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SALIENT FEATURES OF THE FINANCE ACT, 2022 AND UPDATES ON INCOME TAX LAW IMPACTING THE REAL ESTATE SECTOR

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I N D E X

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I. INTRODUCTION

At the onset of a new decade, the Hon'ble Finance Minister Mrs. Sitharaman presented India's first digital Union Budget for the Financial Year 2022-23 amidst an economic contraction.

Method of income determination and allowability of expenses established through landmark judgments of the Supreme Court and High Courts stands amended by new legislations introduced by the Finance Minister.

The Government brought cheer to the market by keeping tax rates untouched for individual and corporate taxpayers. The capping of surcharge on long term capital gains and dividend income at 15% is a big relief for high net worth individuals.

The Finance Bill, 2022 was presented by the Hon'ble Finance Minister Mrs. Nirmala Sitharaman on February 1, 2022. In the wake of the representations received from various stakeholders, while moving the Finance Bill, 2022 for approval by the Lok Sabha the Finance Minister introduced 'Notice of amendments' to the Finance Bill, 2022 (referred to as the "**Finance Bill (Lok Sabha**") proposing more than 39 changes/ amendments to the original Finance Bill, 2022. These amendments are generally intended to address certain ambiguities arising from the wordings of proposals as contained in the Finance Bill, 2022.

The key direct tax amendments made by the Finance Act, 2022 impacting the real estate sector are analysed hereinafter.

II. GLOSSARY OF TERMS USED

"AAR" means Authority of Advance Ruling;

"Act" means the Income Tax Act, 1961;

"AMT" means Alternate Minimum Tax applicable to the assessees other than a company-assessee, as referred to in Section 115JC;

"AO" means the Assessing Officer;

"Board" means the Central Board for Direct Taxes;

"CIT" means the Commissioner of Income Tax;

"Finance Act" means the Finance Act, 2022 which received the Presidential assent on30th March, 2022;

"Finance Bill" means the Finance Bill, 2022 which was presented in the Lok Sabha as part of the Union Budget on February 1, 2022 and which was passed by the Lok Sabha with certain amendments/ modification contained in the 'Notice of Amendments' on 30th March, 2022;

"HEC" means Health and Education Cess;

"ITAT" means the Income Tax Appellate Tribunal;

"MAT" means Minimum Alternate Tax applicable to corporate assessees, as referred to in Section 115JB;

"PCIT" means Principal Commissioner of Income Tax;

"Rules" means of Income-tax Rules, 1962;

"TDS" means withholding tax/ tax at source deducted pursuant to the provisions of the Act;

III. INCOME TAX

Unless otherwise specifically mentioned, the amendments are effective from F. Y. 2022-23 relevant to A. Y. 2023-24 and are therefore applicable with respect to income arising on or after 1st April, 2022 i.e. during the F. Y. 2022-23. Specific mention is made at the relevant places, where the effective date of the amendment is other than the date referred to hereinabove. Any reference to the sections, unless otherwise stated, is to the sections of the Act.

1. IMPORTANT CHANGES TO TAX RATES FOR F. Y. 2022-23 (A.Y. 2023-24)

As regards rates of tax:-

(a) The Finance Act has not made any changes in the existing tax rates for any type of assessee.

(b) The existing "**Health and Education Cess**" continues to be @ 4%.

(c) There is no change in the rate of **Surcharge** except for persons having income from long term capital gains and Co-operative Societies.

Surcharge on long term capital gains from transfer of all assets, income taxable u/s. 111A and dividend income would now be restricted to / capped at 15%.

Earlier 15% Surcharge was restricted only for long term capital gains arising from transfer of listed shares and equity-oriented mutual fund u/s. 112A.

(d) Surcharge was levied @ 12% in case of Co-operative Society if its Total Income exceeded Rs.1 crore. Now the Surcharge will be levied as per the slab rates on the Total Income of the Co-operative Society (refer para 1.3 below).

(e) Maximum marginal rate of tax for individuals and HUF continues to be @ 42.74% (including Surcharge of 37% and HEC of 4%).

(f) For F. Y. 2021-22, a resident individual is entitled to tax rebate under Section 87A up to Rs.12,500/-, provided his Total Income is not in excess of Rs.5,00,000/-. This tax rebate shall remain the same for F. Y. 2022-23.

The income tax rates (inclusive of Surcharge and HEC) and TDS Rates for the F. Y. 2022-23 is tabulated hereunder for ready reference. These income tax rates are applicable on income earned during the period from 1st April, 2022 to 31st March, 2023.

1.1 EFFECTIVE TAX RATES FOR INDIVIDUALS AND HUFs (INCLUSIVE OF SURCHARGE & HEC)

Tax Rates under existing Tax Regime - For resident Individuals and HUFs

Particulars	Tax Rates for F. Y. 2022-23			
	Resident Very Senior Citizens of age 80 Years & above	Resident Senior Citizens of 60 Years & above but below age of 80 years	Resident Men & Women below 60 Years & Non Residents (Men & Women)/ HUF	Applicable Surcharge
Total Income				
Up to Rs.2,50,000	Nil	Nil	Nil	Nil
Rs.2,50,001 – Rs.3,00,000	Nil	Nil	5.20%	Nil
Rs.3,00,001 – Rs.5,00,000	Nil	5.20%	5.20%	Nil
Rs.5,00,001 – Rs.10,00,000	20.80%	20.80%	20.80%	Nil
Rs.10,00,001 – Rs.50,00,000	31.20%	31.20%	31.20%	Nil
Rs.50,00,001- Rs.1,00,00,000	34.32%	34.32%	34.32%	10%
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	35.88%	35.88%	15%
Rs.2,00,00,001 – Rs.5,00,00,000	39%	39%	39%	25%*
Above Rs.5,00,00,000	42.74%	42.74%	42.74%	37%*

* Surcharge on Long Term Capital Gains from all assets, Short-Term Capital Gains on the sale of listed equity shares, equity mutual funds, and units of business trust on which STT (Securities Transaction Tax) is paid and dividend income, would be restricted to / capped at 15%.

Tax Rates under New Optional Tax Regime u/s. 115BAC - For resident Individuals and HUFs

The effective tax rates for Individuals and HUFs opting for new tax regime, for different slabs of income is as follows :

Particulars	Tax Rates for F. Y. 2022-23			
	Resident Very Senior Citizens of age 80 Years & above	Resident Senior Citizens of 60 Years & above but below age of 80 years	Resident Men & Women below 60 Years & Non Residents (Men & Women)/ HUF	Applicable Surcharge
Total Income				
Up to Rs.2,50,000	Nil	Nil	Nil	Nil
Rs.2,50,001 – Rs.5,00,000	5.20%	5.20%	5.20%	Nil
Rs.5,00,001 – Rs.7,50,000	10.40%	10.40%	10.40%	Nil
Rs.7,50,001 – Rs.10,00,000	15.60%	15.60%	15.60%	Nil
Rs.10,00,001 – Rs.12,50,000	20.80%	20.80%	20.80%	Nil
Rs.12,50,001 – Rs.15,00,000	26%	26%	26%	Nil
Rs.15,00,001 – Rs.50,00,000	31.20%	31.20%	31.20%	Nil
Rs.50,00,001 – Rs.1,00,00,000	34.32%	34.32%	34.32%	10%
Rs.1,00,00,001 – Rs.2,00,00,000	35.88%	35.88%	35.88%	15%
Rs.2,00,00,001 – Rs.5,00,00,000	39%	39%	39%	25%
Above Rs.5,00,00,000	42.74%	42.74%	42.74%	37%

Note : The assessee will have to comply with the conditions laid down in s. 115BAC if it wants to opt and continue to pay tax under new tax regime u/s. 115BAC.

A comparative chart giving tax rates under the existing tax regime and the new optional tax regime scheme, for different slabs of income is given as under:

Total Income	Tax Rate (under the new regime)	Tax Rate (under the old regime)
Up to Rs. 2,50,000	Nil	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%	5%
Rs. 5,00,001 to Rs. 7,50,000	10%	20%
Rs. 7,50,001 to Rs. 10,00,000	15%	20%
Rs. 10,00,001 to Rs. 12,50,000	20%	30%
Rs. 12,50,001 to Rs. 15,00,000	25%	30%
Above Rs. 15,00,000	30%	30%

1.2 EFFECTIVE TAX RATES FOR COMPANIES (INCLUSIVE OF SURCHARGE & HEC)

Effective tax rates (including Surcharge and HEC) for a company assessee for F. Y. 2022-23 continues to be as follows :

Types of Companies	Income not exceeding Rs.1 Crore		Income exceeding Rs.1 Crore and up to Rs.10 Crore		Income above Rs.10 Crore	
	Effective tax rate (normal)	Effective MAT	Effective tax rate (normal)	Effective MAT rate	Effective tax rate (normal)	Effective MAT rate
New domestic manufacturing companies exercising option to pay tax as per Section 115BAB	17.16%**	Nil	17.16%**	Nil	17.16%**	Nil
Domestic company exercising option to pay tax as per Section 115BAA	25.17%**	Nil	25.17%**	Nil	25.17%**	Nil
Domestic company with turnover of up to Rs. 400 Crores in F.Y. 2020-21 and avails tax incentives or exemptions or tax holiday	26%	15.60%	27.82%*	16.69%*	29.12%*	17.47%*
Other domestic company	31.20%	15.60%	33.38%*	16.69%*	34.94%*	17.47%*
Foreign Company	41.60%$	15.60%$#	42.43%$	15.91%$#	43.68%$	16.38%$#

* Includes Surcharge @ 7% in case of income from Rs.1 Crore up to Rs.10 Crore and 12% in case of income above Rs.10 Crore.

** Includes Surcharge @ 10%.

$ Includes Surcharge @ 2% in case of income from Rs.1 Crore up to Rs.10 Crore and 5% in case of income above Rs.10 Crore.

\# If MAT is applicable to the foreign company.

For companies, other than companies opting for the new tax regime u/s. 115BAA or 115BAB, the rate of MAT continues to be at 15%.

1.3 EFFECTIVE TAX RATES FOR CO-OPERATIVE SOCIEITES (INCLUSIVE OF SURCHARGE & HEC)

Effective tax rates (including surcharge and HEC) for F. Y. 2022-23 continues to be as follows :

Particulars	Income above Rs. 30,000 up to Rs. 1 Crore	Income above Rs.1 Crore to Rs.10 Crores		Income above Rs.10 Crores	
	Effective Tax Rate	Effective Tax Rate	Surcharge Applicable for income above Rs. 1 Crore to 10 Crores	Effective Tax Rate	Surcharge Applicable for income above Rs. 10 Crore
Co-operative societies opting for taxation under Section 115BAD	25.168%	25.168%	10%	25.168%	10%
Other Co-operative Society	31.20%	33.384%	7%	34.944%	12%

Rates remain unchanged i.e. NIL up to Rs.10,000/-; 10% between Rs.10,000 to Rs.20,000 and 20% between Rs. 20,000 to Rs.30,000 and 30% in excess of Rs.30,000/-

1.4 EFFECTIVE TAX RATES FOR OTHER ASSESSEES (INCLUSIVE OF SURCHARGE & HEC)

Particulars	Threshold Limit for Surcharge	F. Y. 2022-23		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
Limited Liability Partnership	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
Local Authority	Up to Rs.1 Crore	31.20%	NA	Nil
	Above Rs.1 Crore	NA	34.94%	12%
AOP, BOI, whether incorporated or not, or every artificial juridical person	Up to Rs.2,50,000	Nil	NA	Nil
	Rs.2,50,001 to Rs.5,00,000	5.20%	NA	Nil
	Rs.5,00,001 to Rs.10,00,000	20.80%	NA	Nil
	Rs.10,00,000 to Rs.50,00,000	31.20%	NA	Nil
	Rs.50,00,000 to Rs.1,00,00,000	NA	34.32%	10%
	Rs.1,00,00,001 to Rs.2,00,00,000	NA	35.88%	15%
	Rs.2,00,00,001 to Rs.5,00,00,000	NA	39%	25%
	Above Rs.5 Crores	NA	42.74%	37%

Particulars	Threshold Limit for Surcharge	F. Y. 2022-23		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Tax on profits distributed by Indian Companies				
(A) Buyback of shares by unlisted Domestic Companies u/s.115QA		NA	23.27%	12%
(B) Buyback of shares by listed Domestic Companies made after 5th July, 2019 u/s.115QA		NA	23.27%	12%

1.5 ALTERNATE MINIMUM TAX ("AMT") RATES FOR NON CORPORATE ASSESSEES (INCLUSIVE OF SURCHARGE & HEC)

Particulars	Threshold Limit for Surcharge	F. Y. 2022-23		
		Tax Rate without Surcharge	Tax Rate with Surcharge	Rate of Surcharge
Partnership Firm - Alternate Minimum Tax (Basic AMT Rate – 15%)	Up to Rs.1 Crore	15.6%	NA	Nil
	Above Rs.1 Crore	NA	17.472%	12%
Limited Liability Partnership – Alternate Minimum Tax (Basic AMT Rate – 15%)	Up to Rs.1 Crore	15.6%	NA	Nil
	Above Rs.1 Crore	NA	17.472%	12%
Co-operative Society – Alternate Minimum Tax (Basic AMT Rate – 15%)	Up to Rs.1 Crore	15.6%	NA	Nil
	Rs.1 Crore to Rs. 10 Crores	NA	16.692%	7%
	Above 10 Crores	NA	17.472%	12%
Individuals and HUFs – Alternate Minimum Tax (Basic AMT Rate – 15%)	Rs.50 Lakhs	15.6%	NA	Nil
	Rs.50 Lakhs to Rs.1 Crore	NA	17.16%	10%
	Rs.1 Crore to Rs.2 Crores	NA	17.94%	15%
	Rs.2 Crores to Rs.5 Crores	NA	19.344%	25%
	Rs.5 Crores	NA	21.372%	37%

Notes :

1. For resident co-operative societies and Individuals and HUFs opting for the optional tax regime under Sections 115BAC or 115BAD, the provisions of Section 115JC relating to AMT are not applicable.

2. An Individual / HUF and Co-operative Society claiming deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects under Section 80-IBA and who have not opted for concessional/ reduced tax regime under Section 115BAC or Section 115BAD respectively, shall still be liable to pay AMT on its book profits at the basic rate of 15%. However, if such assesses opts for concessional / reduced tax regime under Section 115BAC or 115BAD, then such assessees shall neither be eligible to claim deduction under Section 80-IBA nor shall it be liable to pay AMT on its book profits and shall also not be entitled to carry forward and set off its past AMT credit and pay @ 25.17%.

1.6 TAX RATES ON CAPITAL GAINS - SECTIONS 10(38), 111A, 112 & 112A

Category of Assessee	Long Term Capital Gains			Short Term Capital Gains	
	On all Assets (other than listed securities)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust		On all Assets (including listed securities, where STT is not paid)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust, where STT is paid
		If STT is paid (Refer No 5 below)	If STT is not paid		
Resident Individuals/ HUFs having taxable income up to Rs.2.50 lakhs	Nil	Nil	Nil	Nil	Nil
Individuals & HUFs having taxable income exceeding Rs.2.50 lakhs (Refer Note 1 below)	20% with indexation	10% with grandfathering	10% without Indexation or 20% with Indexation	Slab Rates Max – 30%	15%
Partnership Firms/ LLPs (Refer Note 2 below)	20% with indexation	10% with grandfathering	10% without Indexation or 20% with Indexation	30%	15%
Companies (Refer Notes 3 & 4 below)	20% with indexation	15.00% (MAT) with grandfathering	10% without Indexation or 20% with Indexation	30%	15%

Category of Assessee	Long Term Capital Gains			Short Term Capital Gains	
	On all Assets (other than listed securities)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust		On all Assets (including listed securities, where STT is not paid)	On securities listed on Recognised Stock Exchange and Units of Equity Oriented Fund / Business Trust, where STT is paid
		If STT is paid (Refer No 5 below)	If STT is not paid		
Co-operative Societies (Refer Note 3 below)	20% with indexation	10% with grandfathering	20% with indexation	30%	15%

Notes:

1. **Surcharge for Individuals and HUF will be levied on Total Income based on thresholds as stated in para 1.1 above, which is as high as 37% but the Surcharge on Long Term Capital Gains from all assets, Short Term Capital Gains on the sale of listed equity shares, equity mutual funds, and units of business trust on which STT (Securities Transaction Tax) is paid and dividend income, being restricted to / capped at 15%.**

2. Where the taxable income of assessee being a Partnership Firm and LLP, exceeds Rs.1 Crore, then the surcharge applicable would be 12%.

3. Where the taxable income of an assessee being a Company and Co-operative Society, is between Rs. 1,00,00,001/- to Rs.10,00,00,000/- the surcharge applicable would be @ 7%. Where the taxable income of a Company exceeds Rs.10 Crores the surcharge applicable would be @ 12%.

4. **In case of Company having not opted for concessional / reduced tax regime under Section 115BAA or Section 115BAB, MAT @ 15% plus applicable surcharge may be payable on the Book Profits of the Company in accordance with the provisions of Section 115JB.**

5. No long term capital gains tax would be levied if the long term capital gains arising or accruing on sale of listed equity shares or units of equity-oriented mutual fund / business trust is up to Rs. 1,00,000/-.

6. The existing "HEC" continues to be @ 4%.

7. With reference to taxation of capital gains, it is pertinent to note that Long Term Capital Loss cannot be set-off against Short Term Capital Gain. However, Short Term Capital Loss can be set-off against Long Term Capital Gain.

1.7 MAXIMUM MARGINAL RATES OF INCOME TAX (INCLUSIVE OF SURCHARGE & HEC)

Category of Assessee	Normal Income	Rental Income from House Property (post standard deduction of 30%)
Individuals & HUFs having taxable income exceeding Rs.5 Crores	42.74%	29.92%
AOPs / Joint Venture having taxable income exceeding Rs. 1 Crore	35.88%	25.116%
Partnership Firms/LLPs having taxable income exceeding Rs. 1 Crore	34.94%	24.46%
New Domestic manufacturing company exercising option to pay tax as per Section 115BAB	17.16%	12.01%
Domestic company exercising option to pay tax as per Section 115BAA	25.17%	17.62%
Domestic Company having turnover of less than Rs.400 Crores in the F. Y. 2020-21 and avails tax incentives or exemptions or tax holiday	29.12%	20.38%
Other Domestic Companies having taxable income exceeding Rs. 10 Crores	34.94%	24.46%
Co-operative Societies having taxable income exceeding Rs. 10 Crore	34.94%	24.46%

1.8 RATES OF TDS APPLICABLE FOR THE F. Y. 2022-23 DEPENDING UPON THE CATEGORY OF RECIPIENT WITH RESPECT TO THE IMPORTANT PAYMENTS MADE BY THE BUILDERS / DEVELOPERS

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
193	**Interest on Debenture issued by a Company** Basic exemption Rs. 5000/-, where the payee is a resident individual or HUF	10%	10%	10%
	Interest on listed Securities of a Company held in dematerialized form	Nil	Nil	Nil
194	**Dividends** (Basic exemption limit Rs.5,000/-)	10%	10%	10%
194K	**Dividends on Units** (Basic exemption limit Rs.5,000/-)	10%	10%	10%
194A	**Interest other than interest on securities** i.e. Interest on loan etc. (Basic Exemption - Rs.40,000/- (Rs.50,000/- for Senior Citizen w.e.f. 1st April,	10%	10%	10%

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
	2018) where the payer is a Banking Company, Co-op. Society engaged in the business of banking and Post Office; and Basic Exemption – Rs. 5,000/- for all other types of payers)			
194C	**Payments to Contractors** (1) In case of Contract/Sub-Contract (2) Contractor/Sub-Contractor in Transport Business (provided Transporter furnishes his PAN) (Basic Exemption –Rs.30,000/- per Contract subject to overall limit, of Rs.1,00,000/- per annum per contractor) - Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession would be covered by Section 194C in respect of payments made by them to a resident contractor.	1% Nil	2% Nil	2% Nil
194M	**Payment by Individual/ HUF to contractors and professionals** (Exemption up to Rs.50,00,000/-) – Applicable even to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	5%	5%	5%
194H	**Commission or Brokerage** (Basic Exemption –Rs.15,000/)	5%	5%	5%
194-I	**<u>Rent to Residents</u>** - **Rent on Plant, Machinery and Equipment** (Basic Exemption- Rs.2,40,000/- per person) - **Rent for Land & Building or Furniture or Fittings** (Basic Exemption- Rs.2,40,000/- per person)	2% 10%	2% 10%	2% 10%

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
194-IB	**Rent payable by Individuals/ HUFs for use of Land or Building in excess of Rs.50,000/- per month or part of the month** – Applicable to Individuals/ HUFs whose total turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession	5%	5%	5%
194-IA	**Consideration for transfer of immovable property (other than agricultural land)** (Basic exemption - Rs.50 lakh) Applies to person other than the person referred to in Section 194LA. TDS is required to be deducted on higher of the Stamp Duty Value or the Transaction Value. (Refer Note No. 1 below)	1%	1%	1%
194-IC	Monetary consideration payable by Developer to the Land owner being Individual / HUF in addition to Non-monetary consideration in the form of constructed area under a specified agreement as defined in Section 45(5A), such as Joint Development Agreement	10%	-	-
194LA	**Payment of compensation/ consideration on compulsory acquisition of certain immovable property** (Basic Exemption - Rs. 2,50,000/-)	10%	10%	10%
194J	**Fees for technical services** (Basic Exemption - Rs. 30,000/- per person, per annum)	1.50%	1.50%	1.50%
194J	**Fees for other professional services** (Basic Exemption - Rs. 30,000/- per person, per annum) – Individuals/ HUFs whose total turnover exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession would be covered by Section 194J in respect of payments made by them of professional fees.	10%	10%	10%

		TDS Rates applicable for different categories of Resident Recipient		
Main Section	**Nature of payment**	**Resident Individual/ HUF/AOP/ BOI**	**Resident Company**	**Resident Firm / LLP**
194J	Remuneration (not in the nature of salary), fees or commission to Directors (w. e. f. 1st July, 2012)	10%	-	-
194N	Cash payments by banks and post office in excess of Rs 1,00,00,000/- in a financial year	2%	NA	NA
194-LBA	Distribution by a Business Trust to its resident unit-holders of any interest or dividend or any income received from renting or leasing or letting out any real estate asset owned directly by it	10%	10%	10%

TDS RATES APPLICABLE TO PAYMENTS MADE TO NON-RESIDENTS

The rates of TDS applicable to payments made to non-residents relevant to the real estate sector, during the period 1st April, 2022 till 31st March, 2023 are tabulated hereunder :

Main Section	**Nature of Payment**	**TDS Rates for different categories of Non-Resident Recipient**	
195	**Payment of consideration exceeding Rs. 1 Crore by any transferee to a non-resident transferor towards purchase of any immovable property situated in India :**	**Non-Resident / Non Corporate Person (including surcharge)**	**Foreign Company (including surcharge)**
	For a period exceeding 24 months	23.92%	21.84%
	For a period up to 24 months	35.88%	43.68%
195	**Dividends** (Refer Note No. 2 below)	20% or rate prescribed in DTAA, whichever is less*	20% or rate prescribed in DTAA, whichever is less*
194LBA	**Distribution by a Business Trust to its non-resident unit-holders (not being a company) or a foreign company of -**	**Non-Resident (not being a company)***	**Foreign Company***
	Income being in the nature of interest income	5%	5%
	Income being in the nature of dividend income	10%	10%
	Income being in the nature of rent from renting or leasing or letting out any real estate asset owned directly by it	30%	30%

* Subject to applicable Surcharge and HEC.

Notes:

1. **TDS on consideration for transfer of immovable property (other than agricultural land) [Section 194-IA]**

   With effect from 1st September, 2019, the term "consideration for immovable property" to include all charges in the nature of club membership fees, car parking fees, electricity and water facility fees, maintenance fees, advance fees or any other charges of similar nature, which are incidental to transfer of the immovable property.

   It is pertinent to note that with effect from 1st April, 2022, TDS on transfer of immovable property (other than agricultural land) is required to be deducted on higher of the Stamp Duty Value or the Transaction Value. For more discussion on this topic, please refer to para 2.1 below hereafter.

2. **Rate of TDS on dividend distributed to a Non-resident or Foreign Company [Section 195]**

   With effect from 1st April, 2020, domestic companies distributing dividends to its non-resident shareholders are required to deduct tax at source @ 20%. However, where dividend income of a non-resident person is chargeable to tax at the reduced rate as per the provisions of DTAA, then tax shall be deducted at a rate provided under DTAA.

3. **Time of deduction of tax**

   Except in case of salary (wherein tax is to be deducted at the time of payment), tax is to be deducted at the time of payment or credit, whichever is earlier.

4. **Time of deposit of tax**

   All sums deducted at source shall be deposited with the government within 7 days from the end of the month in which the deduction is made and where payment is made under Section 194-IA (i.e. TDS on Purchase of Immovable Property) or Section 194-IB (Rent), the amount shall be deposit within 30 days from the end of the month in which it was deducted. However, where the amount is credited or paid to the account of the payee in the month of March, the tax is required to be deposited with the government on or before 30 April.

5. **Mode of making payment of Tax**

   All company-deductors who are liable to tax audit have to make payment of tax by electronic mode. Others can make payment of tax either physically or by electronic mode.

6. **TDS Return**

Person deducting tax is required to file quarterly statements for the quarter ending on 30 June, 30 September, 31 December and 31 March in each financial year, in Form 26Q (Form 24Q for Salary), on or before 31 July, 31 October, 31 January, and 31 May respectively. Form 26Q and Form 24Q are to be filed electronically.

7. **Certificate for tax deduction in case of non-salary payments**

TDS Certificate in Form 16A is required to be issued on quarterly basis within 15 days from the due date of furnishing the statement of TDS i.e. on or before 15 August, 15 November, 15 February and 15 June for quarters ended 30 June, 30 September, 31 December and 31 March respectively.

8. **Certificate for tax deduction in case of salary payments**

TDS Certificate in Form 16 is required to be issued on annual basis by 31 May of the financial year immediately following the financial year in which the income was paid and tax deducted.

9. **Higher TDS rate of 20% for not furnishing PAN**

In case the payee does furnish his / her / its PAN to the payer, tax shall be deducted at higher of the rates specified in the relevant provisions of the Act or at the rates in force or 20%.

10. **Liability of Individual or HUF to deduct tax at source**

Individuals and HUFs are liable to deduct tax at source in case of Salary payments under Section 192, Interest other than securities under Section 194A, consideration payable for transfer of an immovable property under Section 194-IA, rent payable for use of land and building under Section 194-IB and payments to contractors and professionals under Section 194M, even if their turnover does not exceed Rs.1 Crore in case of business or Rs.50 Lakhs in case of profession.

11. **Consequence for delay in deposit of tax at source**

As per the provisions of Section 201(1A), in case of delay in deposit of tax at source, the assessee shall be liable to pay interest @ 1% per month from the date the tax was deductible to the date on which tax is deducted and @ 1.5% per month from the date of tax deduction till the date of tax payment to the Government.

12. **No Penalty in certain cases**

As per the provisions of Section 201 read with Section 201(1A), any person who fails to deduct the whole or any part of the tax at source on the sum **paid to a resident** or on the sum credited to the account **of the resident**, shall not be deemed to be an assessee in default in respect of such tax if the resident-payee:

(a) Has furnished his return of income under Section 139;

(b) Has taken into account such sum for computing income in such return of income; and

(c) Has paid tax due on the income declared by him in such return of income, and the resident-payee furnishes a certificate to this effect from a chartered accountant in the prescribed form. Accordingly, no penalty shall be leviable on such person under Section 221. However, such person shall still be liable to pay interest under Section 201(1A).

(d) Furthermore, if any person does not deduct the whole or any part of the tax at source or after deducting fails to pay the tax, he shall be liable to pay simple interest under Section 201(1A) as specified in Para 11 above.

13. Recently the Special Court of Economic Offence, Bengaluru in case of Income Tax Department TDS Ward – 1(3), Bengaluru vs M/s Geodesic Techniques Pvt Ltd and Others has held that if TDS is late deposited along with Interest and Penalty with the government department then no prosecution shall be initiated u/s 276B.

2. AMENDMENTS RELATED TO TRANSACTIONS IN IMMOVABLE PROPERTIES

2.1 TDS on sale of immovable property (other than agricultural land) – Section 194-IA

Background

Section 194-IA casts an obligation on the buyer of an immovable property to deduct tax @ 1% of consideration for transfer of immovable property if the transferor is a resident. Further, such tax is to be deducted only if the consideration for the transaction is Rs.50 lakh or more.

Amendment made

(a) Section 194-IA has been amended to provide for deduction of tax at source @ 1% on higher of the stamp duty value or the transaction value. Further, no deduction is required to be made where the consideration for transfer and the stamp duty value are both less than Rs.50 lakhs.

(b) An explanation to the phrase "stamp duty value" has been provided referring to Section 56(2)(vii) viz. the value adopted or assessed or assessable by any authority of the Central Government or a State government for the purpose of payment of stamp duty in respect of an immovable property.

Our Comments

(a) It may be noted that the provisions for taxation on transfer of immovable property (sections 43CA or 50C) state that the transaction value itself could be considered as consideration where the variation between the transaction value and stamp duty value is **less than 10%, No such leeway is provided in section 194-IA**. This could result in a situation where taxation to the seller is on transaction value but TDS u/s. 194-IA could be on the stamp duty value.

Example:

Sr.No	Transaction / Agreement Value	Stamp Duty Value	Value for Section 43CA	Value for TDS Purpose
1	100	105	100	105
2	90	105	105	105
3	110	105	110	110

(b) In case of primary sale of an immovable property from a developer to the purchaser, the purchaser would pay the total consideration in various instalments. Before making payment of any instalment, the purchaser is required to furnish and upload prescribed Form 26QB whereunder the purchaser is required to state the total consideration amount payable, the instalment presently being paid and the system automatically computes 1% TDS amount on such instalment-payment.

Now Form 26QB will have to be amended to provide for computation and deduction of tax at source on the higher of the consideration amount or the stamp duty value.

(c) Furthermore, in case of sale of an immovable property the Stamp Duty Value would be determined and known at the time of registration of the sale deed or agreement of sale. Hence, additional amount of TDS on differential value may have to be deducted upon registration of the sale deed or agreement of sale and paid within prescribed time period.

This amendment is applicable with effect from 1st April, 2022.

2.2 Transfer of Money, Capital Asset or Stock-in-Trade to a partner on Dissolution or Reconstitution of Firm etc. [Sections 9B, 45(4) and 48]

Background

The existing provisions of Section 45(4) provides that profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on dissolution of a firm or other AOP or BOI or otherwise, shall be chargeable to tax as the income of such firm or other AOP or BOI of the previous year in which the said transfer takes place. Further, the FMV of the asset on the date of such transfer shall be deemed to be full value of the consideration for the purpose of Section 48.

In order to cover situations where assets are revalued or self-generated assets are recorded in the books of accounts of the firm at the time of reconstitution of the firm and any money is paid to partner or member which is in excess of his capital contribution or any capital asset or stock-in-trade is transferred to the partner or member the FMV of which is in excess of the capital contribution of the recipient-partner / member, the Finance Act 2021 has replaced the entire sub-section (4) to Section 45 and inserted a new Section 9B with retrospective effect from 1st April, 2021 i.e. from F. Y. 2020-21 relevant to A. Y. 2021-22 and onwards as under :

Amendments made

A. **Section 45(4)** has been **substituted** to provide that profits and gains arising from **receipt** of **money** or **capital asset** by a specified person (i.e. a partner of a firm or member of other AOP / BOI) from a specified entity (i.e. a firm or other AOP / BOI) in connection with the **reconstitution** of the specified entity, shall be taxed in the hands of the specified entity under the head "capital gains" in the previous year in which the such money or capital asset is received by the specified person. The section lays down the formula for computing capital gains as follows :

A = B + C – D

A = Income chargeable to income-tax under this provision as income of the firm under the head 'Capital gains';

B = Value of money received by the specified person on the date of such receipt;

C = FMV of the capital asset received by the specified person on the date of such receipt; and

D = Balance in the capital account (represented in any manner) of the specified person in the books of account of the specified entity at the time of its reconstitution (excluding / ignoring any increase to capital account due to revaluation of any asset, self-generated

goodwill (goodwill acquired without incurring any cost for purchase or which has been generated during the course of business or profession) or other self-generated assets).

Where the value of A is negative, it shall be deemed to be *nil*.

Reconstitution of specified entity has been defined to cover retirement of one or more partners, admission of one or more partners and change in profit/ loss sharing ratio of partners. .

B. A new Section 9B has been inserted to provide that where a specified person receives during the previous year any **capital asset or stock-in-trade or both** from a specified entity in connection with the **dissolution** or **reconstitution of such specified entity**, then the specified entity shall be deemed to have transferred such capital asset or stock-in-trade or both to the specified person in the year in which such capital asset or stock in trade or both are received by that specified person and the profits and gains arising therefrom shall be taxable in the hands of the specified entity under the head 'Income from business or profession' or 'Capital gain' as the case may be of the previous year in which stock-in-trade or capital asset were received by the specified person. The FMV of the capital asset or stock-in-trade on the date of its receipt by the specified person shall be deemed to be the full value of consideration while computing income arising from deemed transfer of such capital asset or stock-in-trade by the specified entity.

Comment

Section 9B creates a deeming fiction that the distribution of capital asset or stock-in-trade by a firm to its partner is a transfer. This is done to overrule various judicial rulings which held that the distribution, division or allotment of assets by a partnership firm upon dissolution or reconstitution is nothing but a mutual adjustment of rights between the partners. Reference may be had to the decision of the Supreme Court in the case of *Malabar Fisheries Co.* v. *CIT* [1979] 2 Taxman 409 (SC).

C. Explanation 2 to Section 45(4) provides that the provisions of sub-section (4) of Section 45 shall operate independently to the provisions of Section 9B.

D. Section 48 prescribes the manner of computing the income under the head 'capital gains'. As per this section, the capital gain is to be computed by reducing the cost of acquisition, cost of improvement and expense attributable to transfer from the full value of consideration of the capital asset.

Section 48 been amended to mitigate the double taxation arising due to introduction of Section 9B and substitution of Section 45(4). The new sub-clause (*iii*) provides that profits or gains chargeable to

tax under Section 45(4) which is attributable to capital asset being transferred by the specified entity shall be reduced/ deducted while computing capital gains in the hands of the specified entity in respect of such capital asset.

E. Determination of the Holding Period

Notification No. 76/2021/F. No. 370142/22/2021-TPL dated 2nd July, 2021 has amended Rule 8AA to provide that in case of capital gains chargeable under section 45(4), the amount of such capital gains (whole or part of it) shall de deemed to be from transfer of short term/long term capital asset based on the criteria discussed below:

Capital asset which is short-term under the Act, at the time of taxation of capital gains under section 45(4)	Short term capital gains
Capital asset forming part of block of assets	
Self-generated goodwill/asset	
Any other capital asset not covered above and, which is long-term capital asset under the IT Act, at the time of taxation of capital gains under section 45(4)	Long term capital gains

F. Attribution Rules

(i) Rule 8AB of the Income Tax Rules, 1962 notified vide Notification No. 76/2021/F. No. 370142/22/2021-TPL dated 2nd July 2021 provides for the manner of attribution of capital gains chargeable under Section 45(4) in the hands of specified entity, to the remaining capital assets of the specified entity, so that when such capital assets are transferred in future, the amount attributed to such capital assets is allowed as a deduction from the full value of the consideration received or accruing as a result of transfer of such capital asset and to that extent the specified entity does not pay tax again on the same amount.

(ii) The following table summarizes the attribution rules:

Particulars	Attribution		
Relates to revaluation of any capital asset of specified entity or Relates to valuation of self-generated goodwill/ asset of specified entity	Capital gains charged under Section 45(4)	X	Increase in, or recognition of, value of that asset
			aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation

Particulars	Attribution		
Capital gain related only to capital asset received by the partner from the specified entity			No attribution
Capital gain does not relate to any of the above categories			No attribution

(iii) Revaluation to be based on a valuation report obtained from a registered valuer. Specified entity to furnish details in prescribed Form No. 5C on or before the due date of filing of return.

Comments

(a) The aforesaid amendments are retrospective and shall also apply even to the concluded transactions that have taken place during the period from 1st April, 2020 to 31st March, 2021.

(b) When a partner disassociates from the partnership firm in lieu of transfer of a property by such partnership firm to him, two separate transactions take place. One, transfer of partnership interest by the partner and second, transfer of property by the firm to the partner. The former transaction is dealt with under Section 45(4) and the latter in Section 9B.

(c) Section 9B applies to a case where **capital asset or stock-in-trade** is received by a specified person from a specified entity at the time of reconstitution of the specified entity. **This tax arises in the hands of the specified entity** and the same is required to be paid by the specified entity since there is transfer of the assets of the specified entity by the specified entity.

Section 45(4) applies to case where money or **capital asset** is received by a specified person from a specified entity at the time of reconstitution of the specified entity. **This tax is of specified person**, however by virtue of deeming provisions of Section 45(4) it is chargeable to tax in the hands of the specified entity and the same is payable by the specified entity.

Section 45(4) and Section 9B overlap insofar as the taxation on transfer of a capital asset is concerned.

(d) Revaluation of capital asset done in the past years i.e. prior to 1st April, 2020 will have to be ignored for the purposes of computing the capital gains under Section 9B.

(e) Reconstitution now includes retirement of partners also. Accordingly, profits and gains arising on distribution of a capital asset/ money/ stock-in-trade by a partnership firm to its retiring partner has now become taxable in the hands of the partnership firm as capital gains/ business profits by virtue of Sections 9B and 45(4).

(f) Section 45(4) provides for the computation of capital gain which arises to a partner on extinguishment or relinquishment of his right in the firm in connection with reconstitution of the firm. Though the income arises to the partner, it is deemed as income of the specified entity vis-a-vis for its own income under Section 9B and for income arising to the partner under Section 45(4).

(g) The attribution rules currently prescribed by Rule 8AB do not apply to transfer of stock-in-trade by the specified entity to the specified person. Hence, proper planning is required to ensure that the monies paid to the specified person in excess of his capital account on account of revaluation of the stock-in-trade at the time of reconstitution of the specified entity or the transfer of the stock-in-trade at FMV to the specified person by the specified entity at the time of reconstitution of the specified entity, with respect to which tax is paid by the specified entity under Section 9B or Section 45(4) is available as cost deduction in the hands of the specified entity on subsequent sale of such stock-in-trade by the specified entity.

(h) If the tax payable under Section 45(4) is debited to the capital account of the specified person and effectively the tax amount being borne by the specified person and not the specified entity, then the issue which arises is whether the specified entity will still be eligible to attribute under Rule 8AB the FMV with reference to which it has paid or liable to pay tax under Section 45(4)? Hence, adequate care needs to be taken to ensure that attribution is available to the specified entity.

(i) If the tax under Section 9B or 45(4) is borne by the specified person, then it may lead to a debit balance in the capital account of the specified person after payment of the monies due to them upon reconstitution. Thus, precautions will have to be taken to avoid such situations.

(j) The specified entity will be liable to pay advance tax on the income chargeable to tax under Sections 9B and 45(4).

(k) The following case studies will throw more light on the manner in which Sections 9B and 45(4) would operate under a given circumstance:

Case Study 1 : Facts

- Mr. A, Mr. B and Mr. C are partners of ABC LLP in equal ratio;
- ABC LLP holds multiple land parcels. All the land parcels are held as

long-term capital assets;

- Partner A wishes to retire from the firm;
- Partner A's account is proposed to be settled as under:-
  - Cash payment - 11
  - Distribution of land parcel Z – FMV 50
- The balance sheet of ABC LLP is provided below:

Liability	Amount	Asset	Amount
Partner's Capital	30	Land parcel X (FMV 90)	10
Mr. A – 10		Land parcel Y (FMV 50)	10
Mr. B – 10		Land parcel Z (FMV 50)	10
Mr. C – 10			
Total	**30**	**Total**	**30**

Implications under Section 9B – Capital Gains in the hands of the Firm:

Particulars	Amount
Sale consideration (FMV of land parcel Z)	50
Less:- Indexed cost of acquisition of land (assumed)	15
Long term capital gains chargeable u/s . 9B in hands of the firm	35
Capital gains tax payable by the firm @ 20% (without applying Surcharge and HEC for simplicity)	7

Capital account of partners on account of this transaction shall be as under:-

Particulars	Amount
Sale consideration (FMV of land parcel Z)	50
Less :- Cost of land for the LLP (as per books)	10
Profit to the firm (before tax)	40
Capital gains tax paid by the firm	7
Post-tax profit of the firm (this amount will be equally distributed to all 3 partners)	33
Capital Balance of each of the partners (Old Balance 10 + Profit 11)	21

Implications under Section 45(4) – Capital Gains chargeable to tax in the hands of Firm :

Particulars	Description	Amount
Sale consideration	Value of any money received by partner from firm on the date of such receipt (A)	11
	FMV of the capital asset received by partner from firm on the date of such receipt (B)	50
Cost of acquisition	Balance in the capital account of partner in the books of account of the firm at the time of reconstitution (C)	(21)
Capital Gains	**A + B - C**	**40**

For the firm, capital gains of Rs. 40 shall be chargeable under Section 45(4), in addition to Rs. 35 which is chargeable to tax under Section 9B.

The cost of acquisition of land parcel Z in the hands of Mr. A shall be Rs. 50.

Attribution of capital gains under section 45(4) read with Rule 8AB to remaining capital assets of firm will be computed as follows :

Particulars	Cost	FMV	Increase in value	Proportion	Attribution of capital gains charged u/s 45(4)
Land parcel X	10	90	80	66.67%	27
Land parcel Y	10	50	40	33.33%	13
Total			**120**		**40**

The amount of 27 and 13 shall be attributed to land parcel X and land parcel Y respectively. When either of land parcels X or Y is sold by the LLP in the future, the amount attributed at the time of taxation under section 45(4), shall be reduced from sale consideration while computing capital gains on sale of such land.

Case Study2 : Facts

- Mr. A, Mr. B and Mr. C are partners of ABC LLP
- The partner's profit-sharing ratio ('PSR') and capital contribution is equal in ratio
- The partner's aggregate contribution is Rs. 12 lakhs (Rs. 4 lakhs by each partner)
- ABC LLP acquired listed shares out of capital contributed by partners
- The current FMV of shares is Rs. 24 lakhs and they are held as long term capital asset
- Mr. A intends to retire from the LLP and it has been decided to settle his account by paying cash considering FMV of shares held by LLP
- Mr. A is paid Rs. 8 lakhs on overall basis :
  - Rs. 4 lakhs pertaining to capital contribution; and
  - Rs. 4 lakhs as 1/3rd share in value appreciation of shares by Rs. 12 lakhs

Section 9B – No tax implication considering there is no transfer of capital asset or stock-in-trade by LLP

Section 45(4):

Money received (Rs. 8 lakhs) in excess of capital balance (Rs. 4 lakhs) shall be taxable as capital gains in the hands of LLP. Therefore, Rs. 4 lakhs taxable as capital gains in case of LLP

Cost increase by Rs. 4 lakhs (attributable to Mr. A's share in value appreciation) and the same is deductible from sales consideration on transfer of such shares in future by LLP.

2.3 **Latest Supreme Court Judgement on Revaluation of Asset of Partnership Firms/LLP**

CIT v. Mansukh Dyeing and Printing Mills, Civil Appeal No. 8258 of 2022 (SC) – A. Y. 1993-94 & 1994-95

The Supreme Court held that the event of revaluation of assets of the partnership firm during the Course of Reconstitution and credit of such revaluation amount to the capital accounts of the partners itself was a taxable event in the hands of the partnership firm, holding that revaluation of partnership assets is a deemed transfer of its assets in favour of the partners. The event of revaluation of assets and crediting of the revaluation amount to the capital accounts of the partners and subsequent withdrawal can be said to be in effect distribution of the assets to the partners. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners can be said to be "transfer" and which fall in the category of "OTHERWISE" and therefore, the provision of Section 45(4) inserted by Finance Act, 1987 w.e.f. 01.04.1988 shall be applicable.

Supreme Court affirmed the view taken by the Bombay High Court in the case of A. N. Naik Associates & Ors. (2004) 265 ITR 346 (Bom) that the expression "otherwise" has to be read with the words "transfer of capital assets" by way of distribution of capital assets. The Bombay High Court expressly stated that the word "otherwise" takes into its sweep not only cases of dissolution but also cases of subsisting partners of a partnership, transferring assets in favour of a retiring partner.

Our Comments

1. (a) In all case of reconstitution, reopening of assessments cannot be ruled out.

   (b) This will involve litigations, additional tax liabilities on account of tax interest penalty etc.

   (c) The firm may not have the requisite cash flow to pay tax on account of revaluation and the partners who has availed benefit, might have retired.

2. In the absence of specific provision, the firm may find it difficult to claim deduction of the revaluation amount with reference to which the tax is paid.

3. Further after introduction of new Section 9B and Section 45(4) read with Rule 8AB, the Supreme Court judgement in the case of CIT v. Mansukh Dyeing and Printing Mills will have limited application prospectively.

4. As per Supreme Court judgment entire revaluation is taxable. However as per new provisions of Section 9B and Section 45(4) tax is applicable on the assets taken over by the retiring partner or revaluation of any specified assets of the firm against which capital is withdrawn by retiring partner.

5. Any reconstitution of the firm by way of Dissolution, Admission or change of PSR would no longer by tax efficient in view of the stringent provision of Section 9B and Section 45(4) read with Rule 8AB.

6. Partnership Firm/LLP has lost its utility in case of Real Estate as investments or business especially where it is not a family business.

7. Importance of Book Entries and consideration clause in Reconstitution Deeds have assumed greater importance and critical point in whole exercise.

2.4 Extending Time Limit for availing deduction of profits of Affordable Housing Projects [Section 80-IBA]

Background

Section 80-IBA provides a deduction to assessee of an amount equal to 100% of profits and gains from business of developing and building of affordable housing projects, subject to the fulfillment of specified conditions. One of the conditions provided in Section 80-IBA is that the project is approved by the competent authority after 1st June, 2016, but before 31st March, 2021.

Amendment made

A. With a view to making more homes available under affordable housing, the Finance Act 2021 has amended Section 80-IBA with effect from 1st April, 2022 to provide that the deduction under this section would be available in respect of profits arising from affordable housing projects which are approved by the competent authority before 31st March, 2022 (thereby granting an extension of one more year for approval of the housing project).

   The fulfillment of other conditions as stated in Section 80-IBA continues to apply for availing deduction of the profits and gains in respect of projects approved by the competent authority on or after 1st September, 2019 but before 31st March, 2022.

B. Furthermore, to help migrant labourers and to promote affordable rental housing, the Finance Act 2021 with effect from 1st April, 2022 has extended the scope of deduction under Section 80-IBA to such Affordable Rental Housing Projects which are notified by the Central Government in the Official Gazette on or before 31st March, 2022 and fulfilling such conditions as may be specified in the said notification.

Comments

(a) The deduction under Section 80-IBA was initially available in respect of affordable housing projects approved by the competent authority after 1st June, 2016 but before 31st March, 2019. Thereafter, the Finance Act, 2019 amended Section 80-IBA to provide deduction in respect of affordable housing Projects approved by the competent authority on or after 1st September, 2019 but before 31st March, 2020. **Hence, affordable housing projects approved by the competent authority between 1st April, 2019 and 31st August, 2019 may not be eligible to claim deduction under Section 80-IBA**, unless revised approval is obtained within the framework.

(b) The threshold of the stamp duty value of residential units comprised in affordable housing project applies only in respect of housing projects approved on or after 1st September, 2019 but before 31st March, 2022, but not to the residential units comprised in affordable housing project approved between 1st June, 2016 to 31st August, 2019.

(c) (i) Companies claiming deduction of an amount equal to 100% of the profits and gains derived from the business of developing and building affordable housing projects under Section 80-IBA and who have not opted for concessional tax regime under Section 115BAA, are still liable to pay MAT on their book profits at the rate of 15% (with applicable Surcharge) viz. 18.5%.

(ii) Such companies shall be liable to pay tax on their normal income @ 25% if their turnover for the F. Y. 2020-21 is up to Rs.400 Crores or @ 30% in other cases.

(iii) **However, if such company opts for concessional / reduced tax regime under Section 115BAA @ 22%, then such company shall neither be eligible to claim deduction under Section 80-IBA nor shall it be liable to pay MAT on its book profits and shall also not be entitled to carry forward and set off its past MAT credit**.

(d) The Central Government is yet to notify affordable rental housing projects and the conditions to be complied / fulfilled by such projects, which would entitle 100% deduction of the profits and gains derived from the business of developing and building such projects under Section 80-IBA.

2.5 Tax Incentive for purchase of "affordable house" [Section 80EEA]

Background

(a) In order to promote growth in the affordable housing sector, Section 80EEA provides for a deduction of up to Rs.1,50,000/- to an Individual on interest paid on housing loan taken from the financial

institution, provided *inter alia* the stamp duty value of such residential house property does not exceed Rs.45 Lakhs and loan has been sanctioned by the financial institution during the period 1st April 2019 to 31st March 2021.

Similarly deduction of up to Rs.50,000/- is available to an Individual under Section 80EE on interest paid on housing loan taken from the financial institution, provided *inter alia* the stamp duty value of such residential house property does not exceed Rs.35 Lakhs and loan has been sanctioned by the financial institution during the period 1 April 2016 to 31 March 2017.

(b) The expressions "financial institution" and "stamp duty value" have been defined under Section 80EEA(5).

(c) The deduction of interest under Section 80EEA is available only if the Individual-assessee is not eligible for deduction under Section 80EE. Furthermore, if the deduction is claimed under Section 80EEA, then no deduction shall be allowed in respect of such interest under any other provisions of the Act for the same or for any other assessment year.

Amendment made

The Finance Act 2021 with effect from 1st April, 2022 has extended the period of sanctioning of the housing loan to 31st March, 2022 from the present 31st March, 2021.

Comment

It is pertinent to note that that in addition to the interest payment deduction available to an individual under Sections 80EE or 80EEA, he is also entitled to claim additional deduction of the interest payment on the housing loan of up to a maximum amount of Rs.2 Lakhs under Section 24 for self-occupied house property. However, where the house property is acquired out of borrowed funds is let out then the entire interest payment can be claimed as deduction against the rental income.

3. PROFITS AND GAINS FROM BUSINESS OR PROFESSION & CAPITAL GAIN

3.1 Disallowance of Expenditure in relation to Exempt Income — Section 14A

Background

(a) Section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions of the Act (exempt income).

(b) There is a judicial controversy whether disallowance u/s. 14A can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.

(c) CBDT vide Circular No. 5/2014, dated 11the February, 2014, has clarified that the purpose of introducing Section 14A is that the expenditure relatable to earning of exempt income have to be considered for disallowance, irrespective of whether any such income has been earned during the financial year or not.

Amendment made

(a) In order to make the intention of the legislation clear and to make it free from any misinterpretation, an Explanation to section 14A is inserted to clarify that notwithstanding anything to the contrary contained in the Act, the provisions of section 14A shall apply even in a case where exempt income has not accrued or arisen or has not been received, but the expenditure relating to such exempt income has been incurred during the year.

(b) Sub-section (1) of the said section is also amended so as to include a non-obstante clause in respect of other provisions of the Income-tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in the Act.

3.2 **Disallowance of tax — Section 40(a)(ii)**

Background and Amendment

(a) Presently, tax levied on profits and gains of any business or profession is not allowed as a deduction. Certain courts (including the Hon'ble Bombay High Court in the case of *Sesa Goa Limited vs. JCIT (2020) 117 taxmann.com 96* and Hon'ble Rajasthan High Court in the case of *Chambal Fertilizers & Chemicals Ltd vs. JCIT: D.B Income-tax Appeal No. 52/2018 decided on 31-07-2018*) have held that the term "tax" would not include cess levied on tax and have thus, allowed a deduction in respect of the cess paid.

(b) A retrospective amendment to section 40(a)(ii) is now made by insertion of a new Explanation 3 to provide that the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax and accordingly, no deduction shall be allowed in respect of the same.

(b) Consequential amendments have been made as follows :

(i) A new sub-section (18) to Section 155 is inserted to provide that claim of deduction of 'surcharge' or 'cess' in any previous year shall be deemed as under-reporting of income for the purpose of section 270A(3).

It is also provided that the provisions of section 270A(6) which provides exceptions to under-reported income, shall not be applicable in this case.

(ii) The new sub-section (18) to section 155 empowers the AO to re-compute the total income of the assessee for such a previous year in which he claimed deduction of surcharge or cess.

The assessee shall be liable to pay tax on it along with a penalty of 50% of the amount of tax payable on under-reported income.

(iii) Section 154 authorises the AO to rectify any mistake in the order. Sub-section (7) of section 154 deals with the limitation period for making such rectification. It provides that an order of rectification is required to be passed within 4 years from the end of the financial year in which the order (sought to be rectified) was passed.

The new inserted sub-section (18) of section 155 provides that the period of 4 years specified u/s. 154(7) is to be reckoned from the end of the previous year commencing on the first day of April 2021.

This amendment is applicable retrospectively with effect from 1st April, 2005 i.e. from A. Y. 2005-06 and onwards.

3.3 Disallowance on conversion of interest payable into debentures — Section 43B

Background

(a) At present, interest payable on existing loan or borrowing from certain entities (such as public financial institutions, State financial corporation, deposit taking NBFCs, scheduled bank, etc.) is to be allowed as deduction under section 43B in the year of actual payment. However, in recent Supreme Court decision in the case of *Aqua Technologies Ltd. vs. CIT (Civil Appeal No. 4742-4743 of 2021), dated 11th August 2021*, it was held that the interest payable can be said to have been actually paid where the interest payable was converted into debentures.

(b) Reversing the decision of the Supreme Court decision (supra), new Explanation 3C, 3CA and 3CD to section 43B is inserted to provide that any interest payable which has been converted into debenture or any instrument, by which the liability to pay is deferred to a future date, shall not be deemed to have been actually paid and hence, would be disallowed u/s. 43B.

4. INCOME FROM OTHER SOURCES

4.1 Exemption for COVID-19 compensation — Sections 56(2)(x)(c) and 17(2)

Background

(a) The Finance Ministry had issued a press release dated 25th June 2021 exempting an amount received by a taxpayer for medical treatment from employer or from any other person for treatment of COVID-19 illness during the Financial Year 2019-20 and subsequent years. It was also stated that the necessary legislative amendments shall be proposed in due course of time.

(b) Accordingly, new clauses (XII) and (XIII) are inserted in the proviso to section 56(2)(x)(c), to exempt any sums of money or property from the provisions of section 56(2)(x), as follows:

(i) Any sums of money received by an individual from any person in respect of his medical treatment or treatment of any member of his family for any illness related to COVID-19, to the extent of his expenditure actually incurred; or

(ii) Any sums of money received by a member of the family of a deceased person from the employer of the deceased person with no limit; or from any other person to the extent of Rs.10 lakhs, where the cause of death of such person is illness related to COVID-19 and the payment is received within 12 months from the date of death and such other conditions as notified in the Official Gazette are satisfied.

For this purpose, the term 'family' shall have the same meaning as defined in Explanation 1 to section 10(5), i.e. "the spouse, children of the individual; and the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual".

(c) Further, a new sub-clause (c) is inserted in clause (ii) of the first proviso to section 17(2), whereby any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or on treatment of any family member for any illness relating to COVID-19 shall not be regarded as a taxable perquisite, subject to such conditions as notified in the Official Gazette.

These amendments are applicable retrospectively from A. Y. 2020-21.

4.2 Cash Credits — Section 68

Background

(a) Section 68 provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(b) The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited as loan or borrowing.

(c) Vide Finance Act, 2012, a proviso was inserted in section 68 to provide that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, the judicial decisions have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor.

(d) Section 68 is amended to provide for a provision similar to the one provided for share application money, share capital, share premium, in respect of loan or borrowing.

Amendment made

(a) Section 68 is amended by replacing the entire first proviso with a new proviso to provide that where a credited sum received from any person consists of loan or borrowing or any such amount by whatever name called, assessee's explanation about the nature and source of such sum shall not be deemed to be satisfactory unless an explanation is also provided about the nature and source of the person in whose name such credit is recorded in the books of the assessee to the satisfaction of the AO. This means that the borrower is now also required to prove the source of funds in the hands of the lender.

However, such proviso will not apply if the sum is credited in the name of a venture capital fund or a venture capital company as referred to in section 10(23FB).

4.3 Discontinuation of special rate of tax on dividends received from foreign companies - Section 115BBD

Background

Section 115BBD provides for a concessional rate of tax of 15% on the dividend income earned by an Indian company from a foreign company in which the Indian company holds 26% or more in nominal value of equity shares. This rate was aligned to the rate of tax provided under section 115-O of the Act ("**specified foreign company**").

The Finance Act, 2020 abolished the dividend distribution tax provided in section 115-O to, *inter-alia*, provide that dividend shall be taxed in the hands of the shareholder at applicable rates plus surcharge and cess.

In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis-à-vis dividend received from domestic companies, section 115BBD is amended to provide that the provisions of this section shall not apply to any assessment year beginning on or after the 1st day of April, 2023. In other words, dividends received by Indian company from specified foreign company on or before 31st March 2022 shall only be eligible for special rate of tax.

5. SET OFF OF LOSSES

5.1 Restriction on set off of a loss against undisclosed income (search cases) — Section 79A

Background & Amendment made

(a) Chapter VI of the Act deals with aggregation of income and set off or carry forward of loss. Sections 70 to 80 contain specific provisions relating to set off or carry forward and set off of losses while computing the income under various heads and with respect to different classes of persons.

(b) Currently there is no provision in the Act to disallow the claim of set off of losses or unabsorbed depreciation against undisclosed income relating to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings.

(c) Allowing the adjustment of undisclosed income detected as a result of search or requisition or survey against the loss or unabsorbed depreciation is resulting in short levy of tax. The provision of non-adjustment of loss or unabsorbed depreciation against undisclosed income detected as a result of search or requisition or survey would help in ensuring that proper tax is paid on income detected due to a search or survey and also result in increased deterrence against tax evasion.

(d) Therefore a new section 79A is inserted to provide that any loss, either of the current period or brought forward, or unabsorbed depreciation cannot be adjusted against 'undisclosed income' detected in the aforesaid cases.

For this purpose, "undisclosed income" is defined as-

(1) any income of the previous year or any entry in the books of accounts or other documents or transactions, detected during a search or requisition or survey, which has not been recorded in the books of accounts or has not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or before the date of the search or requisition or survey, or

(2) any expenditure recorded in the books of accounts or other documents, which are found to be false and would not have been detected but for the search or requisition or survey.

This amendment is applicable with effect from 1st April, 2022 and will accordingly apply in relation to A. Y. 2022-23 and onwards.

6. TDS / TCS PROVISIONS

6.1 Higher rate of TDS/TCS prescribed for non-filers of Income Tax Returns - Sections 206AB, 2O6CCA and 194-1B

Background

(a) Section 206AB and 206CCA which were introduced in the Act through Finance Act, 2021 mandate a higher rate of TDS (as per section 206AB) and TCS (as per section 206CCA) to be deducted/collected in case of such persons, who have not filed their income tax returns in each of the immediately preceding two previous years and in whose case, aggregate TDS and TCS exceeds Rs.50,000/-.

(b) Sections 206AB is not applicable for deduction of tax at source u/s. 192, 192A, 194B, 194BB, 194LBC or 194N.

Amendment made

(a) Sections 206AB and 206CCA are amended to provide that the requirement to deduct/collect higher rate of tax shall also not be applicable to the provisions of sections 194-IA (TDS on sale of immovable property (other than agricultural land)), 194-1B (TDS on payment of rent by certain Individuals and HUF paying rent exceeding Rs.50,000/- per month or part of a month) and 194M (TDS on payment of certain sums by certain Individuals and HUF). These are those TDS provisions, where the payer is not required to obtain TAN. A consequential amendment has also been made in section 194-1B to remove the reference to section 206AB.

(b) The test of the period of non-filing of IT returns as stated in sections 206AB and 206CCA, on payee for applying higher TDS/TCS is also reduced from existing two years to one previous year immediately preceding the current financial year.

These amendments are applicable with effect from 1st April 2022.

6.2 **TDS on the value of benefit or perquisite arising from business or profession - Section 194R**

(a) A new section 194R is introduced to provide for deduction of tax at source in case of a resident @ 10% of the value of any benefit or perquisite, whether convertible into money or not, arising from business or profession, if the value of such benefit or perquisite during the financial year exceeds Rs.20,000/-. However, the term benefit or perquisite is not defined.

(b) This TDS shall be deducted by person providing such benefit or perquisite or in case of a company, the company itself including the principal officer.

(c) The section further proposes to provide that, if the benefit or perquisite is wholly in kind or partly in kind and partly in cash and cash part is not sufficient to meet the TDS deduction, then the person responsible for providing such benefit or perquisite should ensure that tax required to be deducted has been deducted before releasing such benefit or perquisite.

(d) The provisions of section 194R are not applicable to Individuals and HUF, whose total sales, gross receipts or turnover does not exceed Rs.1 crore in case of business or Rs.50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by such person.

(e) The section does not provide any mechanism to determine the value of benefit or perquisite provided in kind.

(f) Deduction of tax at source in case of provision of benefit or perquisite in kind will pose a challenge vis-à-vis cash flow for the person providing such benefit or perquisite.

These amendments are applicable with effect from 1st April 2022. However, the Memorandum mentions that the amendment is effective from 1st July 2022 and that seems to be an error.

7. OTHER AMENDMENTS

7.1 Definition of "Slump Sale" – Section 2(42C)

Background

(a) As per the extant provisions of Section 50B, profits and gains arising from slump sale of an undertaking is chargeable to income-

tax as capital gains. If the undertaking, which is the subject matter of slump sale, is held for less than 36 months, then the profits and gains arsing there from is considered as short-term capital gains, otherwise the profits and gains is considered as long-term capital gains.

Further, as per the extant provisions of Section 2(42C), 'slump sale' was defined to mean transfer of one or more ***undertakings as a result of the sale*** for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. This definition was interpreted by some courts in a manner such that other means of transfer of a capital asset listed in section 2(47), such as exchange, relinquishment etc., are excluded. Reference may be had to the decisions in the case of Motors & General Stores (P.) Ltd., 66 ITR 692 (SC); CIT v. Bharat Bijlee Limited, [2014] 365 ITR 258 (Bom).

(b) At the backdrop of the above judicial precedents, it was widely followed that transfer of undertaking on a going concern basis, without assigning value to the individual assets and liabilities for a non-monetary consideration is a case of 'slump exchange', where provisions of section 50B would not be applicable. This led to gains on slump exchange (which is one of the modes of transfer prescribed) escaping taxation u/s. 50B.

(c) Section 50B(2) provides that where an undertaking or division is transferred, the net worth of such undertaking or division is deemed as the cost of acquisition. Further, the benefit of indexation shall not be available even if the undertaking transferred under the slump sale is deemed as long-term capital asset. The mechanism for the computation of net worth has been provided in the Explanation 2 to Section 50B. It provides that for computing net worth, depreciable assets are taken at written down value and non-depreciable asset at book value. However, capital asset which are fully allowed as deduction under Section 35AD are taken at nil value.

The provisions of Section 50B did not contain any provision for the computation of the full value of consideration in relation to the transfer of the undertaking under a slump sale.

Amendment made by the Finance Act 2021

(A) Against this background the Finance Act, 2021 made the following retrospective amendments effective from 1st April, 2021 i.e. from financial year 2020-21 relevant to assessment year 2021-22 and onwards :

(i) The Finance Act 2021 widened the definition of the term "slump sale" to cover a case of transfer of an undertaking 'by any means' and not just restricted to a case of transfer 'as a

result of the sale'. Hence, slump exchange is now covered as slump sale.

(ii) The Finance Act 2021 also amended Section 50B(2) to provide that in relation to capital assets being an undertaking or division transferred by way of slump sale, -

(I) the net worth of such undertaking or division shall be deemed as the cost of acquisition and the cost of improvement. Further, the benefit of indexation shall not be available even if the undertaking transferred under the slump sale is deemed as long-term capital asset;

(II) The FMV of the capital assets (being an undertaking or division transferred by way of slump sale) as on the date of transfer shall be calculated in the prescribed manner. Such FMV shall be deemed to be full value of the consideration received or accruing as a result of transfer of such capital asset.

Further, a new clause (aa) in Explanation 2 was inserted to provide that the value of capital asset being goodwill, which has not been acquired by the assessee by purchase from previous owner, shall be taken as nil while computing net worth.

The mechanism for the computation of net worth has been provided in the Explanation 2 to Section 50B. It provides that for computing net worth, depreciable assets are taken at written down value and non-depreciable asset at book value. However, capital asset which are fully allowed as deduction under Section 35AD are taken at nil value.

(B) The Ministry of Finance (Department of Revenue), Central Board of Direct Taxes have vide Notification No. 68/2021/F. No. 370142/16/2021-TPL dated 24th May, 2021 notified Income Tax (16th Amendment) Rules, 2021 whereunder Rule 11UAE has been inserted to provide formulae for determining the FMV of the different types of capital assets transferred by way of slump sale for the purposes of computing the capital gains under Section 50B.

Amendment made by the Finance Act 2022

(a) Though the definition of "slump sale" was widened by the Finance Act, 2021 to cover transfer by any means and not merely by sale, it continued to provide that the transfer of the undertaking in such 'sales' should be for a lump sum consideration without assigning values to the individual assets and liabilities.

Therefore, consequential amendment was required to be made to clause (42C) of section 2 to substitute the word "sales" with the word "transfer".

(b) The word 'sales' which was inadvertently appearing in the last sentence of the definition of 'slump sale' as provided in section 2(42C) is substituted by the word 'transfer' and the definition of 'slump sale' would now cover a case of transfer of any undertaking by any means for a lump sum consideration without assigning individual values to assets and liabilities in such 'transfer'.

This amendment is applicable retrospectively with effect from A. Y 2021-22.

7.2 **Amendments related to successor entity subsequent to succession – Sections 170(2A), 170A & 156A**

Background & Amendments made

(a) Chapter XV of the Act refers to liability in certain special cases. Section 170*, inter-alia*, governs the procedure of taxation in case of succession to business which is discussed as under.

(b) Though section 170 provides for assessment in cases of succession otherwise than by death. In practice once an entity starts the process of reorganization by filing an application with the adjudicating authority or any High Court, the period of time involved in coming to a conclusion with respect to such reorganization is found to be a long-drawn process and is not time-bound. The reorganization often is from a preceding date. During the pendency of the court proceedings the income tax proceedings and assessments are carried on and often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.

(c) Hence, till the decision of the court is received, the proceedings under the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court. Therefore, with a view to clarify that such proceedings under the Act are valid, a new sub-section (2A) to section 170 is inserted to provide that the assessment or other proceedings pending or completed on the predecessor in the event of succession, shall remain valid and deemed to have been 'made or initiated' on the successor.

(d) Further, there is a gap between the effective date of the reorganization and the date on which the order approving the reorganization is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganization. Hence, in order to remove this anomaly, a new section 170A is inserted to

enable the entities going through such business reorganization by way of amalgamation, de-merger or merger, to file modified returns for the period between the date of effectivity of the order and the date of issuance of final order of the competent authority.

(e) Further, in the cases of business reorganisation, where the Court or Tribunal or an Adjudicating Authority, as defined in clause (1) of section (5) of the Insolvency and Bankruptcy Code, 2016, as a part of the restructuring process, recast the entire liability to ensure future viability of such sick entities and in the process, modify the demand created vide various proceedings in the past, by the Income Tax department as well, amongst other things.

However, there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, a new section 156A is inserted to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

Our Comments :

(a) Section 170A has defined the expressions 'Business reorganisation' and 'successor' defined for purpose of filing of modified return by successor entity.

Meaning of Business Reorganisation

Business reorganisation has been defined to mean reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons. Acquisition of an entity by acquiring 100% of the shareholding or by way of a slump-sale or by any other mode, will not be covered under this provision.

The meaning of 'amalgamation' and 'de-merger' as defined in sections 2(1B) and 2(19AA) respectively, may not be imported for the purposes of section 170A. It is arguable that the conditions prescribed in section 2(1B) and 2(19AA) in order that a business reorganisation is a 'merger' or de-merger' is not applicable to 'merger' and 'de-merger' as stated in section 170A. In other words, the business re-organisation by way of merger or de-merger u/s. 170A need not fulfill the conditions prescribed u/s.2(1B) and/or 2(19AA).

Successor

It means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.

These amendments will take effect from 1st April, 2022.

8. FILING OF RETURNS, ASSESSMENTS, APPEALS, AND PENALTIES

8.1 Filing of an updated return — Section 139

(a) Considering the limited time period available for filing of a belated or revised return, a new sub-section (8A) to section 139 is introduced to enable filing of an updated return. An updated return of income can be furnished by a person for any assessment year whether or not the return of income has already been furnished for such assessment year under any other provisions of section 139. Such updated return can be furnished at any time (after the expiry of the time limit for furnishing a belated or revised return of income) within twenty-four months from the end of the relevant assessment year. Further, it is subject to the condition that the person filing such updated return shall pay additional income-tax as applicable depending upon when such return is being filed.

(b) In the following cases, the updated return cannot be filed —

1. If it is a loss return.

2. It has the effect of reducing the total tax liability which is determined based on a return already furnished under the other provisions of section 139.

3. It results in a refund or it increases the refund determined based on a return already furnished under the other provisions of section 139.

4. An updated return has already been furnished for the same assessment year.

5. Any proceeding for assessment, reassessment or recomputation, or revision of income is pending or has been completed for the relevant assessment year.

6. The AO has information in respect of the assessee for the relevant assessment year in his possession under the certain statutes as listed below and the same has been communicated prior to date of furnishing of the updated return —

    a. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

    b. Prohibition of Benami Property Transactions Act, 1988.

    c. Prevention of Money-laundering Act, 2002.

    d. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

7. Information for the relevant assessment year has been received under an agreement referred to in section 90 or section 90A (i.e. mainly through exchange of information under DTAA) in respect of the assessee and the same has been communicated to the said assessee prior to date of furnishing of the updated return.

8. Any prosecution proceedings under the Chapter XXII have been initiated for the relevant assessment year in respect of the assessee.

9. The assessee is such a person or belongs to such a class of persons, as may be notified by the Board in this regard.

(c) A return of loss filed u/s. 139(3) can also be updated. However, such an updated return should be a return of income. In other words, the updated return should not be a return of loss.

(d) If as a result of furnishing of an updated return for a previous year, the following is reduced for any subsequent year, then the person shall be required to file the updated return for each such subsequent year:

- loss or any part thereof carried forward under Chapter VI; or
- unabsorbed depreciation carried forward u/s. 32(2); or
- MAT credit carried forward u/s. 115JAA; or
- AMT credit carried forward u/s. 115JD

This proviso is explained through the following examples:

(e) Further, where a search has been initiated u/s. 132 or a requisition is made u/s. 132A or a survey has been conducted u/s. 133A [not being a TDS/TCS survey under sub-section (2A)], an updated return cannot be submitted for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and any assessment year preceding such assessment year. This restriction of filing of updated return applies in the cases of the following persons —

1. A person in whose case such search is initiated or survey is conducted or requisition is made.

2. A person to whom a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned u/s. 132 or 132A in the case of any other person belongs to such person.

3. A person to whom a notice has been issued to the effect that any books of account or documents seized or requisitioned u/s. 132 or 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.

These amendments are applicable with effect from 1st April 2022.

8.2 **Tax payments for updated returns — Section 140B**

(a) Section 140B is inserted to require the assessee to make payment of tax together with additional tax, interest, and fee as applicable before furnishing an updated return u/s. 139(8A). The amount so required to be paid needs to be determined as under:

Particulars	Where no return of income is furnished under other provisions of section 139	Where a return of income is already furnished under other provisions of section 139
Tax	Tax payable as per the updated return to be filed as reduced by – (i) advance tax; (ii) TDS or TCS; (iii) relief u/s. 89; (iv) double tax relief u/s. 90, 90A or 91; (v) tax credit u/s. 115JAA or 115JD	Tax payable as per the updated return to be filed as reduced by – (i) various reliefs and taxes for which credit has already been taken in the earlier return in accordance with section 140A; (ii) TDS or TCS on any income which is taken into account in computing total income and which has not been included in the earlier return; (iii) double tax relief u/s. 90, 90A or 91 on such income which has not been included in the earlier return; (iv) tax credit u/s. 115JAA or 115JD, which has not been claimed in the earlier return; Further, this tax amount needs to be increased by the amount of refund, if any, issued in respect of earlier return.
Interest	For delay in filing the return of income or any default or delay in payment of advance tax (as applicable u/s. 234A, 234B and 234C)	For any default or delay in payment of advance tax (as applicable u/s. 234B and 234C) as reduced by the amount of interest paid in the earlier return. Interest u/s. 234B shall be computed on the amount of tax as computed above including the amount of refund already issued.
Fee	For delay in filing the return of income (as applicable u/s. 234F)	–
Additional income-tax	As applicable	As applicable

(b) The amount of additional income-tax payable shall be determined on the basis of date on which the updated return is furnished.

Date of filing of updated return	Additional income-tax payable
After the expiry of the time available for filing return u/s. 139(4) or 139(5) but before completion of a period of 12 months from the end of the relevant assessment year	25% of aggregate of tax (including surcharge and HEC) and interest payable as computed above
After the expiry of 12 months from the end of the relevant assessment year but before completion of the period of 24 months from the end of the relevant assessment year	50% of aggregate of tax (including surcharge and HEC) and interest payable as computed above

(c) Interest payable shall be computed on the basis of the income as per the updated return. Further, sections 234A and 234B are amended to provide that the additional income-tax payable as above shall not be included in the amount of tax on the total income determined under section 143(1) or under regular assessment for the purpose of computing the amount of interest. Further, the Board is empowered to issue guidelines for the purpose of removing the difficulty arising in giving effect to the provisions of section 140B.

(d) Following consequential amendments are also made to certain other sections —

(1) Section 144 — The AO can make the best judgment assessment in a case where the assessee has failed to furnish his return of income u/s. 139. Reference to sub-section (8A) has been included in the relevant clause (a) of section 144(1).

(2) Section 153 — The assessment u/s. 143 or 144 needs to be completed within nine months from the end of the relevant assessment year. However, in a case where the updated return u/s. 139(8A) is furnished, this time limit is extended to nine months from the end of the financial year in which such updated return was furnished.

(3) Section 276CC — No prosecution shall be initiated for failure to furnish return of income u/s. 139(1) if an updated return has been furnished u/s. 139(8A).

8.3 Modification in limitation period for completion of assessment, reassessment and recomputation [Section 153]

Background

Section 153 provides timelines within which assessment under the various provisions must be completed. Section 153(1) provides the following time limit for completion of assessment u/s. 143(3) and Section 144:

Assessment Year	Time limit for completion of assessment
A. Y. 2021-22 and onwards	Within 9 months from the end of the A. Y. in which income was first assessable
A. Y. 2019-20 and 2020-21	Within 12 months from the end of the A. Y. in which income was first assessable
For A. Y. 2018-19	Within 18 months from the end of the A. Y. in which income was first assessable
Up to A. Y. 2017-18	Within 21 months from the end of the A. Y. in which income was first assessable

Amendment made

The Finance Act has increased the time limit for completion of assessment u/s. 143(3) and best judgment assessment u/s.144, for A. Y. 2020-21 from 12 months to 18 months. The revised time limit for completion of assessment u/s. 143(3) (scrutiny assessment) and 144 (best judgment assessment) shall be as under:

Assessment Year	Time limit for completion of assessment
A. Y. 2021-22 and onwards	Within 9 months from the end of the A. Y. in which income was first assessable
A. Y. 2020-21	Within 18 months from the end of the A. Y. in which income was first assessable
A. Y. 2019-20	Within 12 months from the end of the A. Y. in which income was first assessable
For A. Y. 2018-19	Within 18 months from the end of the A. Y. in which income was first assessable
Up to A. Y. 2017-18	Within 21 months from the end of the A. Y. in which income was first assessable

8.4 Modification in time limit for completion of assessment in search and requisition cases [Section 153B]

Background

Section 153A deals with assessment in case of search or requisitions. The Finance Act, 2021 had introduced a sunset clause and accordingly, the provisions of section 153A were made inapplicable from 01st April, 2021. Section 153B provides a time limit for completion of assessment and reassessment in search or requisition cases, i.e. cases covered under section 153A. The general time limit provided under sub-section (1) is 21 months from the end of the financial year in which the last authorisation

of search or requisition was executed. The provisos to sub-section (1) provide for reduced time limits for different assessment years.

Amendment made

The Finance Act has inserted a sixth proviso to sub-section (1) of section 153B. The newly inserted proviso provides that the assessment in the following cases for the assessment year 2021-22 shall be made on or before 30 September, 2022:

(a) where last authorisation for search under section 132 or requisition under section 132A was executed at any time during the financial year commencing from 01 April, 2020; or

(b) in the case of a person referred to in section 153C, the books of accounts or documents or assets seized or requisitioned were handed over to the AO having jurisdiction over the person at any time during the financial year commencing from 01 April, 2020.

It is to be noted that where a search is initiated u/s. 132 or books of account, other documents or any assets are requisitioned u/s. 132A, on or after the 01 April, 2021, the assessment in such cases shall be made as per section 147 read with section 153.

The limitation period for completion of assessment in search/requisitioned cases is given in the below table:

Date of search	Limitation period
On or after 01-04-2021	Within 12 months from the end of the financial year in which notice was served
Between 01-04-2020 and 31-03-2021	On or before 30-09-2022
Before 01-04-2019 and 31-03-2020	Within 12 months from the end of the financial year in which last of the authorisations for search/requisition was executed

8.5 Avoidance of Repetitive Appeal [Section 158AB]

Background & Amendment made

(a) The Finance Act has provided a sunset date in section 158AA relating to avoidance of repetitive appeal (procedure when in an appeal by revenue an identical question of law is pending before Supreme Court) to the effect that no direction u/s. 158AA shall be given on or after 1st day of April 2022. A new section 158AB is inserted relating to avoidance of repetitive appeals.

(b) A new section 158AB is inserted to provide for avoidance of repetitive appeal before Income-tax Appellate Tribunal or to the Jurisdictional High Court. Such a decision to avoid the repetitive appeal is to be taken by the collegium. On receipt of communication

from the collegium, the PCIT/CIT may direct the AO to make an application to the ITAT or the High Court in a prescribed form within 60 days from the date of receipt of the order of CIT(A) or within 120 days from the date of receipt of the order of Tribunal.

(c) The provisions of section 158AB shall override the respective provisions providing time limits and procedural directions for filing an appeal to ITAT or the High Court;

(d) The time limit within which the application is to be filed with the ITAT has been increased to 120 days;

(e) It is also expressly provided that all the provisions of Part B (Appeal to ITAT) and Part CC (appeal to High Court) of Chapter XX shall apply, as the case may be, when an appeal is being filed u/s. 158AB(4).

9. MISCELLANEOUS

9.1 Profit-oriented Education Institutions cannot claim Income Tax Exemption under Section 10(23C)

Background

(a) Section 10 of the IT Act exempts from the field of taxation certain classes of income. Section 10(23C)(vi) exempts income of any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) and (iiiad) and which may be approved by the prescribed authority.

(b) The Supreme Court in the case of New Noble Educational Society v. CIT was dealing with the appeal against Andhra Pradesh High Court judgment relating to the rejection of an Education Society's claim for registration as a fund or trust or institution or any university or other educational institution set up for the charitable purpose of education, under the Income Tax Act, 1961 on the ground that the Society/Trust was not created 'solely' for the purpose of education, and also that it was not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (A.P. Charities Act) as condition precedent for grant of approval.

(c) The Supreme Court in the aforesaid case vide its Order dated 19th October, 2022 has held as follows :

(i) Educational trust or societies, which seek exemption under Section 10 (23C), should solely be concerned with education or education related activities;

(ii) Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval for the purposes of claiming exemption under Section 10(23C);

(iii) Education or education related activities should not be treated as business, trade, nor commerce. This principle was declared by one of the most authoritative pronouncements of the Supreme Court in T.M.A Pai Foundation's case judgment

(iv) The court overruled its earlier judgments which interpreted the expression 'solely' in Section 10(23C) as the 'dominant / predominant /primary/ main';

(v) The court said the judgment would take effect prospectively.

Comments:

In view of the aforesaid judgment of the Supreme Court, educational institutions which are profit-oriented but operate under the veil of a charitable trust or society will lose the benefit of Section 10(23C) and accordingly its profits from educational activities will now become taxable.

9.2 **Tax Free Compensation on acquisition of lands by the State Government for public purposes under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**

Background

(a) A lot many times the State Government acquire lands for the public purposes of developing infrastructure, such as for road-widening, developing tourist site, etc. As compensation for surrendering the lands the landowner is awarded Transferrable Development Rights ("TDR") which the landowner can use it for himself or sell it in the open market to a builder or a TDR trader.

(b) In these situations, substantial capital gains arise in the hands of the landowner upon surrender of their land and receipt of consideration in the form of TDR.

(c) To mitigate the hardship that would be caused to the landowners vis-à-vis income tax, stamp duty, Section 96 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the "**Right to Fair Compensation Act**") provides that no income tax or stamp duty shall be levied on any award or agreement made under the Right to Fair Compensation Act.

The Right to Fair Compensation Act applies when appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose more particularly listed in Section 2(1) of the Right to Fair Compensation Act. Section 2(1)(e) of the Right to Fair Compensation Act provides that the provisions of the said Act shall apply to land acquired by the appropriate Government for inter alia **public purposes** of **planned development or the improvement of** village sites or **any site in the urban areas** or provision of land for residential purposes for the weaker sections in rural and urban areas.

(d) Further, Circular No.36/2016 dated 25th October, 2016 issued by CBDT provides that any compensation received in respect of award or agreement which had been exempt from levy of income-tax vide Section 96 of the Right to Fair Compensation Act shall not be taxable under the provisions of Income Tax Act, 1961, even if there is no specific provision of exemption for such compensation in the Income Tax Act 1961.

(e) In view of the aforesaid discussion, no income tax liability shall arise in the hands of the landowner upon surrender of their land and receipt of consideration in the form of TDR.

IV. CONCLUSION

1. While there is nothing much the Finance Act has to offer to the real estate sector, the amendment made for deduction of tax at source on the higher of the consideration amount or the stamp duty value will lead to difficulties in complying with the provisions.

2. The capping of surcharge on all kinds long term capital gains (whether earned from transfer of immovable property, securities or any other asset) and dividend income at 15% irrespective of the quantum of such income deserves a big thumbs up.

3. Furthermore, the reduction of AMT rates for Individuals, AOP, firm, co-operative societies and rationalizing the rate of 15% across all types of assessee, is a welcome move.

4. Partnership Firm or LLPs are tools for avoiding double taxation by way of distribution of profits, but it requires a re-look especially in reconstitution situations and disputes among partners inter se.

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PRIVATE CIRCULAR

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Compiled in collaboration with
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Chartered Accountants

09th day of December, 2022