (JDA), the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Further, for computing the capital gains amount on this transaction, the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in ‘cash’.

It has been noticed that the taxpayers are inferring that any amount of consideration which is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains chargeable to tax u/s 45(5A). This was not in accordance with the intention of law as is evident from the provisions of sec. 194-IC which, inter alia, provides that tax shall be deducted on any sum by way of consideration (other than in kind), under the agreement referred to in sec. 45(5A), paid to the deductee in cash or by way of issue of a cheque or draft or any other mode. Accordingly, it is amended to provide that the full value of consideration shall be taken as the stamp duty value of his share as increased by any consideration received in cash or by a cheque or draft or by any other mode.

***Conversion of Gold to Electronic Gold Receipt and vice versa***

Pursuant to the announcement in the Union Budget 2021-22 about Gold Exchange, SEBI has been made the regulator of the entire ecosystem of the proposed gold exchange. Accordingly, SEBI has come out with a detailed regulatory framework for spot trading in gold on existing stock exchanges through the instrument of Electronic Gold Receipts (EGR).

In order to promote the concept of Electronic Gold, it is amended to exclude the conversion of physical form of gold into EGR and vice versa by a SEBI registered Vault Manager from the purview of 'transfer' for the purposes of Capital gains

It is also provided that the cost of acquisition of the EGR for the purpose of computing capital gains shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued, and the holding period for the purpose of capital gains, would include the period for which gold was held by the assessee prior to its conversion into EGR. Similarly, provision for conversion from gold to EGR is also provided.

For the above changes following amendments are made:

- A new clause in sec. 47 has been inserted so as to provide that any transfer of a capital asset, being physical gold to the Electronic Gold Receipt issued by a Vault Manager or such Electronic Gold Receipt to physical gold shall not be considered as 'transfer'.
- A new sub-section (10) to sec. 49 has been inserted to provide that where an Electronic Gold Receipt issued by a Vault Manager, became the property of the person as consideration of a transfer, as referred in the newly inserted clause in sec. 47, the cost of acquisition of the asset for the purpose of the said transfer, shall be deemed to be the cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued. Similarly, where the gold released against an Electronic Gold Receipt, which became the property of the person as consideration for a transfer, as referred in the newly inserted clause in section 47, the cost of acquisition of the asset (being gold) for the purposes of the said transfer shall be deemed to be the cost of the Electronic Gold Receipt in the hands of such person.
- A new clause (hi) has been inserted to Explanation 1 of sec. 2(42A) to provide that the holding period for the purpose of capital gain shall include the period for which the Gold was held by the assessee prior to conversion into the Electronic Gold Receipt. and similarly the holding period for the purpose of capital gain shall include the period for which the Electronic Gold Receipt was held by the assessee prior to conversion into the Gold.

***Transfer of interest in a joint venture [Sec. 47(xx) and sec. 49(2AI)]***

Clause (xx) has been inserted in sec. 47 to provide that any transfer of a capital asset (being an interest in a joint venture held by public sector company) in exchange of shares in a company incorporated outside India by a foreign company will not be treated as transfer for the purpose of computation of capital gain. "Joint venture" shall mean a business entity has may be notified by the Central Government.

Father sec. 49 (2AI) has been inserted to provide that where the capital asset (being shares as referred to in section 47(xx) became the property of the assessee, the cost of acquisition of such asset shall be deemed to be the cost of acquisition to the assessee of the interest in the joint venture.

Further, meaning to certain terms provided in explanation to sec. 47(viiad) has been amended.

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

Under the existing provisions of the Act, the amount of any interest payable on borrowed capital for acquiring, renewing or reconstructing a property is allowed as a deduction under the head "Income from house property" u/s 24. Section 48 of the Act, inter alia, provides that the income chargeable under the head "Capital gains" shall be computed, by deducting the cost of acquisition of the asset and the cost of any improvement thereto from the full value of the consideration received or accruing as a result of the transfer of the capital asset.

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

Firstly, it is claimed in the form of deduction from income from house property u/s 24, and in some cases the deduction is also being claimed under other provisions of Chapter VIA of the Act. Secondly while computing capital gains on transfer of such property this same interest also forms a part of cost of acquisition or cost of improvement u/s 48.

In order to prevent this double deduction, a proviso has been inserted in sec. 48 so as to provide that the cost of acquisition or the cost of improvement shall not include the amount of interest claimed u/s 24 or Chapter VIA.

***Cost of acquisition of a unit of business trust***

Section 48(ii) has been amended to clarify that the cost of acquisition of a unit of a business trust shall be reduced by any sum received by unit holder from the business trust with respect to such unit and which is not in the nature of income as referred to in sec. 10(23FC)/(23FCA) and which is not chargeable to tax u/s 56(2)(xii)/115UA(2).

Where transaction of transfer of unit is not considered as transfer u/s 47 and cost of acquisition of such unit is determined u/s 49, sum received with respect to such unit, before such transactions as well as after such transaction, shall be reduced from the cost of acquisition.

***Capital gains in case of Market Linked Debentures [Sec. 50AA]***

Where capital asset being unit of a Specified Mutual Fund acquired on or after 01-04-2023 or a Market Linked Debenture is transferred, capital gain shall be computed as under:

| | |
|---|---|
| Full value of consideration received or accruing on transfer or redemption or maturity of such debenture or unit | xxx |
| *Less*: Expenses on Transfer (STT is not allowed) | xx |
| **Net Consideration** | xxx |
| *Less*: Cost of acquisition of the debenture or unit | xx |
| **Short Term Capital Gain (irrespective of period of holding)** | **xxx** |

***Taxpoint***:

- No deduction shall be allowed in computing the "Capital gains" in respect of STT
- Such gain shall be taxable at regular rate.
- *Market Linked Debenture* means a security by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices and include any security classified or regulated as a Market Linked Debenture by the SEBI
- *Specified Mutual Fund* means a Mutual Fund by whatever name called, where **not** more than 35% of its total proceeds is invested in the equity shares of domestic companies. The percentage of equity shareholding held in respect of the Specified Mutual Fund shall be computed with reference to the annual average of the daily closing figures.

***Limiting the roll over benefit claimed u/s 54 and 54F***

The existing provisions of sec. 54 and 54F allows deduction on the Capital gains arising from the transfer of long-term capital asset if an assessee, within a period of one year before or two years after the date on which the transfer took place purchased any residential property in India, or within a period of three years after that date constructed any residential property in India.

For sec. 54, the deduction is available on the long-term capital gain arising from transfer of a residential house if the capital gain is reinvested in a residential house. On the other hand, in sec. 54F, the deduction is available on the long term capital gain arising from transfer of any long term capital asset except a residential house, if the net consideration is reinvested in a residential house.

The primary objective of the sections 54 and section 54F of the Act was to mitigate the acute shortage of housing, and to give impetus to house building activity. However, it has been observed that claims of huge deductions by high-net-worth assessees are being made under these provisions, by purchasing very expensive residential houses. It is defeating the very purpose of these sections.

In order to prevent this, it is amended to impose a limit on the maximum deduction that can be claimed by the assessee u/s 54 and 54F to ₹ 10 crore. It has been provided that if the cost of the new asset purchased is more than ₹ 10 crore, the cost of such asset shall be deemed to be ₹ 10 crores. This will limit the deduction under the two sections.

Consequentially, the provisions of sec. 54 and 54F relating to deposit in the Capital Gains Account Scheme have also been amended to provide that the provision, for the purpose of deposit in the Capital Gains Account Scheme, shall apply only to capital gains or net consideration, as the case may be, upto ₹ 10 Crores.

***Cost of acquisition in case of certain assets for computing capital gains [Sec. 55]***

The existing provisions of the sec. 55, inter alia, defines the 'cost of any improvement' and 'cost of acquisition' for the purposes of computing capital gains. However, there are certain assets like intangible assets or any sort of right for which no consideration has been paid for acquisition. The cost of acquisition of such assets is not clearly defined as 'nil' in the present provision. This has led to many legal disputes and the courts have held that for taxability under capital gains there has to be a definite cost of acquisition or it should be deemed to be nil under the Act. Since there is no specific provision which states that the cost of such assets is nil, the chargeability of capital gains from transfer of such assets has not found favour with the Courts.

Therefore, to define the term 'cost of acquisition' and 'cost of improvement' of such assets, it is amended so as to provide that the 'cost of improvement' or 'cost of acquisition' of a capital asset being any intangible asset or any other right (other than those already mentioned) shall be 'Nil'.

## Income from Other Sources

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

Section 56(2)(viib), inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head 'Income from other sources'. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for this purpose.

The said clause was inserted to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.

Accordingly, it is amended to include the consideration received from a non- resident also under the ambit of this clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

***Distribution by business trust to unit holders – Sec. 56(2)(xii) and 115UA***

The Finance No. 2 Act, 2014 introduced a special taxation regime for business trust [Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (InVIT)]. The business trust invest in special purpose vehicles (SPV) through equity or debt instruments. The special taxation regime u/s 115UA, inter alia, provides a pass through status to the business trusts in respect of interest income, dividend income received by the business trust from a SPV in case of both REIT and InVIT and rental income in case of REIT. Such income is taxable in hands of the unit holders unless specifically exempted. Sec. 115UA, inter alia, provides any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the unit holder as it had been received by the business trust.

Further, sec. 115UA(3), inter-alia, provides that if the "distributed income" received by a unit holder from the business trust is of the nature as referred to in sec. 10(23FC) or (23FCA) i.e., is either rental income of the REIT or interest or dividend received by the business trust from the SPV, then, such distributed income or part thereof shall be deemed to be income of such unit holder.

It has been noticed in certain cases that business trusts distribute sums to their unit holders which are categorised in the following four categories:

a. Interest;
b. Dividend;
c. Rental income;
d. Repayment of debt.

As has been stated above, interest, dividend and rental income have been accorded a pass-through status at the level of business trust and are taxable in the hands of the unit holder. However, in respect of the distributions made by the business trust to its unit holders which are shown as repayment of debt, it is actually an income of unit holder which does not suffer taxation either in the hands of business trust or in the hands of unit holder.

Dual non-taxation of any distribution made by the business trust i.e. which is exempt in the hands of the business trust as well as the unit holder, is not the intent of the special taxation regime applicable to business trusts.

In view of the above, sec. 56(2)(xii) provides that any specified sum received by a unit holder from a business trust during the previous year, with respect to a unit held by him at any time during the previous year shall be taxable as income from other sources

*Taxpoint*

Specified sum = A – B -C (If it is negative, it shall be deemed to be zero),

A = Aggregate of sum distributed by the business trust with respect to such unit, during the previous year (or during any earlier previous year or years), to such unit holder, (who holds such unit on the date of distribution of sum or to any other unit holder who held such unit at any time prior to the date of such distribution), which is:

a. not in the nature of income referred to in sec. 10(23FC) or clause (23FCA); and
b. not chargeable to tax u/s 115UA(2) [i.e., income which is taxable in hands of business trust]

B = Amount at which such unit was issued by the business trust

C = Amount charged to tax under this clause in any earlier previous year

***Taxpoint***

- As per sec. 10(23FC), following income of a business trust is exempt:
  a. interest received or receivable from a special purpose vehicle; or
  b. dividend received or receivable from a special purpose vehicle.
- As per sec. 10(23FCA), any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt

***Sum received under a Life Insurance Policy [Sec. 56(2)(xiii)]***

Where the following conditions are satisfied, then any sum received, including bonus, at any time during a previous year, under a life insurance policy shall be taxable under the head Income from Other Sources.

a. Such receipt is **not** exempt u/s 10(10D)
b. Such sum is **not** received under a unit linked insurance policy
c. Such sum is **not** received under a keyman insurance policy

***Computation of income***

| | | |
|---|---|---|
| Sum Received during the previous year | ***less*** | Aggregate of the premium paid, during the term of such life insurance policy, **and** not claimed as deduction under any other provision of this Act |

***Taxpoint***

As per sec. 10(10D), in the following cases, sum received under a life insurance policy is exempt:

<table>
<tr><th>Policy</th><th colspan="3">Condition(s)</th><th>If Taxable, then</th></tr>
<tr><td colspan="5">Life insurance policy</td></tr>
<tr><td>Sum is received on the death of a person</td><td colspan="3">-</td><td>Exempt</td></tr>
<tr><td rowspan="8">Sum is received on maturity</td><td colspan="3">The premium payable for any year does not exceed the following % of actual capital sum assured:</td><td rowspan="8">If conditions are not satisfied, then it shall be taxable as Income from Other Sources</td></tr>
<tr><td>Policy issued</td><td>Insured is disable[2] or suffering from disease specified u/s 80DDB</td><td>Insured is any other person</td></tr>
<tr><td>Upto 31-03-2003</td><td colspan="2">No Restriction</td></tr>
<tr><td>During 01-04-2003 to 31-03-2012</td><td>20%</td><td>20%</td></tr>
<tr><td>During P.Y. 2012-13</td><td>10%</td><td>10%</td></tr>
<tr><td>During 01-04-2013 to 31-03-2023</td><td>15%</td><td>10%</td></tr>
<tr><td rowspan="2">On or after 01-04-2023</td><td>15%</td><td>10%</td></tr>
<tr><td colspan="2">Aggregate amount of premium does not exceed ₹ 5 lakh in any of the previous years during the term of any of those policies</td></tr>
<tr><td colspan="5">Unit linked Insurance Policies</td></tr>
<tr><td>Sum is received on the death of a person</td><td colspan="3">-</td><td>Exempt</td></tr>
<tr><td>In other case</td><td colspan="3">The premium payable for any year does not exceed the following % of actual capital sum assured:</td><td rowspan="4">If conditions are not satisfied, then it shall be taxable u/s 45(1B) [i.e., capital gains]<br>Where it is a LTCA, tax is required to calculated u/s 112A, without taking index benefit[3]</td></tr>
<tr><td rowspan="3"></td><td>Policy issued</td><td>Insured is disable[4] or suffering from disease specified u/s 80DDB</td><td>Insured is any other person</td></tr>
<tr><td>Upto 31-03-2003</td><td colspan="2">No Restriction</td></tr>
<tr><td>During 01-04-2003 to 31-03-2012</td><td>20%</td><td>20%</td></tr>
</table>

[2] Disable or severe disable as referred to in sec. 80U
[3] Circular no 02 of 2022 dated 19-01-2022 has been issued in this regard
[4] Disable or severe disable as referred to in sec. 80U

| | | | | |
|---|---|---|---|---|
| | During P.Y. 2012-13 | 10% | 10% | |
| | During 01-04-2013 to 31-01-2021 | 15% | 10% | |
| | On or after 01-02-2021 | 15% | 10% | |
| | | Aggregate amount of premium does not exceed ₹ 2,50,000 in any of the previous year during the term of any of those policies | | |
| ***Keyman Insurance Policies*** | | | | |
| Any circumstances | | | | Taxable as salary or business income or IFOS, as the case may be |
| ***Sum referred to in sec. 80DD(3)*** | | | | |
| Where the dependent disabled, in respect of whom an individual or the member of the HUF has paid or deposited any amount in any scheme of LIC or any other insurer, predeceases the individual or the member of the HUF, the amount so paid or deposited shall be deemed to be the income of the assessee of the previous year in which such amount is received. Such amount would not be exempt u/s 10(10D) | | | | |

## Set off and Carry Forward of Losses

***Facilitating certain strategic disinvestment [Sec. 72A and sec.72AA]***

Section 72A relates to provisions on carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. Sec. 72A(1) provides that in specified cases, accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the accumulated loss and unabsorbed depreciation of amalgamated company for the previous year in which the amalgamation was affected. Conditions have also been laid down in the said section to facilitate carry forward and set off of loss and unabsorbed depreciation in the case of strategic disinvestment. Strategic disinvestment has been defined as sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding below 51% along with transfer of control to the buyer.

Sec. 72AA relates to carry forward of accumulated losses and unabsorbed depreciation allowance in a scheme of amalgamation in certain cases, which, inter-alia, includes amalgamation of one or more banking company with any other banking institution.

To facilitate further strategic disinvestment, the definition of 'strategic disinvestment' has been amended so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in:

**a.** reduction of its shareholding to below 51%; and

**b.** transfer of control to the buyer.

However, the first condition shall apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding.

Further requirement of transfer of control may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them

Further, section 72AA has also been amended to allow carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution or a company subsequent to a strategic disinvestment, if such amalgamation takes place within 5 years of strategic disinvestment.

***Relief to start-ups in carrying forward and setting off of losses – sec. 79***

Section 79 restricts carrying forward and setting off of losses in cases of companies, other than the companies in which the public is substantially interested. It prohibits setting off of carried forward losses if there is change in shareholding. The carried forward loss is set off only if at least 51% shareholding (as on the last date of the previous year) remains same with the company on the last date of the previous year to which the loss belongs.

However, some relaxation has been provided in case of an eligible start-up as referred to in sec. 80-IAC. The condition of continuity of at least 51%shareholding is not applicable to the eligible start-up, if all the shareholders of the company as on the last day of the year, in which the loss was incurred, continue to hold those shares on the last day of the previous year in which the loss is set off. There is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of 7 years beginning from the year in which such company is incorporated.

In order to align this period of 7 years with the period of 10 years contained in sec. 80-IAC, the time period for loss of eligible start-ups to be considered for relaxation has been increased from 7 years to 10 years from the date of incorporation.

## Deductions

***Deduction in respect of contribution to Agnipath Scheme [Sec. 80CCH]***

In order to allow deduction from the computation of total income of Agniveer, any contribution made by the assessee or the Central Government to his Agniveer Corpus Fund account and to exempt from tax any payment received by Agniveer or his nominee, from the Agniveer Corpus Fund, following amendments has been made:

- a new clause (12C) in sec. 10 has been inserted to provide that any payment received from the Agniveer Corpus Fund by a person enrolled under the Agnipath Scheme, 2022, or the nominee of such person shall be exempted from income tax.
- section 80CCH has been inserted to provide that an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after 01-11-2022, shall be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income.
- Further, sec. 115BAC has been amended to provide that an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund shall get a deduction of the Government contribution to his Seva Nidhi

***Removal of certain funds from sec. 80G***

Section 80G, inter alia, provides for the procedure for granting approval to certain institutions and funds receiving donation and the allowable deductions in respect of such donations to the assessee making such donations. The section provides the list of these funds to which any sum paid by the assessee in the previous year as donations is allowed as a deduction to an extent of 50%/100% of the amount so donated. From the said list, name of the following funds has been removed

- Jawaharlal Nehru Memorial Fund
- Indira Gandhi Memorial Trust
- Rajiv Gandhi Foundation

***Extension of date of incorporation for eligible start-up for exemption – sec. 80-IAC***

The existing provisions of the sec. 80-IAC, inter alia, provides for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive assessment years out of 10 years, beginning from the year of incorporation, at the option of the assessees subject to the condition that:

(i) the total turnover of its business does not exceed ₹ 100 crore,

(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and

(iii) it is incorporated on or after 01-04-2016 but before 01-04-2023.
In order to further promote the development of start-ups in India and to provide them with a competitive platform, provisions of section 80-IAC has been amended so as to extend the period of incorporation of eligible start-ups to 01-04-2024.

***Amendment to sec. 80LA***

Under section 80LA deduction is available to schedule bank / foreign bank having offshore banking unit in SEZ if certain conditions are satisfied. The amount of deduction is 100% of the income for first 5 consecutive assessment years and 50% for next 5 years.
The aforesaid 50% deduction has been increased to 100% deduction for the assessment year 2324 or any subsequent year

## Transfer Pricing

***Amendment to sec. 92BA***

Section 92BA regulates provisions pertaining to specified domestic transactions. A clause (vb) has been inserted in the sec. 92BA to include the transaction between the Cooperative society and the other person with close connection within the purview of 'specified domestic transaction'.

***Reducing the time provided for furnishing TP report – Sec. 92D***

Section 92D, inter-alia, provides that every person who has entered into an international transaction or a specified domestic transaction shall keep and maintain the information and documents as provided under rule 10D of the Income-tax Rules, 1962
As per sec. 92D(3), the Assessing Officer (AOs) or the Commissioner (Appeals) may during the course of any proceedings under the Act require such person to furnish any information or document, as provided under rule 10D of the Rules, within a period of 30 days from the date of receipt of a notice issued in this regard. It has been further provided that on an application made by the assessee the time period of 30 days may be extended by an additional period of 30 days.
The time period allowed for submission of information or documents in respect of international transactions or a specified domestic transaction is required to be rationalised so as to provide the AOs a reasonable amount of time to examine the information/documents submitted and complete the pending proceedings.
In view of the above, sec. 92D(3) has been amended so as to provide that,-

i. the Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under the Act, require any person referred to in sec. 92D(1)(i) i.e., who has entered into an international transaction or specified domestic transaction, to furnish any information or document referred therein, within a period of 10 days from the date of receipt of a notice issued in this regard; and
ii. the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person who has entered into an international transaction or specified domestic transaction, extend the period of 10 days by a further period not exceeding 30 days.

***Limitation on deduction in respect of interest in case of thin capitalization [Sec. 94B]***

Section 94B provides restriction on deduction of interest expense in respect of any debt issued by a non-resident, being an associated enterprise of the borrower. It applies to an Indian company, or a permanent establishment of a foreign company in India, who is a borrower. If such person incurs any expenditure by way of interest or of similar nature exceeding ₹ 1 crore which is deductible in computing income chargeable under the head "Profits and gains of business or profession", the interest deductible shall be restricted to the extent of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA). Proviso to this section brings within its scope certain debt issued by a lender who may not be an associated enterprise of the borrower.

This section was inserted in the Act vide Finance Act, 2017 in order to implement the measures recommended in final report on Action Plan 4 of the Base Erosion and Profit Shifting (BEPS) project under the aegis of G-20 - OECD countries to address the issue of base erosion and profit shifting by way of excess interest deductions.
Sub-section (3) excludes certain companies that are engaged in the business of banking or insurance from its scope.
Said sub-section (3) has been amended to provide a carve out to certain class of NBFCs and to provide that sec. 94B shall not apply to:

i. an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance; or
ii. such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette in this behalf;

## Non-Resident

***Amendment to sec. 115A***

The tax rates on dividend, royalty and technical fees in the case of non residents or foreign company as specified u/s 115A has been amended. The amended tax rates are as follow:

- Dividend received from IFSC referred to in sec. 80LA 10%
- Royalty 20%
- Technical Fees 20%

Similar amendment has also been made in respective TDS provisions
However, where double taxation avoidance agreements are applicable, the aforesaid rate or rates provided in DTAA, whichever is lower, shall be applicable.

## Special Tax Rates

***Tax on Winning from Online Games [Sec. 115BBJ]***

Winning from online games shall be taxable at following special rate of tax:

| | |
|---|---|
| **Meaning** | Online game means a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device |
| **Tax Rate** | 30% + Surcharge, if applicable + HEC @ 4% |
| **Expenditure** | No expenditure or allowance can be allowed from such income |
| **Deduction u/ch VIA** | Not available |
| **Benefit of unexhausted basic exemption limit** | Not available |
| **Taxpoint** | Internet means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission |

It is to be noted that winning from online games shall not be covered u/s 115BB

## Alternate Minimum Tax [Sec. 115JC and 115JD]

Where an assessee is paying tax u/s 115BAC(1A) [i.e., under default tax regime] or u/s 115BAE(5), the provision of alternate minimum tax is not applicable. Further, brought forward tax credit pertaining to alternate minimum tax cannot be adjusted against the tax liability computed u/s 115BAC(1A) or 115BAE(5)

## Income tax Authorities

Section 116, 119, 131, 133, 134, 154,158A, 158AB, 264 and 267 has been amended to include the expression "Joint Commissioner (Appeals)".

## Search and Seizure

***Assistance to authorised officer during search and seizure [Sec. 132]***

Section 132 makes provisions related to search and seizure. The section makes detailed provisions for powers of income-tax authority during the search and seizure proceedings, procedure to be followed, requisition of services of other officers for assistance, examination of books of account or other documents, procedure for custody of evidence, provisional attachment etc. The section also provides the timelines to be followed by the income-tax authority during and post search proceedings.

The section provides that during the course of search, the authorised officer may requisition the services of any police officer or any officer of the Central Government, to assist him for any of the actions required to be performed during the course of such search, and it shall be the duty of such officer to comply. Similarly, there is also a provision that the authorised officer may make a reference to a valuation officer for estimating the fair market value of the property and such reference can be made during the search or within 60 days from the date of executing the last authorisation for search.

In the recent past, due to the increased use of technology and digitisation in every aspect including management and maintenance of accounts, digitisation of data, cloud storage etc., the procedure for search & seizure has become complex, requiring the use of data forensics, advanced technologies for decoding data etc., for complete and proper analysis of accounts. Similarly, there is an increasing trend of undisclosed income being held in a vast variety of forms of assets or investments in addition to immovable property. Valuation of such assets and decryption of information often require specific domain experts like digital forensic professionals, valuers, archive experts etc. In addition to this, services of other professionals like locksmiths, carpenters etc. are also required in most of the cases, due to typical nature of the operations.

Therefore, relevant provisions of the section has been amended to provide that during the course of search the authorised officer, may requisition the services of any other person or entity, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure prescribed by the Board in this regard, to assist him for the purposes of the search. Similarly, in during and post search enquiries, the authorised officer may make reference to any person or entity or any valuer registered by or under any law for the time being in force, who shall estimate the fair market value of the property in the manner prescribed and submit a report of the estimate to the authorised officer or the Assessing Officer within sixty days from the receipt of such reference.

Prior to the enactment of the Finance Act, 2021, the procedure for conducting such assessment in search cases was laid out in sec. 153A and the time limit for their completion was laid out in sec. 153B. Consequent to the changes in 2021, the assessment or reassessment in consequence to search is now performed u/s 147 of the Act and provisions of sec. 153A and 153B are no longer applicable.

The timelines for completing assessment or reassessment in search cases is linked to the execution of the last of the authorisations during such procedure, in order to establish the day of conclusion of search proceedings, and what constitutes as last authorisation is provided in sec. 153B. As the provisions of sec. 153B are no longer applicable, it has been amended to provide the meaning of execution of last authorisation u/s 132 itself.

Return and Assessment Procedure

***Clarification regarding advance tax while filing Updated Return [Sec. 140B]***

The Finance Act, 2022 inserted sub-section (8A) in section 139 enabling the furnishing of an updated return by taxpayers up to 2 years from the end of the relevant assessment year subject to fulfilment of certain conditions as well as payment of additional tax. For the determination of the amount of additional tax on such updated u/s 140B was inserted in the Act.

Section 140B(4) provides for the computation of interest u/s 234B on the tax on updated return. The said sub-section provides that interest payable u/s 234B shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. This implied that interest was payable only on the difference of the assessed tax and advance tax. Further, it also provides advance tax which has been claimed in earlier return of income shall be taken into account for computing the amount on which the interest was to be paid.

Therefore, in order to clarify the provisions of sec. 140B(4), an amendment has been made so as to provide that interest payable u/s 234B shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any.

***Preventing permanent deferral of taxes through undervaluation of inventory – Sec. 142***

Assessees are required to maintain books of account for the purposes of the Act. The Central Government has notified the Income Computation and Disclosure Standards (ICDS) for the computation of income. ICDS-II relates to valuation of inventory. Section 148 of the Companies Act 2013 also mandates maintenance of cost records and its audit by cost accountant in some cases.

In order to ensure that the inventory is valued in accordance with various provisions of law, sec. 142 relating to Inquiry before assessment has been amended to ensure the following:

- ➢ To enable the Assessing Officer to direct the assessee to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Assessee is then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.
- ➢ To provide that the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government.
- ➢ To provide that except where the assessment is made u/s 144, the assessee will be given an opportunity of being heard in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.

Further, the following consequential amendments has also been made:

- Sec. 153 has been amended so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limitation.
- Sec. 295 has been amended so as to include in the aforesaid section, the power to make rules for the form of prescription of report of inventory valuation and the particulars which such report shall contain.

***Provisions relating to reassessment proceedings***

The Finance Act, 2021 amended the procedure for assessment or reassessment of income in the Act with effect from the 1st April, 2021. The said amendment modified, inter alia, sec. 147, 148, 149 and also introduced a new section 148A in the Act. In cases where search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, assessment or reassessment is now made u/s 147 of the Act for all the relevant years prior to the year in which the search was conducted or requisition was made after the Finance Act, 2021. Further, the provisions of re-assessment proceedings were rationalized by amendments made vide Finance Act, 2022.

Amendments has been made in the provisions relating to conduct of reassessment proceedings to further streamline them and facilitate their conduct and completion in a seamless manner. Section 148 has been amended to provide that a return in response to a notice u/s 148 shall be furnished within 3 months from the end of the month in which such notice is issued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the assessee. However, any return which is furnished beyond the period allowed in the sec. 148 to furnish such return of income shall not be deemed to be a return u/s 139. As a result, the consequential requirements viz. notice u/s 143(2) etc. would not be mandatory for such returns.

Further, sec. 149 provides the period of limitation for issuance of notice u/s 148 for commencement of proceedings u/s 147. It is imperative to note here that in case of a search action u/s 132, requisition u/s 132A and cases for which information emanates from the above proceedings are deemed to be information u/s 149 and there is no requirement for proceedings u/s 148A to be conducted prior to re-opening the cases in these cases.

In cases where survey u/s 133A of the Act is conducted, the Assessing Officer is deemed to have information for the purposes of sec. 148 but proceedings u/s 148A need to be conducted prior to issuance of notice u/s 148. It has been seen that in the cases where the aforementioned search, requisition or survey proceedings are conducted after 15th March of a financial year, there is extremely little time to collate this information and issue a notice u/s 148 or show cause notice u/s 148A(b). Moreover, the search is conducted by the Investigation Wing and the notice is required to be issued by the Assessing Officers.

However, evidence of tax evasion may be reflected in the statements recorded or documents seized or impounded etc. during such action before 31st March, but issuance of notice related to such information or search may go beyond the time limitation provided due to the procedure involved. Therefore, important information related to revenue leakage cannot be proceeded on due to the paucity of time for searched conducted and information obtained as a consequence of these searches in the last few days of any financial year.

Accordingly, a proviso has been inserted in the said section to provide that in cases where a search u/s 132 is initiated or a search for which the last of the authorization is executed or requisition is made u/s 132A, after the 15th March of any financial year a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice u/s 148 and the notice so issued shall be deemed to have been issued on the 31st day of March of such financial year.

Further, in the sec. 149, a proviso has been inserted to provide that in cases where the information deemed to be with the Assessing Officer emanates from a statement recorded or documents impounded under summons or survey, as the case may be, on or before the 31st day of March of a financial year, in consequence of, a search initiated or last of the authorization executed u/s 132 or a requisition made u/s 132A, after the 15th day of March of such financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice u/s 148 and the show cause notice issued u/s 148A(b) in such case shall be deemed to have been issued on the 31st day of March of such financial year. It has also been provided that the impounding or the recording of the statement in consequence of the search or the search itself should be before the 31st March only. Only extension has been provided for the time consumed in the procedure for issuance of notice u/s 148 or 148A, as the case may be.

Section 151 contains provisions relating to the specified authority who can grant approval for the purposes of sec. 148 and 148A. The said section provided that the authority would be the Principal Chief Commissioner and where there is no Principal Chief Commissioner, the Chief Commissioner shall give approvals beyond a period of 3 years.

It was seen that the clause (ii) of the said section was resulting in misinterpretation as well as confusion with regards to the specified authority for the cases where re-opening was being done after 3 years from the relevant assessment year. Therefore, to clarify the position of law in this regard, an amendment has been made to provide that the specified authority under clause (ii) of section 151 shall be Principal Chief

Commissioner or Principal Director General or Chief Commissioner or Director General.
At the same time, to give further clarity with regards to the specified authority a proviso is inserted in the sec. 151 to provide that while computing the period of 3 years for the purposes of determining the specified authority the period which has been excluded or extended as per the provisos in sec. 149 from the time limit for issuance of notice u/s 148 shall be taken into account.

***Alignment of timeline provisions u/s 153***

Section 153, as substituted vide Finance Act, 2016, provides for the time limit for completion of assessment, reassessment or recomputation. Sec. 153(1) provides the time limit for order of assessment u/s 143 or 144 as 21 months from the end of the assessment year in which the income was first assessable. Thereafter, vide subsequent Finance Acts, this time period of 21 months was reduced to 9 months from the end of the assessment year in which the income was first assessable for assessment year 2021-22 and later assessment years. Further, vide Finance Act, 2022 sub-section (1A) was inserted in the section 153 of the Act providing that in a case where an updated return u/s 139(8A) has been furnished by an assessee, an order of assessment or reassessment u/s 143 or 144 may be made at any time before the expiry of 9 months from the end of the financial year in which such return was furnished.
Further, a notice u/s 143(2) can be served on the assessee up to 3 months from the end of the relevant assessment year. This gives a time of 6 months to the Assessing Officer for making assessment which, inter alia, includes making investigations, giving assessees opportunities of hearing, bringing on record any material relevant to the case, analysing judicial positions of various legal matters etc.
Further, with the Faceless Assessment, different aspects of the assessment are carried out by different units viz. Assessment Unit, Verification Unit, Technical Unit and Review Unit, Therefore, a lot of co-ordination is required between the different units in every single scrutiny assessment and adequate time is essential for a rational and speaking order.
The period of 6 months is, however, short to complete the entire process of assessment. As a result, taxpayers' grievances of not being given enough time to explain themselves or provide evidences in their favour may arise. This may also compromise the dispensation of reasonableness of orders as well as natural justice to the assessees. Therefore, it has been amended so that the time available for completion of assessment relating to the assessment year commencing on or after the 1st day of April, 2022 shall be 12 months from the end of the assessment year in which the income was first assessable. Consistent with the above, the time available for completion of assessment proceedings in the case of an
updated return also been increased to 12 months from the end of the financial year in which such return is furnished.
Further, vide Finance Act, 2021 the sec. 263 was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, the time line provided in sec. 153(3), (5) and (6) to pass an order of assessment or reassessment or order u/s 92CA by the Transfer Pricing Officer does not refer to the orders so passed by Principal Chief Commissioner or Chief Commissioner. Therefore, sec. 153 has been amended to provide that the provision of the said sub-section shall also be applicable to order u/s 263 or 264, passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
It may also be noted that prior to the Finance Act, 2021 in cases where search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, assessment was made in the case of the assessee, or any other person, in accordance with the special provisions of sec. 153A, 153B and 153C that deal specifically with such cases. The sec. 153A provided that an assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years, as given in sec. 153A, and for the relevant assessment year or years pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A of the Act, as the case may be, shall abate. The scrutiny proceedings would later on be re-opened under the

provisions of sec. 153A, so that correct assessment of income subsequent to a search operation can logically be concluded based on the information available as a result of the search.

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

Further, even if the last of the authorizations have been executed in the relevant search case, the seized material etc. are transferred to the Assessing Officer only after some time owing to the pre-assessment processing of such material and data. Further, the Assessing Officer also needs to carry out investigation and gather evidence to compute the income of the assessee as a result of the search or requisition proceedings. Therefore, there is a need to amend the provisions of the Act so as to allow the Assessing Officer to conduct proper scrutiny of the case on the basis of seized material and investigation made and align the dates of limitation for completion reassessment proceedings for all the assessment years under scrutiny consequent to a search u/s 132 or requisition u/s 132A.

In view of the above, a new sub-section (3A) has been inserted in sec. 153 so as to provide that where an assessment or reassessment is pending on the date of initiation of search u/s 132 or making of requisition u/s 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections (1), (1A), (2) and (3) shall be extended by 12 months in a case of an assessee where such search is initiated u/s 132 or such requisition is made u/s 132A or in the case of an assessee to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or in the case of an assessee to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to.

Furthermore, consequent to the introduction of sub-section (1A) vide Finance Act, 2022, reference to sub-section (1A) has been inserted in sub-sections (3), (4), (6) as well as in the first proviso to Explanation 1 of section 153.

***Facilitating TDS credit for income already disclosed in the return of income of past year – sec. 155***

Sometimes tax is deducted by the deductor in the year in which the income is actually paid to the assessee. However, following accrual method, the assessee may have already disclosed this income in earlier years in their return of income. This results in TDS mismatch, since the corresponding income has already been offered to tax by the assessee in earlier years, however, TDS is only being deducted much later when actual payment is being made. The assessee cannot claim the credit of TDS in the year in which tax is deducted since income is not offered to tax in that year. It may also not be possible to revise the return of past year in which the corresponding income was included since time to revise the return of income for that year may have lapsed. This results in difficulty to the assessee in claiming credit of TDS.

In order to remove this difficulty, a new sub-section (20) in section 155 has been inserted. This new sub-section applies where any income has been included in the return of income furnished by an assessee u/s 139 for any assessment year (hereinafter referred to as the "relevant assessment year") and tax has been deducted at source on such income and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year. In such a case the assessee can make application in the prescribed form to the Assessing Officer within 2 years from the end of the financial year in which such tax was deducted at source. Then Assessing Officer shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year. It has been further provided that the provisions of sec. 154 shall, so far as may be, apply thereto, and the period of 4 years specified therein shall be reckoned from the end of the financial year in which such tax has been deducted. Further, credit of such tax deducted at source shall not be allowed in any other assessment year.

Further, sec. 155(11A) has been amended to insert section 10AA to allow the Assessing Officer to amend the assessment order later where the export earning is realized in India after the permitted period.

***Provisions related to business reorganisation***

Section 170A was inserted vide Finance Act, 2022 in order to make provisions for giving effect to the order of business reorganisation issued by tribunal or court or an Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.

The section provides that in case of business reorganisation, where a return of income has been filed by the successor u/s 139, such successor shall furnish a modified return within 6 months from the end of the month in which such order of business reorganisation was issued, in accordance with and limited to the said order.

Consequently, Rule 12AD has been notified prescribing the form and manner of furnishing such modified return by companies by the Board vide Notification No. 110/2022 dated 19.09.2022.

The provisions pertaining to business reorganisation and corporate restructuring are also available under other statutes like the Companies Act, 2013. Considering the multiplicity of provisions, certain issues have come to the fore since the insertion of sec. 170A in the Act last year. These pertain to the entities who have previously furnished the return for the relevant assessment year, obligation on the Assessing Officer (AO) for passing or modifying assessment or reassessment orders, the requirement of furnishing modified return etc. In order to avoid any unintended litigation, it is proposed to amend the law to clarify the same.

Accordingly, sec. 170A has been substituted so as to provide that notwithstanding anything contained in sec. 139, in a case of business reorganisation, where prior to the date of order of the tribunal or the High Court or Adjudicating Authority, any return of income has been furnished for any assessment year relevant to a previous year, by an entity to which such order applies, the successor shall furnish, within a period of 6 months from the end of the month in which the said order was issued, a modified return in the form and manner, as may be prescribed, in accordance with and limited to the said order. This would also enable modification of the returns filed by the predecessor wherever required

There was no provision of the procedure to be followed by the Assessing Officer after the modified return is furnished by the successor entity. It is therefore being provided that, if proceedings of assessment or reassessment for the relevant assessment year have been completed on the date of furnishing of modified return, the Assessing Officer shall pass an order modifying the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished. Where proceedings of assessment or reassessment for the relevant assessment year are pending on the date of furnishing of modified return, the Assessing Officer shall pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and taking into account the modified return so furnished.

For the purposes of such assessment or reassessment, unless provided otherwise, all other provisions of the Act shall apply and the tax shall be chargeable at the rate applicable to such assessment year.

Further, for the purposes of this section:

- "business reorganisation" means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons;
- "successor" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

***Change in Rule 114B relating to submission of Form 60 in case where person do not have PAN***

Any person who does not have a permanent account number and who enters into any transaction specified in this rule, he shall make a declaration in Form No.60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code in accordance with the procedures, data structures, and standards specified by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems). However, w.e.f. 10-10-2023, for the purpose of this rule, person does not include company and firm. Further, a foreign company who:

i. does not have any income chargeable to tax in India; and
ii. does not have a permanent account number,

and enters into any transaction referred to at Sl. No. 2 (opening an bank account) or 12 (time deposit) of the Table, in an IFSC banking unit, shall make a declaration in Form No. 60.

Further, it has been provided that rule 114BA shall not apply in a case:

a) where the person, making the deposit or withdrawal of an amount otherwise than by way of cash or opening a current account not being a cash credit account, is a non-resident (not being a company) or a foreign company;
b) the transaction is entered into with an IFSC banking unit; and
c) such non-resident (not being a company) or the foreign company does not have any income chargeable to tax in India.

Similar amendment has also been made in Rule 114BB

## TDS / TCS

***TDS on payment of accumulated balance due to an employee [Sec. 192A]***

Section 192A provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952. The existing provisions of sec. 192A, inter-alia, provide for deduction of tax at the rate of 10% of the taxable component of the lump sum payment due to an employee. Further, no deduction of tax is to be made where the amount of such payment or the aggregate amount of such payment to the payee is less than ₹ 50,000.

The second proviso to sec. 192A provides that any person entitled to receive any amount on which tax is deductible shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at the maximum marginal rate.

It was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases u/s 192A. Hence, second proviso to sec. 192A has been omitted so that in case of failure to furnishing of PAN by the person relating to payment of accumulated balance due to him, tax will be deducted at the rate of 20% as in other non-PAN cases in accordance with sec. 206AA, instead of at the maximum marginal rate.

***Removal of exemption from TDS on payment of interest on listed debentures to a resident [Sec. 193]***

Sec. 193 provides for TDS on payment of any income to a resident by way of interest on securities. The proviso to sec. 193 provides exemption from TDS in respect of interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India. It is seen that there is under reporting of interest income by the recipient due to above TDS exemption. Hence, such exemption has been withdrawn

Further, any interest payable to a business trust, in respect of any securities, by a special purpose vehicle will not be subject to TDS u/s 193.

***TDS and taxability on net winnings from online games [Sec. 194B and sec. 194BA]***

Sec. 194B provides that the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding ₹ 10,000 shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.

Sec. 194BB provides for similar provisions for deduction of tax at source for horse racing in any race course or for arranging for wagering or betting in any race course.

Sec. 115BB provides for the rate of tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature.

It is seen that deductors are deducting tax u/s 194B and 194BB by applying the threshold of ₹ 10,000/- per transaction and avoiding tax deduction by splitting a winning into multiple transactions each below ₹ 10,000/-. This is against the intention of legislature.

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

i. Sec. 194B & 194BB has been amended to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ₹ 10,000 during the financial year;
ii. Sec. 194B has been amended to include "gambling or betting of any form or nature whatsoever" within its scope;
iii. Sec. 194B has been amended to exclude online games from the purview of the said section from the 01-07-2023 since a new section 194BA has been introduced for deduction of tax at source on winnings from online games from that date
iv. new sec. 194BA has been inserted, with effect from 01-07-2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year. In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner.
v. Further, in a case where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;

***Amendment to section 194LC***

Tax will be deducted @ 9% (SC + cess) in the case of interest paid or payable on money borrowed from a source outside India provided money is borrowed by way of issuance of long term bond / rupee denominated bond on or after 01-07-2023, which is listed only on recognised Stock Exchange located in an International Financial Service Centre

***Increasing threshold limit for co-operatives to withdraw cash without TDS – Sec. 194N***

Sec. 194N provides that a banking company or a co-operative society engaged in carrying on the business of banking or a post office, which is responsible for paying any sum to any person (referred to as the recipient) shall, at the time of payment of such sum in cash, deduct an amount equal to 2% of such sum, as income-tax. The requirement to deduct tax applies only when the payment of amount or aggregate of amount in cash during the year exceeds ₹ 1 crore.

However, in case of a recipient who is a non-filer tax is to be deducted at the rate of 2% on any sum exceeding ₹ 20 lakh but not exceeding ₹ 1 crore in aggregate during the financial year and, at the rate of 5% on sum exceeding ₹ 1 crore in aggregate during the financial year.

Non-filer means a recipient who has not filed any income-tax return for all of the 3 assessment years relevant to the 3 previous years immediately preceding the previous year in which such payment is received.

Section 194N has been amended by inserting a new proviso to provide that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for ₹ 1 crore, "₹ 3 crore" had been substituted.

***Amendment to sec. 194R***

New explanation 2 has been inserted in the sec. 194R so as to clarify that the provision shall also apply to any benefit or perquisite, weather in cash or in kind or partly in cash and partly in kind.

***Tax treaty relief at the time of TDS under section 196A***

Sec. 196A provides for TDS on payment of certain income to a non-resident (not being a company) or to a foreign company, at the rate of 20%. The income is required to be in respect of units of a Mutual Fund specified u/s 10(23D) or from the specified company referred to in the Explanation to sc. 10(35).

In order to provide the relief, it is amended by inserting a proviso to provide that where in case of a payee to whom agreement u/s 90/90A applies and such payee has furnished the tax residency certificate, the tax would be deducted at 20% or the rate provided in agreement referred to in u/s 90/90A, whichever is lower

***Extending the scope for deduction of tax at source to lower or nil rate [Sec. 197]***

Sec. 194LBA, inter-alia, provides that business trust shall deduct and deposit tax at the rate of 5% on interest income of non-resident unit holders. In some cases, rate of deduction may be required to be reduced due to some exemption, for example exemption u/s 10(23FE) allowed to notified Sovereign Wealth Funds and Pension Funds. However, since certificate for lower deduction u/s 194LBA cannot be obtained u/s 197 of the Act, benefit of exemption is not available at the time of tax deduction.

To remove this difficulty, sec. 197 has been amended to provide that the sums on which tax is required to be deducted u/s 194LBA shall also be eligible for certificate for deduction at lower rate.

***Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns [Sec. 206AB and 206CCA]***

Sec. 206AB provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, sec. 206CCA provides for special provision for higher TCS for non-filers of income-tax returns. These non-filers in these sections are referred to as "specified person".

These sections define "specified person" to mean a person who has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted or collected (as the case may be):

iii. for which the time limit for furnishing the return of income u/s 139(1) has expired; and
iv. the aggregate of tax deducted at source and tax collected at source in his case is ₹ 50,000 or more in the said previous year.

The provisos to these definitions exclude a non-resident from the definition of specified person, if the non-resident does not have a permanent establishment in India.

There may be certain persons who are not required to furnish the return of income. It is not the intention to include such persons in the category of non-filers. Hence, in order to provide relief in such cases, the definition of the "specified person" in sec. 206AB and 206CCA has been amended so as to exclude a person who is not required to furnish the return of income for the assessment year relevant to the said previous year and who is notified by the Central Government in the Official Gazette in this behalf.

***Increasing rate of TCS of certain remittances [Sec. 206C(1G)]***

Sec. 206C provides for TCS on business of trading in alcohol, liquor, forest produce, scrap etc. Sec. 206C(1G) provides for TCS on foreign remittance through the Liberalised Remittance Scheme and on sale of overseas tour package. In order to increase TCS on certain foreign remittances and on sale of overseas tour packages, following amendment has been made w.e.f. 01-10-2023[5]:

| Type of remittance | Earlier Rate | Revised Rate |
|---|---|---|
| For the purpose of any education, if the amount being remitted out is a loan obtained from any financial institution as defined in sec. 80E | 0.5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh | No Change |

[5] Circular No. 10 of 2023 dated 30-06-2023

| | | |
|---|---|---|
| For the purpose of education, other than above or for the purpose of medical treatment | 5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh | No Change |
| Overseas tour package | 5% without any threshold limit | Upto ₹ 7 lakhs – 5%<br>Above ₹ 7 lakhs – 20% |
| Any other case | 5% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh | 20% of the amount or the aggregate of the amounts in excess of ₹ 7 lakh |

## Refund

***<u>Set off and withholding of refunds in certain cases [Sec. 241A, 244A and sec. 245]</u>***

Sec. 241A deals with withholding of refund in certain cases. As per the section, where a refund becomes due to an assessee u/s 143(1) and notice for assessment is issued to him u/s 143(2), the Assessing Officer (AO) may withhold such refund till the date of such assessment being made, if he is of the opinion that the grant of refund is likely to adversely affect the revenue. Such withholding can be done after recording the reasons for doing so and with the prior approval of the Principal Commissioner or Commissioner.

Sec. 245 deals with set off of refunds against tax remaining payable. It provides that where refund is found to be due to any person under any provisions of the Act, the AO or other income-tax authorities mentioned in the section, may, in lieu of payment, set off part or whole of the refund against any sum remaining payable by such person, after giving him an intimation in writing regarding the proposed action.

There is an overlap between the two provisions. Therefore, two sections have been integrated by substituting sec. 245, so as to provide that where under any of the provisions of this Act, a refund is due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against any sum remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

Further, it has also been provided that where a part of the refund has been set off or where no amount is set off, and refund becomes due to a person, then, the Assessing Officer, having regard to the fact that proceedings of assessment or reassessment are pending in such case and grant of refund is likely to adversely affect the revenue, and for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, may withhold the refund till the date on which such assessment or reassessment is made.

The provision of sec. 241A shall be inapplicable from 01-04-2023.

Further, as the amendments made u/s 245 would have an impact on cases referred to in sec. 244A(1A), i.e., where refund due to the assessee is required to be withheld by the AO till the date of the making assessment or reassessment, sec. 244A(1A) has been amended by inserting a proviso so as to provide that in case of an assessee where proceedings for assessment or reassessment are pending, the additional interest shall not be payable to the assessee under this sub-section, for the period beginning from the date on which such refund is withheld by the Assessing Officer, in accordance with and subject to provisions of sec. 245(2), till the date on which the assessment or reassessment pending in such case, is made.

## Appeals

***Introduction of the authority of Joint Commissioner (Appeals)***

- As per the current scheme for appeals under the Act, the first appellate authority for an assessee aggrieved by any order issued under the Act is the Commissioner (Appeals). Such Commissioner (Appeals) has the powers to confirm, reduce, enhance or annul/ cancel an order of assessment or an order of penalty, after providing an opportunity of being heard to the assessee and the AO. The order passed by the Commissioner (Appeals) are appealable before the Appellate Tribunal.
- It has been noted that as the first authority for appeal, Commissioner (Appeals) are currently overburdened due to the huge number of appeals and the pendency being carried forward every year. In order to clear this bottleneck, a new authority for appeals is being proposed to be created at Joint Commissioner/ Additional Commissioner level to handle certain class of cases involving small amount of disputed demand. Such authority has all powers, responsibilities and accountability similar to that of Commissioner (Appeals) with respect to the procedure for disposal of appeals.
- The earlier sec. 246 was providing for the appeal functions of Deputy Commissioner (Appeals). That institution was discontinued in the year 2000. Accordingly, it is amended to substitute sec. 246 to provide for appeals to be filed before Joint Commissioner (Appeals). Sub-section (1) of the amended section provides that any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against:
    i. an order being an intimation u/s 143(1), where the assessee objects to the making of adjustments, or any order of assessment u/s 143(3) or sec. 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
    ii. an order of assessment, reassessment or recomputation u/s 147;
    iii. an order being an intimation u/s 200A(1) of section 200A;
    iv. an order u/s 201;
    v. an order being an intimation u/s 206C(6A);
    vi. an order u/s 206CB(1);
    vii. an order imposing a penalty under Chapter XXI; and
    viii. an order u/s 154 or 155 amending any of the orders mentioned above
- An appeal cannot be filed before the Joint Commissioner (Appeals) where an order is passed by or with the approval of an income-tax authority above the rank of Deputy Commissioner.
- Where any appeal filed against an order is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorised by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred. This will enable transfer of certain existing appeals filed before the Commissioner (Appeals) to the Joint Commissioner (Appeals).
- The Board or an income-tax authority so authorised by the Board in this regard, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals) who may proceed with such appeal or matter, from the stage at which it was before it was so transferred.
- Where an appeal is transferred, the appellant shall be provided an opportunity of being reheard
- For the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a Scheme, by notification in the Official Gazette, so as to dispose appeals in an expedient manner with transparency and accountability by eliminating the interface between the Joint Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible and direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by Joint

Commissioner (Appeals) shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

- The Board may specify that the provisions shall not apply to any case or any class of cases.
- "Status" to mean the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.
- Sec. 2 has been amended by inserting a definition for Joint Commissioner (Appeals) and sec. 116 has been amended so as to make Joint Commissioner (Appeals) an income-tax authority under the Act.
- Further, consequential amendments has been made in the relevant provisions of the Act in order to ensure that functioning of the Joint Commissioner (Appeals) is aligned with that of the Commissioner (Appeals).

***Rationalisation of Appeals to the Appellate Tribunal [Sec.253]***

Sec. 253 contains provisions relating to filing of appeals to the Appellate Tribunal. Sub-section (1) details the types of orders passed under various sections of the Act, against which an aggrieved assessee may appeal to the Appellate Tribunal. The said sub-section provides that any assessee aggrieved by any order passed by a Commissioner (Appeals) u/s 154, sec. 250, sec. 270A, sec. 271, sec. 271A, sec. 271J or sec. 272A may appeal to the Appellate Tribunal. Therefore, the Appellate Tribunal is the first level of appeal for such orders of the Commissioner (Appeals).

Sec. 271AAB, 271AAC and 271AAD are penalty provisions under Chapter XXI for imposition of penalty. Sec. 271AAB provides for imposition of penalty by the Assessing Officer in a case where search has been initiated u/s 132. Sec. 271AAC provides for imposition of penalty by the Assessing Officer in a case where income determined includes any income referred to in sec. 68, 69, 69A, 69B, 69C or 69D for any previous year. Sec. 271AAD contains provisions for imposition of penalty by the Assessing Officer if during any proceedings under the Act it is found that in the books of account maintained by any person there is a false entry or an omission of any entry which is relevant for computation of total income of such person to evade tax liability.

Vide Finance Act, 2022, sec. 271AAB, 271AAC and 271AAD were amended to enable Commissioner (Appeals) also to pass an order imposing penalty under the said sections. However, as the reference to the same has not been inserted in sec. 253(1), an aggrieved assessee cannot appeal against such penalty orders passed by Commissioner (Appeals) which may lead to taxpayer grievance. Therefore, it has been amended to provide that appeal against penalty orders passed by Commissioner (Appeals) u/s 271AAB, 271AAC and 271AAD shall be made to the Appellate Tribunal.

Further, vide Finance Act, 2021, sec. 263 was amended to enable Principal Chief Commissioner and Chief Commissioner to also pass an order of revision under the said section. However, in the absence of any reference to such orders passed u/s 263 in sec. 253(1), an assessee aggrieved by any order u/s 263 by a Principal Chief Commissioner and Chief Commissioner or an order u/s 154 rectifying such order u/s 263 cannot appeal against such orders to the Appellate Tribunal. Therefore, it has been amended so that appeal against an order passed u/s 263 by Principal Chief Commissioner or Chief Commissioner or an order passed u/s 154 in respect of any such order shall be made to the Appellate Tribunal.

Sec. 253(4) allows the respondent in an appeal, against an order of Commissioner (Appeals), to file a memorandum of cross-objections before the Appellate Tribunal. However, it is pertinent to note here that appeal can be made to the Appellate Tribunal against orders of authorities other than Commissioner (Appeals) also, like Principal Commissioner or Commissioner or Principal Director or Director etc. As a result, the respondent, whether it is Revenue or the assessee, cannot file memorandum of cross-objections against an appeal before the Appellate Tribunal by virtue of the provisions of sec. 253(4). This creates grievances as well as reduces the fair and equitable dispensation of judgement in such cases. Therefore, sec. 253(4) has been amended to enable filing of memorandum of cross-objections in all classes of cases against which appeal can be made to the Appellate Tribunal. For example, where the assessee files an appeal to the appellate tribunal against an order passed by the Assessing Officer in consequence of an order of the Dispute Resolution Panel the Assessing Officer would be able to file a cross objection to such appeal which cannot be filed presently.

## Penalty & Prosecution

***Amendment to sec. 270A, 270AA, 271, 271A, 271AAC and 271AAD***

This section has been amended so as to include the expression "Joint Commissioner (Appeals)"

***Amendments in consequence to new provisions of TDS***

Sec. 271C has provisions for penalty for failure to deduct tax at source. Under this section, a person who has failed to deduct whole or part of tax as required under provisions of Chapter XVII-B (Tax Deduction at Source - TDS) or pay the whole or part of tax as required u/s 115-O (Tax on distributed profits) or under proviso to sec. 194B (tax on winnings from crossword, lottery, puzzles etc) is liable to pay penalty of sum equal to the amount of tax he failed to deduct or pay. Sec. 276B makes provisions for prosecution for failure to pay tax to the credit of Central Government under Chapter XII-D (as required under section 115-O) or under XVII-B (deduction at source).

Two new provisions – sec. 194R and sec. 194S were introduced in the Act vide Finance Act, 2022. Sec. 194R makes provisions for deduction of tax on benefit or perquisite in respect of business or profession. In addition, sec. 194BA has been inserted to provide for TDS on net winnings from online games.

Sec. 194S makes provisions for deduction of tax on payment on transfer of virtual digital asset (VDA) owing to their very nature, payments related to benefit or perquisite or VDA may also be wholly in kind or partly in cash and partly in kind. Accordingly, the first proviso to sec. 194R provides that in case the benefit or perquisite or VDA has a "in kind" component, then the person responsible shall ensure that required amount of tax has been paid, before releasing the benefit or perquisite.

In the case of VDA, since the consideration for transfer could be in exchange of another VDA (fully "in kind") or partly in kind, the first proviso to sec. 194S provides that the person responsible for paying the consideration shall ensure that the required amount of tax has been paid, before releasing the consideration.

Similarly, in the case of winnings from online games, it provides that where the net winnings are wholly in kind or partly in cash and partly in kind, the person responsible for paying the net winnings shall ensure that tax has been paid in respect of the net winnings, before releasing the winnings.

Presently, the provisions for penalty and prosecution do not clearly mandate a penalty or prosecution for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind. Therefore, to enable such penalty and prosecution, sec. 271C has been amended by inserting reference to said situation.

Similar amendments has also been made in sec. 276B.

***Penalty for furnishing inaccurate statement of financial transaction or reportable account [Sec. 271FAA]***

- Sec. 285BA makes it mandatory for a person responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed, under any law for the time being in force, to furnish a statement in respect of such specified financial transaction or such reportable account to the prescribed income-tax authority. Further, vide Finance (No. 2) Act, 2014, sec. 271FAA was inserted in the Act in Chapter XXI to provide for penalty for furnishing inaccurate statement of financial transaction or reportable account.
- Self-certifications by reportable persons and the account holders are mandated under the Rule 114H of the Income-tax Rules, 1962 for different purposes. This includes, inter alia, cases where new accounts are opened (to certify the country of tax residence), cases involving curing of indicia for pre-existing accounts (to certify the country of tax residence) and cases of entities to certify whether they are Passive Non-Reporting Financial Entities. While the requirement of having a valid self-certification has been specified in Rule 114H of the Income–tax Rules, 1962, however, there is no penal provision for the submission of a false self-certification which in turn leads to furnishing of an incorrect statement u/s 285BA. Therefore, there is a need to introduce a provision for penalizing false self-certification in the Act.

- It is therefore, a new sub-section (2) has been inserted in the said section which shall provide that if there is any inaccuracy in the statement of financial transactions submitted by a prescribed reporting financial institution and such inaccuracy is due to false or inaccurate information submitted by the account holder, a penalty of ₹ 5,000 shall be imposable on such institution, in addition to the penalty leviable on such financial institution in the said section, if any. This penalty shall be levied by the income tax authority prescribed u/s 285BA(1). Further, the reporting financial institution may recover the amount so paid on behalf of the account holder or retain out of any moneys that may be in its possession or may come to it from every such reportable account holder.
- It is also clarified that the reference to the income-tax authority prescribed which shall levy the said penalty in the sec. 271FAA is the prescribed authority u/s 285BA(1).

***Decriminalisation of section 276A***

Sec. 276A makes provision for prosecution with rigorous imprisonment up to two years in the case of a person, being a liquidator who fails to give notice in accordance with sec. 178(1), or fails to set aside the amount as required by sec. 178(3) or parts with any of the assets of the company or the properties in contravention of the provisions of the said section.

It has been the stated policy of the Government to decriminalise minor offences as a step towards improving ease of business. In this regard, the provisions of the Act have been examined. Sec. 276A provides for prosecution of liquidator for non-compliance with sec. 178. Section also imposes personal liability on such liquidator for the same noncompliance.

Further, with the operationalisation of the Insolvency and Bankruptcy Code, 2016, waterfall mechanism for payment of dues is now in place for companies under liquidation and sec. 178(6) provides that this section shall not have effect when provisions of the IBC are in contrary. Moreover, the liquidator is now working under the oversight of this specific law.

In view of this, sec. 276A has been amended by providing a sunset clause on the section with effect from 31.03.2023. Hence, no fresh prosecution shall be launched under this section on or after 01-04-2023. The earlier prosecutions will however continue.

Further in various sections, reference to Joint Commissioner (Appeals) has been inserted.

## Other Provisions

***Penalty for cash loan/ transactions against primary co-operatives [Sec. 269SS and 269T]***

Sec. 269SS provides that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is ₹ 20,000 or more. Similarly, sec. 269T provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is ₹ 20,000 or more. Certain exceptions have, however, been specified in the provisions.

To provide relief to the low-income groups and facilitate easier conduct of business operations in such areas, sec. 269SS has been amended so as to provide that the limit for Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") shall be ₹ 2 lakh (instead of ₹ 20,000). This will imply where such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member or such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member. The penalty would be leviable only if the amount of a loan or deposit is ₹ 2 lakh or more.

Corresponding amendment has also been made in the provisions of sec. 269T

***15% concessional tax to promote new manufacturing co-operative society [Sec. 115BAE]***

The Taxation Laws (Amendment) Act, 2019, inter-alia, inserted sec. 115BAB in the Act which provides that new manufacturing domestic companies set up on or after 01-10-2019, which commence manufacturing or production by 31-03-2023 and do not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15%.

The time for commencing manufacturing or production has been extended to 31-03-2024 by the Finance Act, 2022. However, the same provision has not been provided for new manufacturing co-operative societies.

In view of the above, a new section 115BAE has been inserted in which concessional tax regime is being provided for the new manufacturing cooperative societies as well. The conditions are materially similar to the conditions applicable to new manufacturing companies.