THE UNION BUDGET 2023

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INDEX

Contents

Sr. No.	Particulars	Page No.
1	Preface	2
2	Rates of Tax	3-12
3	Income from Salaries	13-14
4	Profits & Gains from Business & Profession	14-20
5	Income from Capital Gain	20-24
6	Income from Other Sources	24-26
7	Deductions	26
8	Tax Deducted at Source	27-32
9	Assessment	32-38
10	Miscellaneous	38-45
11	International Taxation	45-47

1. Preface

This note highlights select budget proposals related to direct taxes put forth by the finance minister Mrs Nirmala Sitharaman while presenting Budget 2023 on 1st February, 2023. 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. 2024-25 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.

Mumbai
3rd February 2023

2. 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%

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	25%
Above 5 Crore	37%

(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 to Resident Individual.

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 Individuals and HUFs under section 115BAC (New Tax Regime)

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 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%

Reduction in the Maximum Rate of Surcharge

Note: For a person whose income is chargeable to tax under sub-section (1A) of section 115BAC of the Act, the surcharge at the rate 37% on the income or aggregate of income of such person (excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Act) exceeding five crore rupees shall not be applicable.

In such cases the **surcharge shall be restricted to 25%**. Further, in case of such persons, the surcharge on

income chargeable to tax under Chapter XII or Chapter XII-A shall also be restricted to 25%.

Rebate under section 87A

Under the provisions of section 87A of the Act, an assessee, being an individual resident in India, having total income not exceeding Rs 5 lakh, is eligible for a rebate of 100 percent of the amount of income-tax payable i.e., an individual having income **up to Rs. 5 lakh is not required to pay any income-tax.**

From assessment year 2024-25 onwards, an assessee, being an individual resident in India whose income is chargeable to tax under the proposed sub-section (1A) of section 115BAC, shall now be entitled to a rebate of 100 per cent of the amount of income-tax payable on a total **income not exceeding Rs 7 lakh.**

Effective Assessment Year 2024-25 New Tax Regime shall be default regime. However, 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
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	Deduction on entertainment allowance for government employees of Rs 5,000.
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)(iia)	Additional deprecation at 20%
57(iia)	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)

- Set-off of any **loss under the head Income from House Property** with any other head of income.
- Depreciation, other than additional depreciation, determined in such manner as be prescribed.
- Exemption or deduction for allowance of perquisites provided under any other law for the time being in force.

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.

Further, the option to exercise new regime shall not be available if the belated return is filed.

(D) Corporate Tax Rates

i) Tax rate for Domestic Companies: -

Total income/ Turnover	**Tax Rate**
Gross turnover up to 400 Cr. in the FY 2019-20	25%
Gross turnover exceeding 400 Cr. in the FY 2019-20	30%

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%

Total income/ Turnover	Tax Rate
Where the company opted for Section 115BAA	22%
Where the company opted for Section 115BAB	15%

The rate of surcharge in case of a company opting for taxability under Section 115BAA or Section 115BAB shall be flat 10% irrespective of amount of total income.

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.

ii) Tax rates applicable to 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**		
Total Income	**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 %**

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) Tax on Co-Operative society:

a. Normal Regime

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

The above will be increased by surcharge of 7% in case income exceeds Rs. 1 crore or surcharge of 12% in case income exceeds Rs 10 crores and Cess at the rate of 4%.

b. Concessional Tax Regime under section 115BAD

Particulars	**Under Concessional Regime u/s 115BAD**
Rate of Tax	22%
Surcharge	10%
Health & Education Cess	4%
Effective Rate of Tax	**25.168%**

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

Type of Entity	**Other than Firm, Local Authority and Co-operative Society**				
Total Income	**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 %**

* Surcharge on Association of Person is now restricted to 15% even if income exceeds Rs.2 crore to bring them at par with surcharge which is levied on Companies.

Type of Entity	**Firm, Local Authority**	
Total Income	**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 %**

Type of Entity	**Co-operative Society (not opting tax regime u/s 115BAD)**	
Total Income	**Less than or equal to 1cr**	**Above 1cr**
Rate of Tax	15%	15%
Surcharge	-	7%*
Health & Education Cess	4%	4%
Effective Rate of Tax	**15.60 %**	**17.472 %**

* Surcharge of 7% in case income exceeds Rs. 1 crore or surcharge of 12% in case income exceeds Rs 10 crores.

3. Income from Salaries

A. Rationalization of provisions related to the valuation of residential accommodation provided to employees

As per clause (2) of section 17 of the Act, "perquisite" inter alia includes value of rent-free accommodation or value of any concession in the matters of rent provided to employees by the employer. The methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of the Income-tax Rules, 1962 (the Rules), while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanations to the clause (2) of section 17.

In order to rationalize this provision by prescribing a uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers, it is proposed to amend sub-clauses (i) and (ii) of clause (2) of section 17 of the Act.

It is proposed to take the power of prescription of the method for computation of the value of rent-free accommodation provided to the assessee by his employer and the value of any accommodation provided to the assessee by his employer at a concessional rate.

Further, it is proposed to amend the Explanation 1 to sub-clause (ii) of clause (2) of section 17 of the Act so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner

exceeds the rent recoverable from, or payable by, the assessee.

Further, it is proposed to delete the Explanation 2, Explanation 3 and Explanation 4 of sub-clause (ii) of clause (2) of section 17 of the Act to rationalize the section and specify the method of computation for the value the accommodation provided to employee by his employer through proper prescription of the Rules.

This amendment is proposed to take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

B. Increase in the Standard Deduction for NEW Regime

The benefit of standard deduction is available to all Salary earners under the new tax regime.

4. Profits and Gains from Business and Profession

A. Providing clarity on benefits and perquisites in cash

Section 28 of the Act provides for income that shall be chargeable to income-tax under the head "Profits and gains of business or profession". Clause (iv) 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 was 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 have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of section 28 of the Act.

In order to align the provision with the intention of legislature, it is proposed to amend clause (iv) of section 28 of the Act 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. This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-2025 and subsequent assessment years.

B. Promoting timely payments to Micro and Small Enterprises

In order to promote timely payments to micro and small enterprises (MSME), It is proposed to insert a new clause (h) in Section 43B of the Act that any sum payable by the assessee to MSME beyond the time limit specified in section 15 of the MSMED Act 2006 shall be allowed as deduction only on the actual payment.

It is also proposed that the proviso to section 43B of the Act shall not apply to such payments.

Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") mandates payments to MSME within the time as per the written agreement, which cannot be more than 45 days. If there is no written agreement, the section mandates that the payments shall be made within 15 days.

Section 16 of the MSMED Act provides that where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

The "Appointed day" means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Section 23 of MSMED Act has specifically prohibited the assessee from claiming the deduction from the income on account of interest paid to MSME.

Therefore, payment of such interest is considered as penal in nature and accordingly no deduction is allowed under section 37 of the Income Tax Act, 1961.

IMPACT OF THE PROPOSED AMENDMENT:

Section 43B of the Act provides that deduction for certain sums specified in its clauses (a) to (g) is allowable only on actual payment. The Proviso to this section allows deduction on accrual basis if the specified sum is paid by due date of furnishing of the return of income.

The sums covered by clauses (a) to (g) may have fallen due for payment before the close the financial year and remain unpaid at the end of the year. The Section and the

proviso thereto read together provide that deduction is allowable ONLY if the actual payment is made by the due date of furnishing the return of income

The deduction of the payment due to a Micro and Small Enterprise shall be available only if the payment is made within the time limit specified in section 15 of the MSME Act. The Finance Bill states that the proviso to section 43B will not apply to such payments.

This amendment will take effect from 1st April, 2024 and will accordingly apply to the assessment year 2024-25 and subsequent assessment years.

C. Relief to start-ups in carrying forward and setting off of losses

Earlier, proviso to sub-section (1) of section 79 of the Income-tax Act stipulated a condition for the eligible start up as referred in section 80-IAC of the Income-tax Act that the loss is allowed to be set off, only if it has been incurred during the period of seven years beginning from the year in which such company is incorporated.

In order to align this period of seven years with the period of ten years contained section 80-IAC of the Act it is proposed to amend the proviso to sub-section (1) of section 79 of the Act so that the carried forward loss of eligible start-ups shall be considered for set off under this proviso, if such loss has been incurred during the period of ten years beginning from the year in which such company was incorporated.

IMPACT OF THE PROPOSED AMENDMENT:

Therefore, the carried forward losses of eligible start-ups shall be considered for set off, if such loss has been incurred during the period of ten years beginning from the year in which such company was incorporated instead of seven years from the date of incorporation earlier.

This amendment will take effect from 1st day of April, 2023 and will accordingly apply to the **assessment year 2023-2024** and subsequent assessment years.

D. Increasing threshold limits for presumptive taxation schemes

It is proposed to insert a proviso after Sub-clause (ii) in clause(b) of the Explanation to section 44AD which would be applicable from 1st April, 2024.
It is to extend the benefit of availing the presumptive determination of income 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 of such previous year. **As against the present limit of Rs.200 lakhs, the proposed amendment would apply up to the turnover limit of Rs.300 lakhs**.

Hence, those having turnover below Rs.300 lakhs shall be eligible under section 44AD if the cash receipt is less than 5% of the turnover.

The Finance Bill,2023 also proposes to amend provisions related to presumptive taxation of specified professionals u/s 44ADA

A proviso after sub-section (1) to section 44ADA is proposed to be inserted. It is applicable in cases where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed 5% of the total gross receipts of such previous year. As against the present limit of Rs.50 lakhs, the benevolent provision would apply up to gross receipt of Rs.75 lakhs.

A further proviso is proposed to be inserted to clarify receipt of amount or aggregate of amounts 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.

Category	**Previous limits**	**Revised limits**
Sec 44AD: For small businesses	Rs. 2 crore	Rs. 3 crore
Sec 44ADA: For specified professionals like doctors, lawyers, engineers, etc	Rs. 50 lakh	Rs. 75 lakh

E. Preventing permanent deferral of taxes through undervaluation of inventory

In order to ensure that the inventory is valued in accordance with various provisions of law, it is proposed to amend section 142 of the Act

This provision will 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.

The amendments will take effect from 1st April, 2023 and will accordingly apply **to the assessment year 2023-2024** and subsequent assessment years.

5. Income from Capital Gains

A. Limiting the roll over benefit claimed under section 54 and section 54F

Section 54 and section 54F of the Income-tax, 1961 (the Act) allow 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 house in India, or within a period of three years after that date constructed any residential house in India.

Section 54 of the Act, permits the deduction on the long-term capital gain arising from transfer of a residential house if the capital gain is reinvested in a residential house or deposited in the Capital Gains Account Scheme. Section 54F of the Act, permits deduction 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 or deposited in the Capital Gains Account Scheme.

It is proposed to impose a limit on the maximum deduction that can be claimed by the assessee under section 54 and 54F to rupees ten crore. It has been provided that if the cost of the new asset purchased or the money deposited in the Capital Gains Account Scheme is more than rupees ten crore, the cost of such asset shall be deemed to be ten crores. *Thus deduction is now restricted qua new asset to Rs 10 Crores.*

B. <u>Special provision for taxation of capital gains in case of Market Linked Debentures</u>

'Market Linked Debentures' are listed securities. They are currently being taxed as long-term capital gain at the rate of 10% without indexation. However, these securities are in the nature of derivatives which are normally taxed at applicable rates. Further, they give variable interests as they are linked with the performance of the market. In order to tax the capital gains arising from the transfer or redemption or maturity of these securities as short-term capital gains at the applicable rates, it is proposed to insert a new section 50AA in the Act to treat the full value of the consideration received or accruing as a result of the transfer or redemption or maturity of the 'Market Linked Debentures' as reduced by the cost of acquisition of the debenture and the expenditure incurred wholly or exclusively in connection with transfer or redemption of such debenture, as capital gains arising from the transfer of a short term capital asset.

Note: *'Market linked Debenture' is defined as 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 securities classified or regulated as a Market Linked Debenture by Securities and Exchange Board of India.

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

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 under section 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 under section 48 of the Act.

In order to prevent this double deduction, it is proposed that the **cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA.**

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

For computing the capital gains amount on the transaction as mentioned under section 45(5A) of the Income Tax Act, 1961, 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 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 under sub-section (5A) of section 45.

This is not in accordance with the intention of law as is evident from the provisions of section 194-IC of the Act 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 sub-section (5A) of section 45, paid to the deductee in cash or by way of issue of a cheque or draft or any other mode. Accordingly, it is proposed to amend the provisions of sub-section (5A) of section 45 so as 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.

This amendment will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

E. Defining the cost of acquisition in case of certain assets for computing capital gains

The existing provisions of the section 55 of the Act 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 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 it is proposed to amend the provisions of section 55 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 shall be 'Nil'.

This amendment is will take effect from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years

6. Income from Other Sources

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

Section 56(2)(viib) of the Act, 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 the purposes of the Section 56(2) (viib) of the Act.

It is proposed to include the consideration received from a non- resident also under the ambit of clause (viib) by removing the phrase 'being a resident' from the said clause. This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residential status. These amendments will be effective from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.

B. Taxation of Proceeds from High Value Life Insurance

Clause (10D) of section 10 of the Act 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 ten per cent of the actual capital sum assured.

It may be pertinent to note that the legislative intent of providing exemption under clause (10D) of section 10 of the Act 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 provided under clause (10D) of section 10 of the Act 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.

An amendment was done by the Finance Act 2021 to curb such practices. After the enactment of the above amendment, while ULIPs having premium payable exceeding Rs 2, 50,000/- have been excluded from the purview of clause (10D) of section 10 of the Act, 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 is proposed to tax income from insurance policies (other than ULIP for which provisions already exists) having premium or aggregate of premium above Rs 5,00,000 in a year. Income is proposed to be exempt if received on the death of the insured person. 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 proposed provision shall apply for policies issued on or after 1st April, 2023. There will not be any change in taxation for polices issued before this date.

7. Deductions:

Extension of date of incorporation for eligible start-up for exemption

In order to further promote the development of start-ups in India and to provide them with a competitive platform, it is proposed to amend the provisions of section 80-IAC of the Act so as to extend the period of incorporation of eligible start-ups to 1st day of April 2024

8. Tax Deducted at Source:

A. Removal of exemption from TDS on payment of interest on listed debentures to a resident

Clause (ix) of the proviso to section 193 of the Act provides exemption from TDS in respect of payment of interest on certain securities. The aforesaid section provides that no tax is to be deducted in the case of any 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 in accordance with the securities Contracts (Regulation) Act, 1956 (32 of 1956) and the rules made thereunder.

It is seen that there is under reporting of interest income by the recipient due to above TDS exemption. Hence, it is proposed to omit clause (ix) of the proviso to section 193 of the Act.

B. Tax treaty relief at the time of TDS under section 196A of the Act

Section 196A of the Act 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 under clause (23D) of section 10 of the Act or from the specified company referred to in the Explanation to clause (35) of section 10 of the Act.

It is proposed to insert a proviso to sub-section (1) of section 196A of the Act. This proviso seeks to provide that the TDS would be at the rate which is lower of the rate of 20% and the rate or rates provided in agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A of the Act in case of a payee to whom such agreement applies and such payee has furnished the tax residency certificate referred to in (i.e. DTAA rates), sub-section (4) of section 90 or sub-section (4) of section 90A of the Act.

C. Providing Clarity on TDS on Perquisites in Cash

Section 194R of the Act inserted by the Finance Act 2022 provides for deduction of tax on benefit or perquisite provided to a resident arising from business or exercise of a profession. Sub-section (1) of said section provides for tax deduction at source at the rate of 10% of the value or aggregate of value of such benefit or perquisite.

The responsibility of tax deduction at source has been fixed on a person who is responsible for providing to a resident any benefit or perquisite, whether convertible into money or not, arising from a business or the exercise of a profession by such resident.

First proviso to sub-section (1) provides that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or

perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

Circular No 12 dated 16th June, 2022 provides that tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind. Accordingly, it is proposed to clarify by way of insertion of an Explanation to section194R of the Act to provide those provisions of sub-section (1) apply to benefit or perquisite whether in cash or in kind or partly in cash and partly in kind. **This amendment will take effect from 1st April, 2023.**

D. TDS on payment of accumulated balance due to an employee under EPF Scheme

Section 192A of the Act provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952. The existing provisions of section 192A of the Act, 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 fifty thousand rupees.

The second proviso to section 192A of the Act 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 under section 192A. Hence, it is proposed to omit the second proviso to section 192A of the Act, 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 section 206AA of the Act, instead of at the maximum marginal rate.

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

E. Relief from special provision for higher rate of TDS/TCS for non-filers of income-tax returns

Section 206AB of the Act provides for special provision for higher TDS for non-filers of income-tax returns. Similarly, section 206CCA of the Act 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)-

(i) for which the time limit for furnishing the return of income under sub-section (1) of section 139 has expired; and

(ii) the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand 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, it is proposed to amend the definition of the "specified person" in sections 206AB and 206CCA of the Act 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.

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

F. Facilitating TDS credit for income already disclosed in the return of income of past year

Representations have been received that in many instances, 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. In order

to remove this difficulty, it is proposed to insert a new sub-section (20) in section 155 of the Act.

This new sub-section applies where any income has been included in the return of income furnished by an assessee under section 139 of the Act 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 two 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.

These amendments will take effect from 1st October, 2023.

9. Assessment

A. 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.

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.

Accordingly, it is proposed to substitute section 246 of the Act to provide for appeals to be filed before Joint Commissioner (Appeals). Sub-section (1) of the proposed section seeks to provide 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 under sub-section (1) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 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 under section 147;
(iii) an order being an intimation under sub-section (1) of section 200A;
(iv) an order under section 201;
(v) an order being an intimation under sub-section (6A) of section 206C;
(vi) an order under sub-section (1) of section of section 206CB;
(vii) an order imposing a penalty under Chapter XXI; and
(viii) an order under section 154 or section 155 amending any of the orders mentioned in (i) to (vii) above.

B. Rationalisation of Appeals to the Appellate Tribunal

Sections 271AAB, 271AAC and 271AAD are penalty provisions under Chapter XXI of the Act for imposition of penalty. Section 271AAB of the Act provides for imposition of penalty by the Assessing Officer in a case where search has been initiated under section 132 of the Act. Section 271AAC of the Act provides for imposition of penalty by the assessing Officer in a case where income determined includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D of the Act for any previous year. Section 271AAD of the Act 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, sections 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 sub-section (1) of section 253 of the Act, an aggrieved assessee cannot appeal against such penalty orders passed by Commissioner (Appeals) which may lead to taxpayer grievance. Therefore, it has been proposed to amend the provisions of section 253 of the Act to provide that appeal against penalty orders passed by Commissioner (Appeals) under the sections 271AAB, 271AAC and 271AAD shall be made to the Appellate Tribunal.

Further, vide Finance Act, 2021, section 263 of the Act 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 under section 263 of the Act in sub-section (1) of the section 253 of the Act, an assessee aggrieved by any order under section 263 of the Act by a Principal Chief Commissioner and Chief Commissioner or an order under section 154 of the Act rectifying such order under section 263 of the Act cannot appeal against such orders to the Appellate Tribunal. Therefore, it has been proposed that section 253 of the Act may be amended so that appeal against an order passed under section 263 of the Act by Principal Chief Commissioner or Chief Commissioner or an order passed under section 154 of the Act in respect of any such order shall be made to the Appellate Tribunal.

These amendments will take effect from the 1st day of April, 2023.

C. Assistance to authorised officer during search and seizure

Section 132 of the Act 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 digitalization in every aspect including management and maintenance of accounts, digitalization 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, it is proposed to amend relevant provisions of the section to provide that during the course of search the authorized 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, i during and post search enquiries, the authorized 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 authorized officer or the Assessing Officer within sixty days from the receipt of such reference.

This amendment will take effect from the 1st day of April, 2023.

Prior to the enactment of the Finance Act, 2021, the procedure for conducting such assessment in search cases

was laid out in section 153A and the time limit for their completion was laid out in section 153B. Consequent to the changes in 2021, the assessment or reassessment in consequence to search is now performed under section 147 of the Act and provisions of sections 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 authorizations during such procedure, in order to establish the day of conclusion of search proceedings, and what constitutes as last authorization is provided in section 153B. As the provisions of section 153B are no longer applicable, it is proposed to provide the meaning of execution of last authorization under section 132 itself.

This amendment will take effect retrospectively from the 1st day of April, 2022.

10. Miscellaneous

A. Penalty for furnishing inaccurate statement of financial transaction or reportable account

Section 285BA of the Act 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.

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 five thousand rupees shall be imposable on such institution, in addition to the penalty leviable on such financial institution in the section 271FAA, if any. 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.

B. Extending deeming provision under section 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. Sub-section (1) of section 9 of the Act is a deeming provision providing the types of income deemed to accrue or arise in India. 2. Finance (No. 2) Act, 2019 inserted clause (viiii) to sub-section (1) of section 9 of the Act to provide that the any sum of money exceeding fifty thousand rupees, received by a non-resident without consideration from a person resident in India, on or after the 5th day of July, 2019, shall be income deemed to accrue or arise in India. Sum of money is referred to in sub-clause (xviia) of clause (24) of section 2 of the Act.

The above amendment 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.

It has come to notice that certain persons being not ordinarily residents are receiving the gifts from persons resident in India and not paying tax on it. In view of the above, it is proposed to amend clause (viii) of sub-section (1) of section 9 of the Act so as to extend this deeming provision to sum of money exceeding fifty thousand rupees, received by a not ordinarily resident, without consideration from a person resident in India.
This amendment will take effect from 1st April, 2024.

C. Clarification regarding advance tax while filing Updated Return

The Finance Act, 2022 inserted sub-section (8A) in section 139 of the Act enabling the furnishing of an updated return by taxpayers up to two 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 return section 140B was inserted in the Act.

The sub-section (4) of the section 140B of the Act provides for the computation of interest under section 234B of the Act on the tax on updated return. The said sub-section (4) provides that interest payable under section 234B of the Act 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, the sub-clause (i) of the clause (a) of the said subsection 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 the sub-section (4) of section 140B of the Act, an amendment has been proposed in the said sub-section that interest payable under section 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.

D. Set off and withholding of refunds in certain cases

Section 241A of the Act deals with withholding of refund in certain cases. As per the section, where a refund becomes due to an assessee under sub-section (1) of section 143 and notice for assessment is issued to him under sub-section (2) of section 143, 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, and applicable to assessment years on or after 2017-18.

Section 245 of the Act 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, it is proposed to integrate the two sections by substituting section 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.

It is also proposed to provide that where a part of the refund has been set off under subsection (1) 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.

It is also proposed to amend section 241A of the Act to make the provisions of that section inapplicable from 1st April, 2023.

Further, as the amendments proposed under section 245 would have an impact on cases referred to in sub-section (1A) of section 244A, i.e., where refund due to the assessee is required to be withheld by the AO under sub-section (2) of the proposed section till the date of the making assessment or reassessment, it is proposed to amend sub-section (1A) of section 244A by inserting a proviso 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 sub-section (2) of section 245, till the date on which the assessment or reassessment pending in such case, is made.

However, the proposed amendment shall not impact the existing position with regard to all other types of interest, except additional interest under sub-section (1A) of section244A, payable to the assessee as required under the Act.

These amendments will take effect from the 1st day of April, 2023.

Amendments related to Charitable Trusts

E. <u>Proposed amendments with respect to utilization of corpus and loan and borrowing of charitable trust / education institution - Effective from FY 2022-23</u>

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.

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, only then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes.

The application of corpus funds or loans or borrowing should comply with the other conditions of the IT Act such that the investment/ depositing back into corpus and repayment of loan can be regarded as application of income.

It is proposed that eligible donations made by a trust or institution to another trust shall be treated as application only to the extent of 85% of such donation – Effective from FY 2023-24.

It is proposed, in certain cases, to permit (a) provisional registration/ approvals before commencement of activities and (b) direct registration/ approvals - **Effective from 01 October 2023**

In case the application made for approval/ registration is not complete or contains false information, then, such cases shall be regarded as 'specific violation' and the Principal Commissioner/ Commissioner can take necessary action including cancellation of the approval/ registration **– Effective from 01 April 2023.**

Non-filing for registration/ approval with the prescribed timelines shall be deemed that the trust/ institution has been converted into form not eligible for registration/ approval and the provisions of Chapter XII-EB of the IT Act shall be applicable which includes payment of exit tax on the accreted income at maximum marginal rate - **Effective from FY 2022-23.**

F. Proposal to rationalize certain timelines for filing certain forms for Trusts– Effective from FY 2022-23

Proposal to clarify that the exemption under section 10(23C) (exemption for income of educational institution) and section 11 and 12 (exemption of educational institution/religious trust) of the IT Act shall not be available if the return is not filed with the time allowed under section 139(1) of the IT Act i.e. the regular return of income and section 139(4) of the IT Act i.e., belated return of income – **Effective from FY 2022-23.**

These amendments will require tax payers to monitor the usage of funds and also ensure compliance of the various timelines.

11. International Taxation:

A. Reducing the time limit provided for furnishing TP report

Section 92D of the Act, 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 (the Rules).

As per sub-section (3) of section 92D of the Act, 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.

To provide the AOs a reasonable amount of time to examine the information/documents submitted and complete the pending proceedings, sub-section (3) of section 92D of the Act is amended 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 clause (i) of sub-section (1) of section 92D of the Act 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 ten 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 ten days by a further period not exceeding thirty days.

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