

# **UNION BUDGET 2021 AMENDMENT IN DIRECT TAX PROVISIONS**

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FEBRUARY 1, 2021

# RELAXATION FOR SENIOR CITIZENS FROM FILING INCOME TAX RETURNS

## Existing Provision

- ❖ Section 139 of the Act provides that every person being an individual, if his total income during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

## Amended provision

- ❖ In order to provide relief to senior citizens who are of the age of 75 year or above, it is proposed to provide a relaxation from filing ITR, if following conditions are satisfied:-
- ❖ (i) The senior citizen is resident in India and of the age of 75 or more( as at the end of the previous year)
- ❖ (ii) He has income only from pension and interest . Further interest income is from the same bank in which pension is received;
- ❖ (iii) This bank is a specified bank notified by the Govt. (*yet to be notified*) and
- ❖ (iv) He submits a declaration to the specified bank.
- ❖ Effective from AY 2021-22

# INCOME FROM ULIP

## Existing Provision

- ❖ Clause (10D) of section 10 of the Act provides for exemption for the sum received under a Unit Linked Insurance Plan irrespective of the amount of premium paid under the policy.

## Amended provision

- ❖ **Explanation 3 to clause 10D inserted to define ULIP as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the IRDA (Unit Linked Insurance Products) Regulations, 2019 dated the 8th July 2019.**
- ❖ **4<sup>th</sup> proviso inserted to clause 10D to provide that income from ULIP policy where premium payable for any previous year exceeds Rs. 2.50 lakhs, shall be taxed as capital gains.**
- ❖ **Effective from 1st February, 2021.**

# INTEREST ON PROVIDENT FUND NOW TAXABLE

## Existing Provision

- ❖ Clause (II) of section 10 of the Act provides for exemption with respect to any payment received or becoming payable to an employee from a recognised provident fund.

## Amended provision

- ❖ Proviso inserted to section 10(11) and 10(12) to withdraw exemption of interest income in excess of Rs. 2.50 lakhs on the *contribution made by the employee* to the provident fund.
- ❖ Effective from 1st July, 2021.

# INCREASE IN PRESCRIBED LIMIT FOR EXEMPTION U/S 10(23C)

## Existing Provision

- ❖ Sub-clauses (iiid) and sub-clauses (iiie) of clause (23C) of the section 10 provides for the exemption for the income received by universities or educational institution and hospitals if their annual receipts do not exceed Rs. 1 crore (Rule 2BC of the Income-tax Rules).

## Amended provision

- ❖ **The limit for exemption under sub-clause (iiid) and (iiie) increased to Rs 5 crore.**
- ❖ **Effective from AY 2022-23**

# CORPUS DONATION: INVESTMENT & ITS APPLICATION

## Existing Provision

- ❖ Explanation to third proviso to 10(23C)(d) or Section 11(1) provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.
- ❖ Instances have come to the notice where these entities claim the corpus donations to be exempt and simultaneously claim their application as part of the mandatory 85% application from income other than such corpus.

## Amended provision

To ensure that there is no double counting while calculating application it has been proposed that:

- ❖ Voluntary contribution received with specific direction that it shall form part of corpus to be deposited as per sec 11(5) provisions.
- ❖ Application from corpus and from loans and borrowings shall not be considered as application for charitable and religious (C&R) purpose. Repayment of loan however, shall be treated as application for C&R purposes.
- ❖ While calculating the income required to be applied, no set off or deduction of any excess application made in previous year shall be allowed.
- ❖ Effective from AY 2022-23

# DEPRECIATION ON GOODWILL NOT ALLOWED

## Existing Provision

- ❖ On account of Supreme Court decision in the case of Smiff Securities, Goodwill was being considered as an intangible asset eligible for depreciation under section 32 @ 25% on the Written Down Value - both in merger/ amalgamation and slump-sale transactions.
- ❖ Several Tribunals and some High Courts have upheld the treatment adopted by taxpayers.

## Amended provision

- Goodwill of a business or profession will not be considered as a depreciable asset**
- ❖ **No depreciation on Goodwill of a business or profession would be allowed in any situation - merger or slump sale**
- ❖ **In case of purchase of Goodwill, cost of acquisition will be purchase price for capital gains reduced by the depreciation obtained by the taxpayer in relation to such goodwill before AY 2021-22.**
- ❖ **To give effect to the above, various amendments have been made in Section 2(11), 32(1)ii, 50 and 55(2)a of the Act.**
- ❖ **Effective from AY 2021-22.**
- ❖ **Companies would have to pay advance tax in March 2021 in case they have factored depreciation on Goodwill for estimating their tax liability for FY 2020-21.**

# SLUMP SALE COVERED UNDER CAPITAL GAINS

## Existing Provision

- ❖ On account of the decision of Bombay High Supreme Court in the case of Bharat Bijlee, transfer of a business undertaking for a non-monetary consideration viz. shares, etc., capital gains tax was considered as not applicable since the transaction did not qualify as a 'slump sale' but that of a 'slump exchange'.

## Amended provision

- ❖ Definition of 'slump sale' u/s 2(42C) has been amended to provide that transfer of an undertaking by any means would be covered, thereby including all forms of transfer viz. exchange, extinguishment, compulsory acquisition, etc. as mentioned in section 2(47).
- ❖ Capital gains tax would now be payable on the difference between the value of the exchanged instrument (*received as a consideration for transfer of undertaking*) less the Net-worth of the undertaking.
- ❖ Effective from AY 2021-22.
- ❖ Companies would have to pay advance tax in March 2021 in case they have factored slump sale transaction in estimating their tax liability for FY 2020-21.



# PAYMENT BY EMPLOYER OF EMPLOYEE CONTRIBUTION TO A FUND

## Existing Provision

- ❖ Section 43B specifies the list of deductions that are admissible only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B.
- ❖ Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provisions of section 43B on employee contribution as well.

## Amended provision

- ❖ In order to provide certainty, it is proposed to -
- ❖ (i) amend section 36(1)(va) to clarify that section 43B does not apply for the purposes of determining the due date of payment
- ❖ (ii) amend section 43B to clarify that provisions of the said section do not apply to a sum received by the assessee from its employees.
  
- ❖ Effective from AY 2021-22

# INCREASE IN THRESHOLD OF 10% FOR HOME BUYERS

## Existing Provision

- ❖ Section 43CA of the Act provides that where the stamp duty value does not exceed 110% of the consideration received, the consideration so received shall be deemed to be the full value of the consideration.

## Amended provision

- ❖ **Threshold is increased from 110% to 120% under section 43CA if following conditions are satisfied:-**
- ❖ **Transfer of residential unit takes place during 12th November, 2020 to 30th June, 2021.**
- ❖ **Transfer is by way of first time allotment of the residential unit**
- ❖ **Consideration does not exceed two crore rupees.**
- ❖ **Consequential relief provided in section 56(2)x.**
- ❖ **Effective from AY 2021-22**

# ENHANCEMENT OF LIMIT FOR TAX AUDIT U/S 44AB

## Existing Provision

- ❖ In order to reduce compliance burden on SMEs, through Finance Act 2020, the threshold limit for a person carrying on business was increased from one crore rupees to five crore rupees.

## Amended provision

- ❖ **In order to incentivize non-cash transactions to promote digital economy and to further reduce compliance burden it is proposed to increase the threshold from Rs. 5 crore to Rs. 10 crore.**
- ❖ **Effective from AY 2021-22**

# EXTENSION OF DATE FOR INVESTMENT IN ELIGIBLE START-UP U/S 54GB

## Existing Provision

- ❖ Section 54GB provides for exemption of capital gain which arises from the transfer of a long-term capital asset, being a residential property. The assessee is required to utilize the net consideration for subscription in the equity shares of an eligible start-up. The benefit was available only when the residential property is transferred on or before 31st March, 2021.

## Amended provision

- ❖ **The outer date of transfer of residential property extended from 31st March 2021 to 31st March 2022.**
- ❖ **Effective from AY 2021-22**

# EXTENSION OF DATE OF INCORPORATION FOR ELIGIBLE START-UP FOR EXEMPTION

## Existing Provision

- ❖ Section 80-IAC provides for a deduction to an eligible start-up for 03 consecutive assessment years out of 10 years at the option of the assessee. The eligible start-up is required to be incorporated on or after 1st day of April, 2016 but before 1st day of April 2021.

## Amended provision

- ❖ **The outer date of incorporation for an eligible start-up extended from 1st day of April 2021. to 'before 1st April, 2022'.**
- ❖ **Effective from AY 2021-22**

# EXTENSION OF DATE OF SANCTION OF LOAN FOR AFFORDABLE RESIDENTIAL HOUSE PROPERTY

## Existing Provision

- ❖ Section 80EEA provides for a deduction in respect of interest on loan taken for a residential house property from any financial institution up to Rs. 1.5 lakhs subject to the condition that the loan was sanctioned during 1st April, 2019 to 31st March, 2021.

## Amended provision

- ❖ **Date for sanction of loan extended to 31st March 2022.**
- ❖ **Effective from AY 2022-23.**

# RATIONALIZATION OF MAT PROVISIONS

## Existing Provision

- ❖ Section 115JB of the Act provides for MAT at the rate of 15% of book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the 15% of book profit.

## Amended provision

- ❖ A new section 2(2D) inserted which provides that where past year income is included in the income of the previous year on account of an Advance Pricing Agreement (APA) u/s 92CC or a secondary adjustment u/s 92CE, the AO shall recompute the book profit and tax payable of the past year(s). The same shall not be considered for computing MAT liability for previous year.
- ❖ Deduction of dividend income received by foreign companies and expenditure thereon while computing book profits where such income is taxed at lower than MAT rate due to DTAA.
- ❖ Effective from AY 2021-22

# EXTENDING DUE DATE FOR FILING OF ITR IN SOME CASES

## Existing Provision

- ❖ The due date for filing of original return of income of partner of a firm (liable to tax audit) is 31st October of the AY. |

## Amended provision

- ❖ Due date for filing of ITR for the spouse of a partner of a firm (liable to audit) be extended to 31st October of the AY. |
- ❖ However, this relaxation is there only for spouse of such partner to whom section 5A of the Act (Civil Portuguese code) applies. |
- ❖ If firm is required to furnish report under section 92E of the Act, due date of filing ITR for the partner of such firm shall be 30th November of the AY.
- ❖ Effective from AY 2021-22.



# REDUCTION IN TIME LIMIT TO FILE BELATED AND REVISED ITR

## Existing Provision

- ❖ Belated or revised returns under sections 139(4) and 139(5), respectively can be filed before the end of the assessment year or before the completion of the assessment whichever is earlier.

## Amended provision

- ❖ **Belated or revised return can now be filed 03 months before the end of the relevant AY or before the completion of the assessment, whichever is earlier.**
- ❖ **Effective from AY 2021-22.**

# RATIONALIZATION OF THE PROVISION OF SECTION 143(2)

## Existing Provision

- ❖ Section 143(1)(a) provides that at the time of processing of return the total income or loss shall be computed after making adjustments specified in clauses (i) to (vi) therein.

## Amended provision

- ❖ **143(1)(a)(iv) to allow for adjustment on account of increase in income indicated in the audit report but not considered in computing the total income.**
- ❖ **Consequential effect shall be given to section 80AC.**
- ❖ **143(1) to reduce time limit for sending intimation from 01 year to 09 months from the end of the FY.**
- ❖ **Reduction in time limit for issue of notice u/s 143(2) from 06 months to 03 months from the end of the FY.**
- ❖ **Effective from AY 2021-22.**

# ASSESSMENT UNDER SECTION 147 & 148

## Existing Provision

- ❖ As per section 147 the tax officer (TO) can reassess the income if he has 'reasons to believe' that any income has escaped assessment.

## Amended provision

- ❖ Powers have been given to TO to conduct assessment u/s 147 if he has 'information that suggests that some income has escaped assessment'. Such information shall mean:
  - a. Information flagged by Risk Management Strategy.
  - b. Objections raised by the CAG
  - c. Information gathered during search/survey.
  - d. Money, bullion, jewelry or any other valuable items belonging to the assessee seized during search on any other person.

# **ASSESSMENT UNDER SECTION 147 & 148 CONTD..**

**The Tax officer would be required:**

- (i) to issue a notice as to why the notice under section 148 should not be issued and**
- (ii) to pass, after considering the reply filed by the tax payer, an order that the case is fit for issuance of notice under section 148.**

**The time limit for issuance of notice**

- ❖ Where income that has escaped assessment is less than Rs. 50 lakhs 03 years**
- ❖ Where income that has escaped assessment is more than Rs. 50 lakhs 10 years\***

**\*6 years for assessment of FY 2020-21 or earlier years.**

# RATIONALIZATION OF EQUALIZATION LEVY PROVISIONS

## Existing Provision

- ❖ As per section 165 Equalisation Levy is to be levied at the rate of 2% of the amount of consideration received or receivable by an e-commerce operator from ecommerce supply or services made or provided or facilitated by it.
- ❖ E-commerce supply/ service means:
  - (i) online sale of goods owned by the e-commerce operator;
  - (ii) online provision of services provided by the e-commerce operator;
  - (iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
  - (iv) any combination of activities listed in clause (i), (ii) or clause (iii)

## Amended provision

- ❖ **It is now clarified that e-commerce supply/ service shall not include considerations that are taxable as royalty or fee for technical services under the Act read with agreement notified u/s 90 & 90A.**
- ❖ **Online sale of goods or services shall include:**
  - (a) **Acceptance of offer for sale;**
  - (b) **Placing the purchase order;**
  - (c) **Acceptance of the Purchase order;**
  - (d) **Payment of consideration; or**
  - (e) **Supply of goods or provision of services, partly or wholly**

# RATIONALIZATION OF EQUALIZATION LEVY PROVISIONS CONTD..

- ❖ Consideration received or receivable from e-commerce supply or services shall include:
  - (i) Consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
  - (ii) Consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.
  
- ❖ Effective retrospectively from 1st April, 2020

# EXEMPTION FROM TDS ON PAYMENT OF DIVIDEND TO BUSINESS TRUST

## Existing Provision

- ❖ Section 194 of the Act provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers.

## Amended provision

- ❖ **The second proviso to section 194 amended to provide that the provisions of this section shall also not apply to dividends credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.**
- ❖ **Effective from AY 2020-21, retrospectively**

# RATIONALIZATION OF TDS PROVISIONS ON PAYMENT TO FII

## Existing Provision

- ❖ Section 196D provides for TDS at the rate of 20% on income of FII from securities as referred to in section 115AD(I)(a)
- ❖ Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction.

## Amended provision

- ❖ A proviso to section 196D(1) inserted to provide that in case of a payee to whom an agreement u/s 90 or 90A applies and such payee has furnished the tax residency certificate referred to in section 90(4) or section 90A(4) then the tax shall be deducted at the rate of 20% or rate of income-tax provided in such agreement for such income, whichever is lower.
- ❖ Effective from AY 2021-22.



# ADVANCE TAX PAYABLE WHERE INCOME INCLUDES DIVIDEND INCOME

## Existing Provision

- ❖ The proviso to section 234C(1)(b) provides that the tax relating to income listed therein is to be paid as a part of instalments of advance tax which are remaining due in the financial year.

## Amended provision

- ❖ **The benefit of provision extended to Dividend income other than deemed dividend as per section 2(22)(e).**
- ❖ **Effective from assessment year 2021-22.**

# NEW PROVISIONS

## 1. TDS/TCS on non filers of ITR at Higher Rates

- ❖ A new sections 206AB & 206CCA inserted as a special provision to provide for higher rate of TDS for **non-filers of income-tax return**. The provisions are applicable to following persons:
  - ❖ Who have not filed ITRs for **past 02 years within due dates**
  - ❖ TDS deducted or TCS collected in respect of such persons in the past 02 years was Rs. 50,000 or more.
  - ❖ TDS shall be deducted or TCS shall be collected at higher of the following
    - i. Twice the rate specified in the relevant provision of the Act
    - ii. Twice the rate in force (in the case of TDS)
    - iii. At the rate of 5%
  - ❖ The above provisions are not applicable to sections 192, 192A, 194B, 194BB, 194LBC or 194N.
  - ❖ Effective from 1<sup>st</sup> July, 2021.

# NEW PROVISIONS

## 2. TDS on Purchase of Goods (Section 194Q)

- ❖ Buyer of goods whose turnover for preceding FY exceeded Rs. 10 crores, to deduct TDS @ 0.10% on purchase consideration exceeding Rs. 50 lakhs paid or payable to the seller.
- ❖ TDS shall be effected @ 5% if PAN is not provided by the seller.
- ❖ The provision shall not apply if TDS/ TCS [other than TCS under section 206(1H)] is otherwise applicable to the transaction.
- ❖ Effective from 1<sup>st</sup> July 2021.

## 3. Discontinuance of Income-tax Settlement Commission

It is proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases.

Effective from 1<sup>st</sup> July 2021.

# NEW PROVISIONS

## [CONTD..]

### 4. Constitution of Dispute Resolution Committee for SME taxpayers

- ❖ The Central Government has adopted a policy to make the processes under the Act, which require interface with the taxpayer, fully faceless. It is expected that with these reforms, there would be lesser disputes. In order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a scheme for preventing new disputes and settling the issue at the initial stage. The new scheme is proposed to be incorporated in a new section 245MA.
- ❖ Effective from AY 2021-22.

### 5. Section 89A inserted to remove genuine hardship faced by a resident who had opened retirement fund when he was non-resident in India and resident in that country.

The section provides that income of the specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government.

A Specified Person means a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country.

Specified account is defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption.

- ❖ Effective from AY 2022-23.

# NEW PROVISIONS

## [CONTD..]

### **6. Provision for Faceless Proceedings before ITAT in a Jurisdiction-Less manner**

- ❖ New sub-sections inserted in section 255 to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT so as to impart greater efficiency, transparency and accountability by:
  - (a) Eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible;
  - (b) Optimising utilisation of the resources through economies of scale and functional specialisation;
  - (c) Introducing an appellate system with dynamic jurisdiction.
- ❖ **Effective from 1<sup>st</sup> April 2021.**

### **7. Definition of term 'Liable to tax'**

The Act currently does not define the term – “Liable to tax” though this term is used in section 6, section 10(23FE) and various agreements entered into under section 90 or section 90A of the Act.

**Section 2(29A) inserted to define term “liable to tax” which means that there is a liability of tax on any person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.'**

# OTHER AMENDMENTS

- ❖ **Section 45(4):** If a partner/member of a firm receives any capital asset at the time of dissolution or reconstitution of the firm/AOP/BOI, it shall be chargeable to tax under the head “capital gains” as income of firm in the year of receipt of asset by the partner/member.
- ❖ **Section 45(4A):** If a partner/member of a firm receives any money or other asset at the time of dissolution or reconstitution of the firm/AOP/BOI, it shall be chargeable to tax under the head “capital gains” as income of firm in the year of receipt of asset by the partner/member. For this purpose balance in the capital account of the partner/member at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.
- ❖ As per **Section 48**, FMV of capital asset on date on receipt shall be the Full Value of Consideration. Such balance shall be calculated without considering the effect of revaluation of any asset. Amount included in the total income of such specified entity under section 45(4A) shall be reduced from the full value of the consideration to compute income charged “capital gains” to mitigate the effect of double taxation.
- ❖ **Section 281B:** The property of the assessee can be provisionally attached in case the likelihood of penalty under section 271AAD exceeds Rs. 2 Crore.

**THANK YOU**

**For any clarifications on this presentation  
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