



UNION Budget 2022

Amendments in TAX Provisions

FEBRUARY 1, 2022



A. DIRECT TAX

AMENDMENTS

Surcharge on Dividend Income & Capital Gains Capped

Existing Provision

Surcharge applicable as per the income slab of the individual, HUF, AOP, BOI

Amended Provision

Surcharge on Dividend income and income under the head Capital Gains capped at 15%.

This amendment will take effect from April 1, 2022.

NPS Deduction Enhanced for State Government Employee [S 80CCD]

Existing Provision

Section 80CCD provides that contribution to National Pension Scheme shall be exempt upto 14% where the employer is Central Government.

In case of any other employer the exemption is limited to 10% of salary.

Amended provision

Benefit of 14% now extended to State Government employees by substituting the words "Central Government" with the words "Central Government or the State Government" in sub-section 2 of the section 80CCD.

This amendment will take effect retrospectively from FY 19-20

Amount Received from the Scheme for the Benefit of Disabled Exempt [S 80DD]

Existing Provision

- ❖ [sub-section 2].
- ❖ Deduction of the amount received as annuity or lump sum was allowed to an individual or HUF only if the payment was made to the benefit of the dependent in the event of the death of the individual or the member of the HUF making the contribution
- ❖ [sub-section 3].
- ❖ If the dependent predeceases the individual or HUF, the amount received by the individual or HUF from the scheme shall be deemed to be income in their hands.

Amended Provision

Deduction shall now be allowed during the lifetime, i.e., upon attaining age of 60 years or more by the individual or the member of the HUF in whose name subscription to the scheme was made and where payment or deposit was discontinued.

Provisions of sub-section (3) shall not apply to the amount received by the dependent, before his death, by way of annuity or lump sum.

This amendment will take effect from April 1, 2022.

TDS on Sale of Immovable Property

[Section 194-IA]

Existing Provision

Any person, being a transferee, responsible for making payment to a resident transferor for purchase of immovable property (other than agricultural land) in excess of Rs. 50 Lakhs, should deduct 1% TDS.

Amended provision

In case of transfer of an immovable property (other than agricultural land), TDS is to be deducted at the rate of 1% of the sum paid to the resident or the stamp duty value of such property, whichever is higher.

This amendment will take effect from April 1, 2022.

Trust Income to be Exempt on Actual Payment [Section 11]

Existing Provision

As per section 11, Income of the trust is tax exempt if 85% of the its income is applied for the purposes of the trust.

Amended provision

A] It is now clarified that Application of Income will be considered when the trust *makes an actual payment towards charitable purpose* out of its income. Mere provisioning for expense in the books will not amount to application.

This amendment will take effect from April 1, 2022.

Tax on Trust Income Applied in Violation to Certain Provisions [S 13]

Existing Provision

Trusts are required not to pass on any unreasonable benefit to the trustee or any other specified persons. Section 13(1) clause 'c' provides that exemption of income to tax shall be denied to the trust irrespective of the amount of benefit passed on.

Amended provision

Amendment proposed in clause 'c' to limit the denial of exemption to the amount of benefit passed on. Further penalty @ 100% & 200% of the benefit amount, on first & subsequent instances/year respectively, proposed u/s 271AAE.

Similar amendment has been proposed for clause 'd' of section 13(1) to tax only that part of income which has been invested in violation to the provisions of 11(5)

Section 115BBI inserted to provide that the income thus arising shall be taxed @ 30% and no deduction of expenditure or set-off of loss shall be allowed from such income.

This amendment will take effect from April 1, 2022.

Trusts & Charitable Institutions to Maintain Books of Accounts

Existing Provision

Where the total Income of the Trust or Charitable Institution registered u/s 12 or 10(23C) exceeds maximum amount not chargeable to tax without giving effect to provisions of section 11 and 12, it is required to get its account audited.

Amended provision

The existing section does not contain provision about maintaining books of Accounts .

It is proposed to prescribe that charitable trust or institutions shall maintain books of Account if the total income exceeds maximum amount not chargeable to tax without giving effect to provisions of section 11 and section 12.

This amendment will take effect from April 1, 2022.

Dividend from Specified Foreign Companies & Domestic Companies taxed At-Par [S 115BBD]

Existing Provision

Section 115BBD provides for *concessional rate of Tax (15%+ surcharge and cess)* for Indian companies on the dividend income received from a specified foreign company*.

*Specified foreign company means a foreign company in which the Indian company holds 26% or more in nominal value of shares.

Amended provision

Dividend from specified foreign companies to be taxed at par with the dividends received from domestic companies ie @ at the rate applicable to the receiving company.

Effective from April 1, 2022

Tax Incentives to International Financial Services Centre [IFSC]

SECTION 10 clause 4E, 4F & 4G

Exemption benefit extended to the following incomes of a non-resident:

A] Income from transfer of offshore derivative instruments or over-the-counter derivatives entered into with such Unit*.

B] Income by way of royalty or interest, on account of lease of a ship in a previous year paid by such Unit* if the unit has commenced its operations on or before the 31st March, 2024.

C] Income from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with such Unit* to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India

*Unit is an Offshore Banking Unit, in any International Financial Services Centre, referred to in subsection (1A) of section 80LA.

These amendments will take effect from April 1, 2022.

Tax Incentives to International Financial Services Centre [IFSC]

SECTION 56

It is proposed to amend the Explanation to clause (viib) of section 56 of the Act to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the International Financial Services Centers Authority Act, 2019

Section 80LA

It is proposed to amend clause (d) of sub-section (2) of section 80LA of the Act to provide that in addition to the income arising from the transfer of an aircraft, the income arising from the transfer a ship, which was leased by a unit of the IFSC to any person shall also be eligible for deduction under section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the March 31, 2024.

These amendments will take effect from April 1, 2022.

Extension of Sun-Set Clauses

SECTION 115BAB(2)a - Special Tax Rate for New Manufacturing Companies

Any company setup and registered on or after October 01, 2019 can opt for taxation at the rate of 15%. Such companies were required to commence manufacturing or production of an article or thing on or before March 31, 2023. **The date has been extended till March 31, 2024.**

SECTION 80-IAC - Tax Incentives for Start-ups

Eligible start-ups were allowed deduction of an amount equal to 100% of the profits and gains for 03 years out of block of 10 years. In order to claim the exemption, eligible start-up should have been incorporated on or after April 1, 2016 and before April 1, 2022. **The date has been extended till March 31, 2024.**

These amendments will take effect from April 1, 2022.



COVID RELATED AMENDMENTS

SECTION 17(2) - PERQUISITES

Definition amended to exclude any sum paid by the employer for **actual expenditure incurred** by the employee for himself or his family members for medical treatment of illness relating to COVID-19 and thus, any such amount shall not be taxable in hands of employee.

SECTION 56(2)x - OTHER INCOME

Section 56 has been amended to provide exemption from tax of:

- i. any sum received by an individual in respect of actual expenditure incurred on medical treatment by him for himself or his family member
- ii. any sum received by family member of deceased person from-
 - the employer - without any limit and
 - any other person exempted upto Rs.10 Lakhs and received within 12 months from the date of death of such person due to illness related to COVID-19.

This amendment will take retrospective effect from AY 2020-21.

CLARIFICATIONS

A] Treatment of Surcharge and Education Cess

In order to set to rest the ambiguity caused by a couple of decisions given by the High Courts regarding claiming of deduction of Surcharge and Education Cess, it has been clarified that,

'the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax'.

Thus, Cess and Surcharge shall not be allowed as expense while computing Income under the head Business & Profession. [Explanation inserted to Section 40]

The above amendment is made effective retrospectively from April 1, 2005.

B] Deduction for Payment of Interest only on 'Actual Payment Basis'

Conversion of the outstanding interest liability into debentures or any other instrument by which liability to pay interest is deferred to a future date, cannot be considered an actual payment of interest and therefore deduction under section 43B shall not be provided.

The above amendment is made effective from April 1, 2022.

C] Allowability of Expenditure u/s 37

Explanation inserted to clarify the expression “expenditure incurred by an Assessee for any purpose which is an offence or which is prohibited by law”, under Explanation 1 to include expenditure to provide:

- a) Any benefit or perquisite to a person, acceptance of which is in violation of any law or rule or regulation or guidelines.
- b) Compounding of any offence under any law, being in force whether in India or outside India.
- c) Any offence which is prohibited by any law in force, in India or outside India.

The above amendment is made effective from April 1, 2022.

D] Disallowance u/s 14A in absence of exempt income during the year

It is proposed to insert an Explanation to clarify that the section shall apply and shall be deemed to have always applied in a case even though no exempt income has accrued/ arisen/ has been received. **The amendment is applicable wef April 1, 2021.**

E] Period of Holding of Goodwill Purchased before April 1, 2020.

Effective April 1, 2020 depreciation on purchased goodwill was not allowed and written down value of the goodwill was to be reduced from the block of Assets.

Sale of purchased goodwill was made taxable under the head “Capital Gains” effective April 1, 2020 *but there was no clarification on the period of holding of purchased Goodwill for computing capital gains.*

It is now clarified that goodwill appearing on the block of Assets as on March 31, 2020 is deemed to have been transferred from the block of Asset under section 50.

Therefore, the holding period of the goodwill shall commence from April 1, 2020.

It is also clarified that cost of acquisition of goodwill for the purpose of section 148 would be the Purchase price as reduced by Depreciation claimed upto April 1, 2020.



NEW INSERTIONS

New Concept: “Updated Return” [Section 139(8A)]

Any person can file “updated return” within 24 months from the end of the relevant assessment year, where:

- No return was filed OR
- Return was filed under 139(1) (Original Return) or 139(4) (Belated Return) or 139(5) (Revised Return).

Updated return cannot be filed where it:

- (a) is a return of a loss,
- (b) has the effect of decreasing the total tax liability as compared to the original return filed
- (c) results in refund or increases the refund due as included in the original return filed.
- (d) Any procedure of search/seizure or proceedings under section 132 or survey u/s 133A has been started or notice u/s/ 132A has been served upon the assessee.
- (e) the Assessing Officer has information in respect of such person, under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to the assessee before submission of return u/s 139(8A).

The return must be accompanied by the proof of payment of tax as required u/s 140B.

This amendment will take effect from April 1, 2022

New Concept: “Updated Return” [Section 140B]

The assessee furnishing the ITR u/s 139(8A), shall be required to pay additional amount of income tax, in addition to applicable tax, interest and penalty, as per following clauses:

- If updated return is filed within 12 months of the end of the AY:
25% of tax & interest payable
- If updated return is filed after 12 months of the end of the AY:
50% of tax & interest payable.

This amendment will take effect from April 1, 2022

'Virtual Digital Asset' [VDA] Taxed [Section - 115BBH]

Income Tax on VDA

- Income from the transfer of any VDA (cryptocurrencies, non-fungible tokens, any other digital asset defined as VDA by Govt.) *taxed @ 30% with effect from 01.04.2022.*
- Notwithstanding anything contained in any other provision of this Act,-
 1. (a) no deduction in respect of any expenditure other than cost of acquisition of VDA (without indexation) is allowed.
 2. (b) Losses from other Income (other than VDA) is not allowed to set off income resulting from VDA transfer.
 3. (c) Loss from VDA transfer is not allowed to be set off against any other Income except VDA and such loss shall not be allowed to be carried forward to succeeding assessment years.

This amendment will take effect from April 1, 2022.

TDS on Transfer of VDA

[Section – 194S]

TDS on VDA [Section 194S]

a. TDS @ 1% on payment made to a *resident* for transfer of VDA.

b. No deduction upto:

- Rs. 50,000 in a FY in case the payer is a Specified person*; and
- Rs. 10,000 in a FY in case the payer is any other person.

Where TDS is effected under this section, provisions of section 194O, 203A & 206AB will not apply.

In case, consideration is partly in cash and partly in kind, the value of asset received should be construed as sales consideration. If in such cases the cash part is not enough for deduction of TDS under this section, the tax payer has to ensure compliance.

*Specified person is defined as:

- (i) Individual or HUF whose total sales, gross receipts or turnover in the preceding year from business/profession does not exceed Rs.1 crore and Rs. 50 Lakh respectively;
- (ii) Individual or HUF having income under any head other than the head 'Profits and gains of business or profession'

This amendment will take effect from July 1, 2022.

No Set-off of Losses Consequent to Search and Survey

A deterrent section 79A has been proposed to be inserted to restraint tax evaders from claiming set-off of losses against the undisclosed income unearthed during search and survey carried out in terms of provisions of sections 132, 132A and 133A.

This amendment will take effect from April 1, 2022

TDS on Perks of a Business or Profession

[Section 194R]

Any person responsible for providing to a resident, *any benefit or perquisite*, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall deduct TDS @ 10% if the value or aggregate value of such benefit or perquisite *exceeds Rs. 20,000*.

No TDS by an individual or HUF if

their turnover does not exceed Rs. 1 crore in case of business or

Rs. 50 Lakhs in case of a profession during the preceding financial year.

This amendment will take effect from July 1, 2022.

Refund of TDS Wrongly Deducted from Non Resident

[Section 239A]

It was difficult to obtain refund of TDS wrongly deducted u/s 195 on payments made to Non-residents. Only a remedy of filing an appeal before the Commissioner (Appeals), u/s 248 was available.

In order to rationalize this, a new section 239A has been proposed which provides that such person, who has made the deduction of tax when no tax deduction was required to be deducted, can file refund application to Assessing officer with in 30 days of tax deducted.

Assessing officer can allow/reject the application by way of written order with in 6 months.

Assessee, if unsatisfied by the order, can file appeal against such order before the Commissioner (Appeals), u/s 246A.

This amendment will take effect from April 1, 2022.

Refund of TDS wrongly deducted from Non Resident

[Section 239A]

For obtaining refund of TDS wrongly deducted u/s 195, Non residents has to file an appeal before the Commissioner (Appeals), u/s 248 as there are no other alternatives available to approach the income tax department for TDS refund.

Now, Section 239A has been proposed which provides that person making TDS deduction can file refund application to Assessing officer within 30 days of Tax deducted.

Assessing officer can allow/reject the application by way of written order within 6 months.

Assessee, if unsatisfied by the order, can file appeal against such order before the Commissioner (Appeals), u/s 246A.

Consequently, Section 248 will not apply in cases where TDS deduction is on or after 01.04.2022.

This amendment will take effect from April 1, 2022.

Other Amendments

A] Section 79(2): Exception inserted to facilitate Divestment of PSU

Provisions of section 79(1) would not apply to an erstwhile public sector company if its (new) ultimate holding company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least 51% per cent of the equity shares of the erstwhile public sector company in aggregate.

In case the above condition is not complied with in any year after the completion of strategic disinvestment, limitation in section 79(1) would again apply in such year and subsequent years.

B] Section 115JC: Alternate Minimum Tax

AMT for Cooperative Societies brought at par with other corporates at 15%.

C] Bonus & Dividend Stripping

Section 94 of the Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, inter-alia, include dividend stripping and bonus stripping.

Provisions of the section 94(7) & (8) extended to cover AIF, REIT and INVIT also.

The above amendments will take effect from April 1, 2022.

Other Amendments

D] Meaning of Specified Person for Section 206AB & 206CCA

In terms of provisions of Sec 206 AB and 206 CCA

A person who *has not filed his ITR for 02 preceding years* for which time limit for filing has expired; and TCS/ TDS exceeds Rs.50,000 for each of the previous years.

Shall be a specified person and accordingly Tax was deducted at source at higher rate

Amendment : *has not filed his ITR for 02 preceding years substituted with 01 preceding year.*

E] Cash Credit u/s 68

Provisions rationalized by extending the onus of explaining the nature and source of funds to the loans and borrowings as well.

However, funds obtained from well regulated entities such as venture capital funds, venture capital companies registered under SEBI etc. are kept out of the ambit of this amendment.

F] Section 179

The section empowers Income tax authorities to recover tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself.

The title of the section inadvertently refers to the “liability of directors of private company in *liquidation*.”

It is proposed to remove the word ‘Liquidation’ from the title.

The above amendments will take effect from April 1, 2022.

Other Amendments

G] Power to Levy Penalty extended to CIT Appeals

Sections 271AAB, 271AAC and 271AAD provides that *Assessing Officer* has power to levy penalty in cases involving undisclosed income where search has been initiated under section 132 or otherwise, or for false entry etc. in books of account.

It is proposed to extend the power to Commissioner of Income Tax (Appeals) also along with the AO to levy penalty under these sections.

H] Penalty Increased u/s 272A

Penalty of *Rs. 100 per day* for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.

It is proposed to increase the penalty amount to *Rs. 500 per day*.

The above amendments will take effect from April 1, 2022.



B. INDIRECT TAX

AMENDMENTS

Input Tax Credit [Section 16 of CGST Act]

Existing Provision

A] Section 16(2): Currently 05 conditions are to be met before claiming ITC

- a) Possession of the tax invoice;
- b) Receipt of the goods and services
- c) Furnishing of the return u/s 39
- d) The invoice reflects in GSTR-2B/2A
- e) The tax has actually been paid

B] Time limit for availing ITC [S-16(4)], issuing Credit Notes [S-34(2)] & rectifying error in GSTR-1 [S-37(1)] for the previous year was upto *September 30* of the FY.

Amended provision

A] The following sub-clause has been inserted:

“f) ITC can be claimed only if such credit has not been restricted in the details communicated to the taxpayer under section 38”

B] The time limit has been extended to *November 30* of the FY.

The above is effective from the date of the enactment

Cancellation of Registration of Non-Filers [Section 29]

Existing Provision

Clause (b): Registration of Composition Dealer can be cancelled if GSTR is **not furnished for 03 consecutive tax periods.**

Clause (c): Registration of any other person can be cancelled if GSTR is **not furnished for a period of 06 months.**

Amended provision

Registration of Composition Dealer can be cancelled if GSTR is **not furnished for a financial year beyond 03 months from the due date.**

Registration of any other person can be cancelled if GSTR is **not furnished for such continuous tax period as may be prescribed.**

The above is effective from the date of the enactment

Other Amendments

SECTION 39: Due date of furnishing if GSTR by Non-Residents preponed to 13th of the subsequent month from 20th of the subsequent month.

SECTION 41: Concept of *claiming of ITC on 'provisional' basis* to be substituted with the concept of *claiming ITC on 'self-assessed' basis* subject to such conditions and restrictions as may be prescribed.

SECTION 50 (3): Amended retrospectively effective July 1, 2017 to provide for levy of interest on ITC *"wrongly availed and utilized"* instead of *"wrongly availed"*.

Further, notification no. 13/2017 also amended retrospectively effective July 1, 2017 to *reduce the rate of interest from 24% to 18%* for excess ITC claimed as utilized.



Thank You

**For any clarifications on this presentation
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