

THE UNION BUDGET 2021

Select Direct Tax Proposals along with the Important Amendments in the Provisions of GST



By

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1. Preface

This note highlights select budget proposals related to direct taxes and GST put forth by the Finance Minister Mrs Nirmala Sitharaman while presenting Budget 2021 on 1st February, 2021. This note summarizes only issues considered of importance to our clients and associates.

This note is for private circulation amongst clients and associates of B. D. Jokhakar & Co. This should not be relied upon for taking or not taking any action. Advice should be taken specific to your situation.

This note contains proposals which may be modified before they are enacted. The provisions are applicable for A.Y. 2022-2023 unless otherwise stated.

This note is prepared on the basis of material available in public domain such as budget documents extracted from the website of Finance Ministry. Even though every care is exercised to present this note in an error-free manner, we assume no responsibility for any errors/omissions or otherwise for any loss which may be sustained by anyone by relying upon the same.

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2. Proposals Relating To Direct Tax

I. Rates of Tax

(A) Individuals, HUFs, Association of persons, Body of Individuals and Artificial Juridical person.

- I. The rates of income tax in the case every individual (other than those mentioned in (II) and (III) below) or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not or every artificial juridical person :-

Income Slab	Rate of Tax
Up to Rs. 2,50,000	Nil
Rs.2,50,001 to Rs.5,00,000	5%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

- II. In the case of every individual, being resident in India , who is of the age of sixty years or more **but less than eighty years** at any time during the previous year:-

Income Slab	Rate of Tax
Up to Rs.3,00,000	Nil
Rs.3,00,001 to Rs.5,00,000	5%
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

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III. In the case of every individual, being resident in India , who is of the age of **eighty years or more** at any time during the previous year:-

Income Slab	Rate of Tax
Up to Rs.5,00,000	Nil
Rs.5,00,001 to Rs.10,00,000	20%
Above Rs.10,00,000	30%

The surcharge rates applicable for I, II & III above:-

Total Income	Rate
50 Lakhs to 1 Crore	10%
1 Crore to 2 Crore	15%
2 Crore to 5 Crore	20%
Above 5 Crore	37%

Enhanced Surcharge rate (25% or 37%) is not applicable in case of specified incomes i.e. short-term capital gain u/s 111A, long-term capital gain u/s 112A & short-term or long-term capital gain u/s 115AD(1)(b).

(B) Health & Education cess

'Health & Education cess' shall be charged @ 4% on income tax & surcharge payable.

(C) Relief from Tax liability

A relief of up to Rs. 12,500 from Tax up to Net Taxable income of Rs. 5,00,000.

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Thus no tax payer in the categories mentioned herein above, shall pay tax for Taxable income up to Rs 5,00,000/-.

Optional Tax rate available to Individual and HUF under section 115BAC

On satisfaction of certain conditions, an individual or HUF shall, have an option to pay tax in respect of the total income at following rates:

Income Slab	Rate of Tax
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5%
From 5,00,001 to 7,50,000	10%
From 7,50,001 to 10,00,000	15%
From 10,00,001 to 12,50,000	20%
From 12,50,001 to 15,00,000	25%
Above 15,00,000	30%

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An Individual or HUF can opt for either the existing regime or the new regime of taxation.

The option for new tax regime can be exercised on year to year basis by individual or the HUF, not having business income. In other cases, option once exercised cannot be withdrawn.

The option to be exercised by individual or HUF in the form and manner as prescribed:

- Where such individual or HUF has no business income, along with return of income to be furnished;
- In any other case, on or before the due date of furnishing of return of income.

The individual or HUF opting for taxation under the new tax regime shall not be eligible to claim certain exemptions/ deductions. Few of them are as under:

Section	Particulars
10(5)	Leave Travel Concession
10(13A)	House Rent Allowance
10(14)	Allowance other than Transport Allowance granted to a divyang employee, Conveyance Allowance, travel on tour or transfer allowance and daily allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty
10(17)	Allowances to MPs/MLAs

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10(32)	Deduction of income of minor child up to Rs 1,500 per child for maximum 2 children
10AA	Special provisions in respect of newly established Units in Special Economic Zones
16	Standard deduction of Rs 50,000, deduction for entertainment allowance for government employees of Rs 5,000 and professional tax Rs 2,500;
24(b)	Interest on house property in respect of self-occupied or vacant property (Loss from rented house property shall not be allowed to be set off under any other head and would be allowed to be carried forward);
32(1)(ia)	Additional depreciation at 20%
57(ia)	Deduction from family pension
Chapter VI-A- Part C	Certain specified deductions in respect of investment made. (Other than section 80CCD(2) employer contribution on account of employee in notified pension scheme; section 80LA i.e. person having unit in IFSC subject to certain conditions and section 80JJAA i.e. deduction in respect of employment of new employees)

- Without set-off of any **loss under the head Income from House Property** with any other head of income.
- By claiming the depreciation, other than additional depreciation, determined in such manner as be prescribed.
- Without any exemption or deduction for allowance of perquisites provided under any other law for the time being in force.

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The option shall become invalid in respect of the assessment year where the person fails to comply with the aforesaid conditions and other provisions of the Act shall apply as if option is not exercised.

(D) Corporate Tax Rates

i) Tax rate for Domestic Companies:-

Total income/ Turnover	Tax Rate
Gross turnover up to 400 Cr. in the FY 2018-19	25%
Gross turnover exceeding 400 Cr. in the FY 2018-19	30%
Where the company opted for Section 115BAA	22%
Where the company opted for Section 115BAB	15%

In case of Companies opting for the provisions of section 115BAA and section 115BAB, such companies shall not be allowed deduction under any provisions of Chapter VIA other than section 80JJAA or section 80M. Further, provisions related to MAT are not applicable to such companies who opt for section 115BAA and section 115BAB.

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Surcharge on above:-

Total Income	Rate
Up to Rs. 1 Crore	Nil
Above Rs. 1 Crore up to Rs. 10 Crore	7%
Above Rs. 10 Crore	12%

ii) Tax rate for Foreign Companies:-

Total Income	Up to 1 cr	1 cr to 10 cr	Above 10 cr
Rate of Tax	40%	40%	40%
Surcharge	-	2%	5%
Health & Education Cess	4%	4%	4%
Effective rate	41.6%	42.432%	43.68%

iii) Minimum Alternate Tax (MAT) on companies

Type of Company	Domestic Companies			Foreign Companies		
	Up to 1 cr	1 cr to 10 cr	Above 10cr	Up to 1 cr	1 cr to 10 cr	Above 10cr
Rate of Tax	15%	15%	15%	15%	15%	15%
Surcharge	-	7%	12%	-	2%	5%
Health & Education Cess	4%	4%	4%	4%	4%	4%
Effective Rate	15.60 %	16.69%	17.47%	15.60%	15.91%	16.38%

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iv) Tax on Firm or local authority

Particulars	Up to 1 Cr	Above 1 Cr
Rate of Tax	30%	30%
Surcharge	-	12%
Health & Education Cess	4%	4%
Effective Rate of Tax	31.20%	34.944%

v) Alternate Minimum Tax (AMT) on entities other than Companies

Type of Entity	Other than Firm, Local Authority and Co-operative Society				
	Less than 50 Lakhs	50 Lakhs to 1 Crore	1 Crore to 2 Crore	2 Crore to 5 Crore	Above 5 Crore
Rate of Tax	18.5%	18.5%	18.5%	18.5%	18.5%
Surcharge	-	10%	15%	25%	37%
Health & Education Cess	4%	4%	4%	4%	4%
Effective Rate of Tax	19.24%	21.16%	22.12%	24.05%	26.35%

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Type of Entity	Firm, Local Authority and Co-operative Society	
	Less than or equal to 1cr	Above 1cr
Rate of Tax	18.5%	18.5%
Surcharge	-	12%
Health & Education Cess	4%	4%
Effective Rate of Tax	19.24 %	21.5488 %

II. Income from Salary

(A) Interest on Provident Fund contribution over Rs.2.5 lakhs a year to be taxed

The budget has proposed to tax interest earned on Employee's Provident Fund and Voluntary Provident Fund or exempted PF Trusts where aggregate amount of contribution to that particular fund exceeds Rs.2.5 lakhs. Until now, interest earned on contributions to different types of Provident Fund was tax-free but now due to the proposed amendment, interest on contribution in excess of Rs.20,833 a month will be taxable.

(B) Exemption for LTC Cash Scheme

Section 10(5) of the Income Tax Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his

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proceeding on leave to any place in India. In view of the situation arising out of outbreak of COVID pandemic, it is proposed to provide tax exemption to cash allowance in lieu of LTC.

Hence, it is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed. It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual.

To claim the benefit under the scheme, an individual is required to fulfill the following conditions:

- i) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;
- ii) The employee incurs specified expenditure.
- iii) Specified expenditure means the amount of deemed LTC fare on the purchase of goods/services attracting GST of 12% or more;
- iv) Purchases must be made during the period between October 12, 2020 and March 31, 2021.
- v) Payment for the purchases must be made through a digital mode including cheque, UPI, etc.
- vi) Invoices must be furnished to an employer containing details of the vendor, GST number and GST amount paid. Invoices in the name of family members can also be submitted.

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- vii) The amount of exemption shall not exceed Rs.36,000 per person **or** one-third of specified expenditure, whichever is less.

III. Profits & Gains from Business & Profession

(A) Rationalisation of provisions relating to tax audit in certain cases

The Finance Act, 2020 had increased the threshold limit for a person carrying on business from Rs.1 crore to 5 crore subject to the conditions that:-

- (i) aggregate of all receipts in cash during the previous year does not exceed 5% of such receipts; and
- (ii) aggregate of all payments in cash during the previous year does not exceed 5% cent of such payments.

In order to incentivize non-cash transactions so as to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold limit from Rupees 5 crore to 10 crore subject to the conditions mentioned above.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

(B) Payment by employer of employee contribution to a fund on or before due date

Section 2(24)(x) of the Income Tax Act,1961 provides to include any sum received from his employees as contribution to any provident fund or super annuation fund or any fund set up under

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the provisions of ESI Act or any other fund for the welfare of such employees .

Section 36 of the Income Tax Act, 1961 provides deduction to the employer for employee contribution to the said funds.

Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered under clause (b) of section 43B. The said provision requires that, if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B and such deduction would be admissible for the previous year. This provision does not cover employees contribution referred to in clause (va) of sub-section (1) of section 36 of the Act.

Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provisions of section 43B to employee contributions as well.

Accordingly, in order to provide clarity, it is proposed that employers cannot avail tax deduction if employee contribution to the said funds is delayed beyond the due dates of the relevant statute.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

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(C) Depreciation on goodwill

Section 2 of the Act provides the definitions for the purposes of the Act. Clause (11) of the said section defines—block of assets to mean a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed.

It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon`ble Supreme Court in the case Smiff Securities Limited [(2012)348 ITR 302 (SC)]. Hon`ble Supreme Court answered the question in affirmative. Thus, as held by Hon`ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

It is seen that Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see an appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification of depreciation on goodwill in the manner to provide for depreciation such as in case of other intangible assets or plant & machinery.

In view of above, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation.

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In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was claimed and allowed by/to the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill. Therefore, to give effect to the above decision, it has been proposed to amend Section 2(11), Section 32(1) (ii), Section 50, Section 55 of the Income Tax Act, 2021.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

(D) Rationalisation of the provision of presumptive taxation for professionals under section 44ADA of the Income Tax Act, 1961

The provisions of section 44ADA of the Act were made applicable to individual, Hindu undivided family (HUF) and partnership firm but not to a Limited Liability Partnership (LLP) as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. This is for the reason that LLPs are required to maintain books of accounts irrespective of the turnover under an LLP Act.

It is proposed to make this position clear in the law. Hence it is proposed to amend sub-section (1) of section 44ADA of the Act to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, but **not to an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008**. All other provisions like being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and

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whose total gross receipts do not exceed fifty lakh rupees in a previous year, shall remain unaltered.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

IV.Income from Capital Gain

(A) Rationalisation of the provision of slump sale

Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines "slump sale" to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word — "transfer" in relation to capital asset like exchange, relinquishment etc, are excluded.

In order to make the intention clear, it is proposed to amend the scope of the definition of the term —slump sale by amending the provision of clause (42C) of section 2 of the Act so that all types of —transfer as defined in clause (47) of section 2 of the Act are included within its scope.

(B) Rationalisation of provision of transfer of capital asset to partner on dissolution or reconstitution

Section 45(4A) of the Income Tax Act, 1961 provides that profits and gain arising from transfer of capital asset by way of

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distribution of capital assets on the dissolution of a firm or other AOP, BOI (not being a company or a co-operative society) shall be chargeable to tax in the hands of the firm, AOP or BOI in the year of distribution. Fair market value on the date of transfer shall be deemed to be the full value of consideration for the purposed of Section 48 of the Act.

Certain situations where assets are revalued or self-generated assets are recorded in the books of account and payment is made to member/partner which is in excess of his capital contribution are not covered in the section.

Therefore it is proposed to substitute Section 45(4) along with insertion of Section 45(4A) of the Act.

New proposed Section 45(4) of the Act applies in a case where a specified person receives any capital asset at the time of dissolution or reconstitution of the specified entity.

The capital represents the balance in the capital account of the specified entity without taking into account increase due to revaluation of any asset or self-generated goodwill or any other self-generated asset.

Profits and gains from receipt of the capital asset by the specified person shall be chargeable to income tax under the head as capital gains in the year in which the capital asset was received by the specified person.

Consequential amendments have been made under Section 48 of the Act for determination of full value of consideration of the transfer of the said capital asset.

New proposed Section 45(4) of the Act applies in a case where a specified person receives any money or other asset at the time of dissolution or reconstitution of the specified entity.

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The money or any other asset is required to be in excess of the balance in the capital account of such specified person in the books of account of the specified entity.

Profits and gains arising from receipt such money or other asset shall chargeable to income tax under the head as capital gains in the year in which the capital asset was received by the specified person in the year in which the money or such asset was received by the specified person.

Consequential amendments have been made under Section 48 of the Act for determination of full value of consideration of the transfer of the money or such asset.

For the purposes of these two sub-sections,-

- "specified person" is proposed to be defined as a person who is partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society), in any previous year;
- "specified entity" is proposed to be defined as a firm or other association of persons or body of individuals (not being a company or a cooperative society); and
- "self-generated goodwill" and "self-generated assets" are proposed to be defined as goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

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(C) Facilitating strategic disinvestment of public sector company

Section 2 Clause (19AA) defines "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

Section 72A of the Act contains provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. Sub-section (1) of section 72A of the Act provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbed depreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

It is proposed to relax the provisions of these two sections for public sector companies in order to facilitate strategic disinvestment by the Government.

Accordingly, it is proposed to carry out amendments in Section 2(19AA) and Section 72(1) of the Income Tax Act, 1961 as mentioned herein above.

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V.Income from Other Sources

(A) Advance tax installment and Dividend Income

Dividend is taxable from 01-04-2020 (AY 2021-22). It is now clarified that interest under section 234C shall not be applicable to any shortfall in the instalment of advance tax where such shortfall is on account of under-estimate or failure to estimate dividend. This is subject to the condition that assessee has paid full tax in the subsequent advance tax instalments once such dividend income is received. However it is clarified that this exclusion will not be applicable to deemed dividend u/s 2(22)(e).

These provisions are applicable from AY 2021-22 and onwards.

VI.Deductions

(A) Extension under section 80IBA

Finance bill has proposed to extend the time limit for approval of affordable housing project for availing deduction under section 80IBA. The period of approval of the project by the competent authority is proposed to be extended from 31-03-2021 to 31-03-2022.

Further, to help migrant labourers and to promote affordable rental, it is proposed to extend the benefit of said section to such rental housing project which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.

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(B) Extension under section 80EEA

Finance bill has proposed to extend the time limit for sanction of loan for availing deduction under section 80EEA. The period of sanction of loan is proposed to be extended from 31-03-2021 to 31-03-2022. This section permits additional deduction of Rs. 50,000 and this deduction is over and above the Rs.2 lakh limit under section 24(b) of the Income tax Act.

(C) Extension under section 80IAC and 54GB

Finance bill has proposed to extend the time limit for last day of incorporation of the eligible start up for availing deduction under section 80IAC. The last day of incorporation is proposed to be extended from 31-03-2021 to 31-03-2022. This section permits deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up **for three consecutive assessment years out of ten years at the option of the assessee.**

The existing provisions of the section 54GB of the Act, provide for exemption of capital gain which arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee. The assessee is required to utilize the net consideration for subscription in the equity shares of an eligible start-up, before the due date of furnishing of return of income under sub-section (1) of section 139 of the Act. The eligible start-up is required to utilize this amount for purchase of new asset within one year from the date of subscription in equity shares by the assessee. Further, it was provided that benefit was available only when the residential property is transferred on or before 31st March, 2021.

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It is now proposed to extend the time limit for transfer of residential property from 31-03-2021 to 31-03-2022 to claim the benefit of section 54GB.

VII.Tax Deducted at Source

(A) No TDS on dividend paid to business trust in whose hands dividend is exempt

Section 194 of the Act provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers. It is proposed to amend second proviso to section 194 of the Act to further provide that the provisions of this section shall also not apply to such income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

This amendment will take effect retrospectively from 1st April, 2020 and will accordingly apply to the assessment year 2020-21 and subsequent assessment years.

(B) Tax Deduction at Source (TDS) on Purchase of goods

Further, in order to widen and deepen the tax net, it is proposed to introduce section 194Q to levy TDS on purchase of goods above specified limit, as under:

- A purchaser of goods is liable to deduct TDS at the rate of 0.1% on consideration paid to a seller in a previous year in excess of Rs.50 lakh. In non-PAN cases the rate shall be 5%.

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- Only those buyers whose total sales, gross receipts or turnover from the business carried on by them exceeds Rs.10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out, shall be liable to deduct such TDS.
- Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to deduct such TDS.
- No such TDS is to be deducted, if the seller is liable to collect TCS under the provision of section 206C other than section 206C(1H) or the buyer is liable to deduct TDS under any provisions of the Act.

This means, if on a transaction a TDS or TCS is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule. If on a transaction TCS is required under section 206C (1H) as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

These amendments will take effect from 1st July, 2021.

(C) TDS/TCS on non-filers at higher rates

I. Higher rate of TDS on non-filer:

It is proposed to introduce a new section 206AB in the Act for providing higher rate for TDS for the non-filers of income-tax return. As per the said section, if any sum or income or amount paid or payable or credited, by a person (herein referred to as deductee) to a specified person (i.e. a non-filer), TDS rate shall be higher of the followings rates:

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- twice the rate specified in the relevant provisions of the Act;
- twice the rate or rates in force; or
- the rate of five per cent

This section shall not apply where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

Further, if the non-filer does not furnish a PAN, then the tax shall be deducted **at higher of the two rates provided in this section and in section 206AA of the Act.**

II. Higher rate of TCS on non-filers:

It is proposed to introduce a new section 206CCA in the Act for providing higher rate of TCS for the non-filers of income-tax return. As per the said section, if any sum or income or amount received by a person (herein referred to as collectee) from a specified person (i.e. a non-filer), TCS rate shall be higher of the followings rates:

- twice the rate specified in the relevant provision of the Act;
or
- the rate of five per cent

Further, if the non-filer does not furnish a PAN, then the tax shall be collected **at higher of the two rates provided in this section and in section 206CC of the Act.**

The "Specified person" as stated above is defined as :-

- a person who has not filed return of income (ITR) for both of the two previous years immediately preceding the previous year in which TDS or TCS is required to be deducted or collected, as the case may be

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- the due date for filing ITR under section 139(1) has expired **and**
- the aggregate amount of TDS or TCS in his case is Rs.50,000 or more in each of these two previous years.

Further, it is provided that the Specified person shall not include a non-resident who does not have a permanent establishment in India.

This amendment will take effect from 1st July, 2021.

(D) TDS in case of specified Senior Citizen

“Specified senior citizen” is defined as –

- i) The senior citizen who is resident in India and of the age of 75 or more during the previous year;
- (ii) He has pension income and no other income. However, in addition to such pension income he may also have interest income from the **same** bank in which he is receiving his pension income;
- (iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking companies, to be the specified bank; and
- (iv) He shall be required to furnish a declaration to the specified bank.

The specified bank would be required to compute the income of such senior citizen after giving effect to Chapter VIA and rebate under section 87A of the Income Tax Act, 1961 and shall deduct income-tax on such total income of a specified senior citizen on the basis of the rates in force.

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VIII>Returns

(A) Pre-filing of Returns

In order to ease compliance for the taxpayer, details of salary income, tax payments, TDS, etc. already come pre-filled in income tax returns. To further ease filing of returns, details of capital gains from listed securities, dividend income, and interest from banks, post office, etc. will also be pre-filled.

(B) Relaxation for certain category of senior citizen from filing return of income

In order to provide relief to senior citizens who are of the age of 75 years or above and to reduce compliance for them, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-

(i) The senior citizen is resident in India and of the age of 75 or more during the previous year;

(ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the **same** bank in which he is receiving his pension income;

(iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and

(iv) He shall be required to furnish a declaration to the specified bank.

The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed. The specified

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bank would be required to compute the income of such senior citizen after giving effect to Chapter VIA and rebate under section 87A of the Income Tax Act, 1961. Once this process is complete, there will be no requirement for furnishing return of income for the said assessment year.

This amendment will take effect from 1st April, 2021.

(C) Reducing time limit to file belated return and revision of original returns

It is proposed that the last date for filing of belated or revised returns of income is to be reduced by three months. Thus the belated returns or revised returns could now be filed three months before the end of the relevant assessment year or before the completion of the assessment whichever **is earlier**. Thus belated return for previous year ended 31-03-2022 relevant to AY 2022-23 can be filed on or before 31-12-2022. Before this amendment, it could be filed on or before 31-03-2023.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

(D) Relaxation of conditions for Defective Return under section 139(9) of the Income Tax Act, 1961

Return of income will be considered defective subject to certain conditions mentioned in Section 139(9). The defect can be rectified within 15 days or more as intimated by the Assessing Officer else the return is treated as an invalid return. The Explanation to the subsection lists the conditions in which a certain return of income shall be considered to be defective.

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The aforesaid conditions create difficulties for both the taxpayer and the Department, as a large number of returns become defective by application of the said conditions. It is proposed that a proviso be inserted to the said Explanation empowering the Board to specify, vide notification that any of the above conditions shall not apply for a class of assessee or shall apply with such modifications, as may be specified in such notification.

The above provision will be effective from 01st April 2021 i.e. A.Y.2021-2022.

IX.Assessment

(A) Centralized issue of notices for non –filing of return

Section 142(1)(i) of the Act empowers the Assessing Officer to conduct enquiry and issue notice to an assessee who has not submitted a return of income asking for submitting the return.

The power to invoke still lies with the Assessing Officer. In order to enable centralized issuance of notices in an automated manner, it is proposed to amend the provisions of Section 142(1)(i) to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the said clause.

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(B) Rationalising of the Section 143(1)(a) relating to processing of returned income and time limit of issuance of Intimation under Section 143(1)

It is proposed to amend the following provisions of Section 143(1)(a) of the Act :-

(i) Adjustment on account increase in income indicated in the audit report but not taken into account in computing the total income. (Section 143(1)(a)(iv))

(ii) Disallowance of deduction with regard to the consequential effect to amendment carried out in Section 80 AC vide Finance Act,2018. (Section 143(1)(a)(v))

It is proposed to reduce the time limit for issue of Intimation under Section 143(1) of the Act from 1 year to 9 months from the end of financial year in which the return was furnished.

(C) Reduce to time limit for issuance of notice of scrutiny assessment

It is proposed to reduce the time limit for issue of notice under section 143(2) of the Act from 6 months to 3 months from the end of financial year in which the return is furnished.

These amendments will take effect from 1st April, 2021

(D) Provisional attachment in Fake Invoice cases

Section 271AAD of the Act was inserted in Finance Act 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his accounts. It is an anti-abuse provision.

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Section 281B of the Act contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue.

It is proposed to amend provisions of Section 281B of the Act to enable the Assessing Officer to exercise the power under the said section during pendency of proceedings for imposition of penalty under Section 271AAD of the Act if the amount or aggregate amount of penalty imposable is likely to exceed 2 crore rupees.

(E) Reduction of time limit for completing assessment

Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act.

The time limit for completion of assessment proceedings under section 143 or 144 of the Act was reduced to 18 months for A.Y.2018-2019 and A.Y.2019-2020.

Since introduction of Faceless Assessment Scheme, 2019 where all the internal and external communications are made electronically, thus the time limit required for completion of assessment procedure needs to be further reduced.

It has been proposed that the time limit for completion of assessment proceedings shall now stand reduced to 9 months from the end of the assessment year in which the income was first assessable for the assessment year 2021-22.

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(E) Introduction of National Faceless Income Tax Assessment Tribunal Centre

It is felt that a faceless scheme be launched for ITAT proceedings on the same lines as faceless appeal scheme. Therefore it is proposed to insert new sub sections in Section 255 of the Act so as to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by ITAT so as to impart greater efficiency, transparency and accountability.

(G) Income escaping assessment and search assessment

There is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and assessment of search related cases due to advancement of technology.

The Bill proposes a completely new procedure of assessment of such cases. Accordingly, changes related to new procedures are incorporated in the relevant sections pertaining to assessment or reassessment or re computation and search cases.

These amendments will take effect from 1st April, 2021.

(H) Discontinuance of Income Tax Settlement Commission

It is proposed to discontinue Income Tax Settlement Commission (ITSC) and constitute Interim Board for pending cases subject to the conditions mentioned therein.

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(I) Constitution of Dispute Resolution Committee (DRC) for small and medium taxpayers

In order to provide early tax certainty to small and medium tax payers, it is proposed to introduce a new scheme for preventing new disputes and settling the issue at the initial stage.

The new scheme is proposed to be incorporated in a new section 245MA of the Act and shall be applicable to only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less.

X.Miscellaneous

(A) Higher Limit for exemption to small trusts and institutions

Section 10(23C)(iiiad) provides that the income earned by any university or educational institution existing solely for educational purposes and not for the purposes of profit shall be exempt from tax if the aggregate annual receipts of such university or educational institution do not exceed Rs. 1 crore. Such limit has been now extended to Rs. 5 crore.

Similarly, income of the hospitals and other institutions shall be exempt under section 10(23C) (iii ae) of the act, if the aggregate annual receipts of such hospital or institution do not exceed Rs. 5 crore.

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(B) Taxation of proceeds of high premium unit linked insurance policy (ULIP)

It is proposed to provide the following:

- (i) ULIP (Unit Linked Insurance Policy) is now defined as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019.
- (ii) It is also provided that exemption under section 10 (10D) is not applicable if any ULIP is issued on or after the 1st February, 2021 **and** the amount of premium payable for any of the previous year during the term of the policy exceeds Rs. 2,50,000.
- (iii) If premium is payable by a person for more than one ULIPs, issued on or after the 1st February, 2021, exemption under this clause shall be available only with respect to such policies aggregate premium whereof does not exceed the amount of Rs.2,50,000, for any of the previous years during the term of any of the policy.
- (iv) The restriction of Rs.2,50,000 is not applicable if proceeds of ULIP are received on the death of a person. Further, such ULIP is to be treated as capital asset under clause (14) of section 2 of the Income Tax Act, 1961 and capital gain shall be calculated in the manner as specified in sec 112A.

Consequential amendment has also been proposed to make security transaction tax applicable on maturity or partial withdrawal with respect to unit linked insurance policy issued by insurance company on or after the 1st February, 2021.

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These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

(C) Rationalisation of the provision of Charitable Trust and Institutions

In order to rationalise the provision of Charitable Trust and Institutions to eliminate possibility of double deduction while calculating application or accumulation, following changes are proposed-

- Voluntary contributions to corpus fund received by trust/institution shall be invested or deposited in one or more of the forms or modes specified in section 11(5).
- Application out of corpus shall **not** be considered as application for charitable or religious purposes for the purposes of section 10(23C) and section 11.

However, when it is invested or deposited back, into one or more of the forms or modes specified in section 11(5) 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.

- Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of 10(23C) and section 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.
- It is further clarified that while computation of income required to be applied or accumulated during the previous year, no set

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off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed.

(D) Definition of the term - Liable to tax

The Act currently does not define the term - liable to tax. Hence, it is proposed to now define the "term liable to tax". It means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

XI. International Taxation

(A) Rationalisation of provisions of Minimum Alternate Tax (MAT)

Where past year income is included in books of account during the previous year on account of an Advance Pricing Agreement entered with the taxpayer under section 92CC or a secondary adjustment under section 92CE, the assessee may make an application to the Assessing Officer for recomputation of book profit and tax payable of the past years. The Assessing Officer shall on receipt of such an application recompute the book profit of the past year(s) and tax payable, if any, during the previous year.

Further, the provisions of section 154 of the Income Tax Act, 1961 shall also be applicable in the above case and expiry of the period of four years shall be reckoned from the end of the

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financial year in which said application is received by the Assessing Officer.

It is also proposed that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA). Similarly, expenses incurred on earning such dividend should be added back while calculating book profit.

This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

(B) Change in the due date of Return of Income of a partner of a firm which is subject to Transfer Pricing Audit:

In the case of a firm which is required to furnish Form no.3CEB i.e. report from a Chartered Accountant for entering into international transaction or specified domestic transaction, as per section 92E of the Act, then the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined only after the books of accounts of such firm have been finalised, it is proposed that the due date of such partner be extended to 30th November of the assessment year.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

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(C) Rationalisation of the provisions of Equalisation Levy

Equalisation Levy is to be levied at the rate of two per cent. of the amount of consideration received or receivable by an e-commerce operator from ecommerce supply or services. There are few clarifications which are issued in respect of equalisation levy and same are as follows:

- (i) Consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which is taxable as royalty or fees for technical services in India under the Income-tax Act read with the Double Taxation Avoidance Agreement (DTAA).
- (ii) The definition of e-commerce supply or service means "online sale of goods" and "online provision of services". It is hereby clarified that "online sale of goods" and "online provision of services" shall include one or more of the following activities taking place online:
 - Acceptance of offer for sale;
 - Placing the purchase order;
 - Acceptance of the Purchase order;
 - Payment of consideration; or
 - Supply of goods or provision of services, partly or wholly
- (iii) Consideration received or receivable from e-commerce supply or services shall include:
 - consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and

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- Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect retrospectively from 1st April 2020 and will accordingly apply to the assessment year 2020-21 and subsequent assessment years .

(D) Rationalisation of the provisions of income exempt under section 10(50)

As per section 10(50) of the Income tax Act, 1961 the incomes on which equalization levy has already been deducted and paid shall be considered exempt in India.

The exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the Double Taxation Avoidance Agreement (DTAA).

This amendment will take effect retrospectively from 1st April 2020 and will accordingly apply to the assessment year 2020-21 and subsequent assessment years.

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3. Goods and Services tax

Key Changes are as under:

(A) Scope of Supply:

New clause has been inserted under Scope of Supply to include "The activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration."

Above amendment is retrospective w.e.f 1st July, 2017. This will affect Clubs / Associations. Due to introduction of this clause below paragraph is omitted from Schedule II w.e.f 1st July, 2017 which specified below transaction to be supply of goods:

"Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

(B) Input Tax Credit (ITC):

Additional condition for claiming of Input Tax Credit has been inserted. Now, ITC can be availed only if details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies (i.e. GSTR 1) and such details have been communicated to the recipient of such invoice or debit note.

(C) GST Audit and Annual Return:

Requirement of submission of Reconciliation Statement i.e. GSTR 9C and getting the GST Audit done has been eliminated and as a substitute a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial

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statement for every financial year electronically has to be provided in GST Annual Return (i.e. GSTR 9)

(D) Interest:

Interest on delayed payment of tax is to be calculated on NET CASH LIABILITY i.e. portion of tax which is paid by debiting the electronic cash ledger except where demand and recovery proceedings are initiated by the department. This is applicable retrospectively w.e.f 1st July, 2017.

(E) Seizure and confiscation:

Seizure and confiscation of goods and conveyances in transit are now treated as a separate proceeding from the recovery of tax. This means proceedings against other persons (e.g. transporter) will still remain open even if proceedings against the main person (e.g. supplier) are concluded.

(F) Self-assessed Tax:

Meaning of 'Self-assessed tax' has been inserted under section 75 of the CGST Act. Self-assessed tax shall refer to outward supplies as reported in GSTR-1 but missed out in GSTR-3B. Recovery proceedings can be initiated for the same. Therefore, matching of details in GSTR-1 and GSTR 3B is crucial.

(G) Provisional attachment:

Scope of Provisional attachment expanded to protect the interest of government. Now it can be done for proceedings under below three categories also:

- i) Assessment
- ii) Inspections, Search, Seizure and Arrest
- iii) Demands and Recovery

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(H) Pre-deposit for Appeal:

In order to file appeal before the first appellate authority, in cases of detention and seizure of goods and conveyance in transit, 25% of the penalty amount imposed has to be paid. Earlier there was no such requirement.

(I) Penalty on Detention and Seizure of goods and conveyances in transit:

- i. Where owner comes forward for payment of such penalty:

Penalty has been increased from 100% to 200% of the tax payable on such goods.

- ii. Where owner does not come forward for payment of such penalty:

Earlier penalty was 50% of value of goods and now it is higher of 50% of value of goods or 200% of the tax payable on such goods.

(J) Power to call for information:

Earlier the Commissioner or officer had power to collect statistics which has now been amended and now they have power to call for information.

(K) Zero rated supply:

Refund will be available to class of persons notified and class of goods / services notified.

In case of non-realisation of export proceeds, refund has to be refunded within 30 days of expiry of the time limit prescribed under Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances.