



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

UNION BUDGET 2023-24

AN ANALYSIS

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PREFACE

Dear Reader,

An annual budget is a major event in every developing country. Less developed the country; the more the changes annually – policy is often amended.

Today the government presented its last comprehensive budget before it goes for the General Elections scheduled in 2024. As avid followers of the budget for over two decades, we at ELP are pleased to report that there is a strong thread of consistency from previous budgets thus demonstrating the maturing of the Indian economy. Clearly there is a focused plan.

As anticipated, the Finance Minister has made drastic changes to personal Income Tax by either extending or introducing various social schemes for the under privileged. Besides pleasing the electorate, this is a need in India as it impacts each voter personally – whether s/he pays taxes or not. The revision of the Income Tax slabs under the new tax regime is expected to increase the purchasing power in the hands of the consumer.

The other big outlay is to capex, which typically has a multiplier effect in the economy – both on industry and job creation. The lasting effects of this expenditure will undoubtedly manifest itself in the efficiency of the economy as a whole – especially in the railways which have received whopping funding in the Finance Bill.

The Finance Bill clearly spells out its seven priorities on the basis of which the proposals have been made which includes: inclusive development, reaching the last mile, infrastructure and investment, unleashing the potential of India's technology, green growth, youth power and promoting the financial sector.

Make in India has not been ignored either. Customs duty on several items have increased under the Make in India scheme which will facilitate domestic manufacturers to compete. However, at the same time it has also reduced customs duty on champion goods such as mobile phones, electrical goods and parts and components of Electrical Vehicles.

Finally, on the issue of fiscal litigation, the government has taken several steps from adding more resource and announcing its intention to introduce (another) settlement scheme. We hope once announced it will benefit tax payers and significantly reduce the backlog of cases in a fair manner. Other clarifications in the law which are ostensibly designed to reduce litigation are largely weighed in favour of revenue with the law ending the dispute in favour of the department. The amendment to Section 9 C of the Customs Tariff Act relating to anti-dumping duties takes the Finance Ministry out of the appeal process without providing a clear alternative.

The final word – a budget that promises much with no major negative impact for the moment. The positive impact will hopefully manifest itself in the future – but isn't planning all about a clear path and a steady hand?

As ELP has always done, our budget publication deep dives into the Finance Bill. We as lawyers, tax advisors and policy shapers dissect the budget from multiple angles with an aim to provide our readers the practical impact of the budget and present the impact on your business. Stripped of all frills and jargon – it is designed to be an easy read. We do hope you benefit from the depth, breath, and clarity of the analysis. As always, your feedback is welcome.



Suhail Nathani, Managing Partner

On behalf of Team ELP



BUDGET HIGHLIGHTS

DIRECT TAXES

- Personal taxation - Promotion to new tax regime wherein slab rate changed, standard deduction of INR 50K introduced, no tax on income upto INR 0.7 million by way of tax rebate and effective tax rate for HNI with an income above INR 50 million reduced from 42.74% to 39%. No change in old tax regime.
- No change in headline tax rates for corporates.
- New tax regime of 15% introduced for manufacturing co-operatives.
- Start-ups – The benefit of carry forward of losses on change in shareholding extended from 7 years to 10 years. Tax holiday benefit extended to start-ups incorporated upto March 31, 2024.
- Angel tax u/s 56(2)(viib) extended to issue of shares to non-residents.
- Cost of acquisition for intangibles and rights to be taken as nil if indeterminable for capital gains.
- Scope of Section 28(iv) and Section 194R extended to cover business monetary perquisites as well.
- Presumptive taxation – Turnover limits enhanced for MSMEs and Professionals to INR 30 million (from INR 20 million) and INR 7.5 million (from INR 5 million) respectively.
- Section 50AA introduced specifying Market Linked Debentures to be taxed as short term capital gains (irrespective of period of holding).
- REIT/INVITs - Debt repayment and redemption of units taxable under the head IFOS.
- Taxation regime for online gaming introduced levying 30% tax as well as withholding tax on net winnings.

INDIRECT TAX

- Restriction on availability of GST input tax credit in respect of CSR expenses.
- New section 158A in CGST Act is being inserted to enable sharing of information across regulators.
- Import tariffs suitably amended to foster more local value addition and promote green energy & mobility.
- Validity period of 2 years shall not apply to specified exemption notifications such as those issued in relation to multilateral or bilateral trade agreements etc.
- Retro amendments to Customs Tariff Act concerning trade remedies, addresses pending (unwanted) litigation.
- Retrospective coverage of international merchant trading transactions, sale of warehoused goods as well as high seas sales under Schedule III of the CGST Act.
- Expanding the scope of GST levy on OIDAR services.
- Filing of returns/statements restricted to a maximum period of three years from its due date.
- Decriminalization of certain offences under Section 132 of CGST Act.

- Increase in the threshold limit in relation to certain offences for prosecution under Section 132.
- Penalty proposed on e-Commerce operators dealing with unregistered persons or composition taxpayers.
- Taxation regime for online gaming introduced levying 30% tax as well as withholding tax on net winnings.

CENTRAL SALES TAX ACT, 1956

- Section 19 of the CST Act which provides for functions, powers and composition of the Central Sales Tax Appellate Authority is proposed to be substituted. As per the new provision, CESTAT will have jurisdiction to adjudicate any dispute relating to inter-state sales.
- An amendment is proposed to omit Section 24 of the CST Act which deals with the constitution of the Central Sales Tax Appellate Authority. The Central Sales Tax Appellate Authority will no longer be functional as per the proposed amendment.
- CESTAT will have jurisdiction over any disputes relating to inter-State sale of goods.
- Central Sales Tax Appellate Authority will no longer be functional. Pending cases to be transferred to CESTAT.

ELP COMMENTS:

The CST Appellate Authority has been non-functional for over a year. This amendment provides much required clarity in relation to appeals pending before the CST Appellate Authority.

DIRECT TAX

INCOME TAX RATES

Individual, HUF, AOP, BOI and AJP

Old Regime

Income (INR)	Existing tax rate (AY 2023-24) and proposed tax rate (AY 2024-25)		
	All Individuals (Other than resident senior and resident super senior citizens)	Resident senior citizens (60 years or more at any time during previous year)	Resident super senior citizens (80 years or more at any time during previous year)
0 – 250,000	Nil	Nil	Nil
250,001 – 300,000	5	Nil	Nil
300,001 – 500,000	5	5	Nil
500,001 – 1,000,000	20	20	20
1,000,001 and above	30	30	30

New Regime as per Section 115BAC of the IT Act (Default Regime w.e.f. AY 2024-25)

Existing tax rate (AY 2023-24)		Proposed tax rate (AY 2024-25)	
Income (INR)	Tax rates	Income (INR)	Tax rates
Up to 250,000	Nil	Up to 300,000	Nil
250,001 - 500,000	5	300,001 - 600,000	5
500,001 - 750,000	10	600,001 - 900,000	10
750,001 - 1,000,000	15	900,001 - 1,200,000	15
1,000,001 - 1,250,000	20	1,200,001 - 1,500,000	20
1,250,001 - 1,500,000	25	Above 1,500,000	30
Above 1,500,000	30		

Rebate, Surcharge & Cess for Individual, HUF, AOP, BOI and AJP

Sr. No.	Particulars	Existing	Proposed
1	Rebate under section 87A (applicable to resident individuals)	Old Regime and New Regime INR 12,500 - If total income does not exceed INR 500,000	Old Regime INR 12,500 - If total income does not exceed INR 500,000

			<p>New Regime INR 25,000 - If total income does not exceed INR 700,000</p>
2	Surcharge for income covered under Section 111A, 112, 112A, 115AD(1)(b) of the IT Act, dividend and income of AOPs comprising of companies as its members	<ul style="list-style-type: none"> ▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million 	<ul style="list-style-type: none"> ▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million
3	Surcharge (for income other than those specifically covered above)	<p>Old Regime and New Regime</p> <ul style="list-style-type: none"> ▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million, but ≤ INR 20 million ▪ 25% - If total income > INR 20 million, but ≤ INR 50 million ▪ 37% - If total income > INR 50 million 	<p>Old Regime</p> <ul style="list-style-type: none"> ▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million, but ≤ INR 20 million ▪ 25% - If total income > INR 20 million, but ≤ INR 50 million ▪ 37% - If total income > INR 50 million <p>New Regime</p> <ul style="list-style-type: none"> ▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million, but ≤ INR 20 million ▪ 25% - If total income > INR 20 million
4	Cess - Health and Education cess	4%	4%
5	AMT for Individuals, HUFs, AOPs, BOIs and AJP (Including surcharge and cess)	<p>Old regime</p> <ul style="list-style-type: none"> ▪ 19.24% - If adjusted total income > INR 2 million, but ≤ INR 5 million ▪ 21.16% - If adjusted total income > INR 5 million, but ≤ INR 10 million 	<p>Old regime</p> <ul style="list-style-type: none"> ▪ 19.24% - If adjusted total income > INR 2 million, but ≤ INR 5 million ▪ 21.16% - If adjusted total income > INR 5 million, but ≤ INR 10 million

	<ul style="list-style-type: none"> ▪ 22.13% - If adjusted total income > INR 10 million, but ≤ INR 20 million ▪ 24.05% - If adjusted total income > INR 20 million, but ≤ INR 50 million ▪ 26.36% - If adjusted total income > INR 50 million <p>New Regime (applicable to individuals and HUF)</p> <ul style="list-style-type: none"> ▪ Not applicable 	<ul style="list-style-type: none"> ▪ 22.13% - If adjusted total income > INR 10 million, but ≤ INR 20 million ▪ 24.05% - If adjusted total income > INR 20 million, but ≤ INR 50 million 26.36% - If adjusted total income > INR 50 million <p>New Regime (applicable to individuals, HUF, AOP, BOI and AJP)</p> <ul style="list-style-type: none"> ▪ Not applicable
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Co-operative Societies

Normal Tax Rates

Income (INR)	Existing and proposed
0 – 10,000	10
10,001 - 20,000	20
20,001 and above	30

Special Tax Rates under optional tax regime

Sr. No.	Particulars	Existing	Proposed
1	Optional regime (Section 115BAD of the IT Act)	25.17% (Base rate – 22%)	25.17% (Base rate – 22%)
2	Optional regime for new manufacturing co-operative society set up on or after 1st April 2023 (Section 115BAE of the IT Act)	-	17.16% - Irrespective of total income (Base rate – 15%)

Surcharge & Cess for Co-operative Society

Sr. No.	Particulars	Existing	Proposed
1	Surcharge on income of co-operative society	<p>Normal tax rates</p> <ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 10 million ▪ 7% - If total income > INR 10 million, but ≤ INR 100 million ▪ 12% - If total income > INR 100 million 	<p>Normal tax rates</p> <ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 10 million ▪ 7% - If total income > INR 10 million, but ≤ INR 100 million ▪ 12% - If total income > INR 100 million

		If opted for special tax rates: <ul style="list-style-type: none"> 10% irrespective of total income 	If opted for special tax rates under section 115BAD or Section 115BAE <ul style="list-style-type: none"> 10% irrespective of total income
2	Cess - Health and Education cess	4%	4%
3	AMT for co-operative societies (Including surcharge and cess)	Normal tax rates <ul style="list-style-type: none"> 15.6% - If total income ≤ INR 10 million 16.69% - If total income > INR 10 million, but ≤ INR 100 million 17.47% - If total income > INR 100 million If opted for special tax rates (Section 115BAD) <ul style="list-style-type: none"> Not applicable 	Normal tax rates <ul style="list-style-type: none"> 15.6% - If total income ≤ INR 10 million 16.69% - If total income > INR 10 million, but ≤ INR 100 million 17.47% - If total income > INR 100 million If opted for special tax rates (Section 115BAD and Section 115BAE) <ul style="list-style-type: none"> Not applicable

Effective tax rates for Companies, Firms (including LLP)

Sr. No.	Description	Existing and proposed rates (Including surcharge & Cess)		
		Net income ≤ INR 10 million	Net Income > INR 10 million, but ≤ INR 100 million	Net income > INR 100 million
(A)	Domestic Companies			
1	Turnover or gross receipts in previous year 2019-20 ≤ INR 4 billion (Base rate – 25%)	26%	27.82 %	29.12 %
2	Covered under Section 115BA of the IT Act (Base rate – 25%)	26%	27.82%	29.12%
3	Covered under Section 115BAA of the IT Act (Base rate – 22%)	25.17%		

4	Covered under Section 115BAB of the IT Act (Base rate – 15%)	17.16%		
5	Any other Company having turnover or gross receipts in previous year 2020-21 > INR 4 billion (Base rate – 30%)	31.20%	33.38%	34.94%
6	MAT under section 115JB of the IT Act (For companies other than that covered under Section 115BAA and 115BAB of the IT Act) - Rate to be applied on book profits – base rate 15%)	15.60%	16.69%	17.47%
7	BBT under Section 115QA of the IT Act (Base rate -20%)	23.3%		
(B)	Foreign Companies	Net income ≤ INR 10 million	Net Income > INR 10 million, but ≤ INR 100 million	Net income > INR 100 million
1	Effective tax rate (Base rate – 30%)	41.6%	42.43%	43.68%
(C)	Firms (including LLP)	Net income ≤ INR 10 million		Net income > INR 10 million
1	Effective tax rate (Base rate – 30%)	31.2%		34.94%
2	AMT (Base rate – 18.5%)	19.24%		21.55%

Surcharge and Cess

Particulars	Existing and proposed rates
For Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	10% - Irrespective of the amount of total income
Other domestic companies	<ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 10 million ▪ 7% - If total income > INR 10 million, but ≤ INR 100 million ▪ 12% - If total income > INR 100 million
For Foreign companies	<ul style="list-style-type: none"> ▪ NIL - If total income ≤ INR 10 million ▪ 2% - If total income > INR 10 million, but ≤ INR 100 million ▪ 5% - If total income > INR 100 million
For Firms (including LLP)	<ul style="list-style-type: none"> ▪ 12% - If total income > INR 10 million
Cess - Health and Education cess	4%

ELP COMMENTS:**Tweaks under new tax regime for Individuals, HUFs, AOP, BOI and AJP**

- **Status of default scheme:** Finance Bill proposes that the new tax regime would be the default regime, and the taxpayers would have to specifically opt for old tax regimes.
- **Revision in slab rates:** Presently, tax rates applicable to individuals and HUFs choosing for new tax regime increase by 5% for every additional INR 250,000 in the slab up to an annual income of INR 1,500,000. The Finance Bill seeks to change the slab rate, with an increase of INR 300,000 in each band after the baseline exemption of INR 300,000.
- **Increase in rebate for resident individuals:** Threshold for claim of 100% rebate of the income tax payable by resident individuals opting for new tax regime under Section 115BAC of the IT Act has been increased from INR 500,000 to INR 700,000. Consequentially, such resident individuals would be saving tax outgo of INR 25,000 on yearly basis.
- **Capping of surcharge at 25%:** Currently, the highest surcharge is 37% in respect of income (other than certain specified income wherein surcharge is capped at 15%). The Finance Bill proposes to cap the highest surcharge under the new tax regime as per Section 115BAC of the IT Act at 25%. Such reduction of surcharge from 37% to 25% would result in reduction of maximum tax rate from 42.74% to 39%.
- **EWS:** Recently, the Supreme Court in Janhit Abhiyan, Writ Petition (Civil) No. 55 of 2019, upheld the validity of the 103rd Constitutional Amendment which provides 10% reservation for the EWS. EWS in India is a subcategory of people having a family income less than INR 800,000 and who do not belong to any special category such as SC/ST/OBC. A public interest writ petition has been filed before the Madras HC seeking exemption from tax for income less than INR 800,000. The proposed amendment is a welcome move as it largely deals with the issue pending before the Madras High Court.

Co-operative Societies

- Presently, Co-operative societies have an option to avail benefit of concessional tax rate of 22% under Section 115BAD of the IT Act. The Finance Bill proposes to insert new Section 115BAE providing concessional tax @ 15% for new manufacturing co-operative society set up on or after April 1, 2023. This provides level playing field for new manufacturing co-operative societies and new manufacturing companies.

BASIS OF CHARGE**Amendment to Section 9 of the IT Act**

- Section 9 of the IT Act provides that any sum of money exceeding INR 50,000 received by a 'non-resident' without consideration from a person resident in India on or after July 5, 2019 is deemed to accrue or arise in India.
- It is proposed to amend the above provision to extend the deeming provision to sum of money exceeding INR 50,000 received by a person 'resident but not ordinarily resident in India' without consideration from a person resident in India.

- Accordingly, any sum of money exceeding INR 50,000 received by either a 'non-resident' or 'resident but not ordinarily resident in India' from a person resident in India without any consideration shall be deemed to accrue or arise in India.
- This amendment is proposed to come into effect from April 1, 2024 and will accordingly apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment is brought to include the gifts received by person who is a 'resident but not ordinarily resident in India' from person resident in India within the ambit of income-tax.

INCOME NOT FORMING PART OF TOTAL INCOME

Amendment to Section 10(22B) of the IT Act

- Section 10(22B) of the IT Act is proposed to be amended to withdraw the exemption available to news agencies which are set up in India solely for collection and distribution of news.
- This amendment is proposed to come into effect from April 1, 2024 and will accordingly apply in relation to AY 2024-25 and thereafter.

Exemption of specified income arising to Development Authorities - Insertion of new clause (46A) to the Section 10 of the IT Act

- Section 10(46) of the IT Act provides exemption to any specified income arising to a body or authority or Board or Trust or Commission or class thereof not engaged in any commercial activity.
- It is proposed to amend the provisions of Section 10(46) of the IT Act, to exclude income of body or authority or Board or Trust or Commission not being a company, from the scope of Section 10(46) of the IT Act.
- Consequently, it is proposed to insert clause Section 10(46A) of the IT Act to exempt income arising to a body or authority or Board or Trust or Commission not being a company, which has been established or constituted by or under a Central or State Act with one or more of the following purposes:
 - dealing with and satisfying the need for housing accommodation;
 - planning, development or improvement of cities, towns and villages;
 - regulating, or regulating and developing, any activity for the benefit of the general public; or
 - regulating any matter, for the benefit of the general public, arising out of the object for which it has been created.

ELP COMMENTS:

Hon'ble Supreme Court in the case of Assistant Commissioner of Income-tax (Exemptions) vs Ahmedabad Urban Development Authority in Civil Appeal No 21762 of 2017 has held that the amounts or any money whatsoever charged for the public services are prima facie to be excluded from the ambit of business or commercial receipts as their objects are essential for advancement of public purposes and should be exempted under Section 10(46) of the IT Act.

The proposed amendment to the provisions of Section 10(46) of the IT Act and insertion of 10(46A) of the IT Act is brought in to settle the ambiguity of providing exemption with respect to commercial receipts for providing public services.

Amendment to Section 10AA of the IT Act

- Section 10AA of the IT Act provides 15-year tax benefit to a unit established in a SEZ which begins to manufacture or produce articles or things or provide any services on or after April 1, 2005.
- It is proposed to amend the Section 10AA(1) of the IT Act by insertion of a proviso to clause (ii), to allow the aforesaid deduction only if the returns are filed within the due date prescribed in Section 139 (1) of the IT Act. This proposed amendment will align Section 10AA and Section 143(1) of the IT Act.
- New sub-section (4A) to be inserted whereby deduction will be available to a unit if the proceeds from sales of goods or services are received in or brought in India in convertible foreign exchange, within a period of 6 months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.
- Further, it is proposed that the export proceeds from sale of goods or services shall be deemed to be received in India if it is credited to a separate account maintained for the purpose by the assessee with any bank outside India with RBI's approval.
- This amendment is proposed to come into effect from the April 1, 2024 and would apply in relation to the AY 2024-25 and thereafter.

Amendment to Section 10 (23BBF), (23EB), (26A), (41) and (49)

- Clauses (23BBF), (23EB), (26A), (41) and (49) of Section 10 of the IT Act have been proposed to be omitted on account of having become redundant.
- This amendment will take effect from April 1, 2023.

SALARY INCOME

Valuation of residential accommodation provided to employees as perquisites - Amendment to clause (2) of Section 17 of the IT Act

- As per clause (2) of Section 17 of the IT Act, "perquisite" *inter alia* includes value of rent-free accommodation or value of any concession in the matters of rent provided to employees by the employer.
- It is proposed to amend sub-clauses (i) and (ii) of clause (2) of Section 17 of the IT Act to provide uniform methodology in the Rules for computing the value of perquisite and to clearly classify the two categories of perquisites with respect to accommodation provided by the employers.
- Further, it is proposed to substitute Explanation 1 to Explanation 4 to sub-clause (ii) of clause (2) of Section 17 of the IT Act by insertion of a new Explanation so as to provide that accommodation shall be deemed to have been provided at a concessional rate if the value of the accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee.
- This amendment is proposed to come into effect from April 1, 2024, and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

Methodology to compute the value of rent-free accommodation is prescribed in Rule 3 of the IT Rules while the methodology to compute the value of any concession in the matters of rent provided to employees by the employer is prescribed in the Explanation 1 to 4 to the clause (2) of Section 17 of the IT Act. By prescribing valuation methodology to compute perquisites in case of concessional rent, the aforesaid amendment brings uniformity to computing perquisites under both the scenarios.

INCOME FROM BUSINESS AND PROFESSION**Amendment to Section 28 of the IT Act**

- Section 28(iv) of the IT Act is proposed to be amended to include benefits or perquisites arising from business or exercise of a profession which are in cash or kind or partly in cash and partly in kind.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

ELP COMMENTS:

The proposal seeks to nullify the position laid down by the Hon'ble Supreme Court in case of Mahindra and Mahindra Ltd. [93 taxmann.com 32] wherein the Hon'ble Court has held that the value of benefit or perquisite would be included in Section 28(iv) of the IT Act only if the same is not in cash or money. Additionally, the said proposal may lead to multiple tax litigations. For instance - there are certain relaxations introduced in the Guidelines under Section 194R of the IT Act (such as loan waiver by financial institutions), the same are not extended to Section 28(iv) which may lead to litigation.

Amendment to Section 35D of the IT Act

- Section 35D of the IT Act is proposed to be amended to provide ease in claiming deduction on amortization of preliminary expenses. The condition of activities like preparation of feasibility report, project report etc. to be carried out by a concern approved by CBDT is proposed to be removed and the taxpayer will be required to furnish a statement in prescribed form which shall contain the particulars of such expenditure to claim the deduction under Section 35D of the IT Act.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment shall provide convenience to taxpayers in claiming the said deduction under Section 35D of the IT Act.

Amendment to Section 43B of the IT Act

- As per Section 43B of the IT Act, certain expenses are allowed as a deduction on payment basis, even if the assessee is offering income to tax on accrual basis. Further, if the payment is made before the due date of filing return of income, the same can be claimed as deduction in the year of accrual.

- It is proposed to include payments made to micro or small enterprises within the ambit of Section 43B of the IT Act. Further, the benefit of claiming the deduction of the expense in the year of accrual if payment is made before the due date of filing return of income will not be available in respect of payment to micro or small enterprises.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment will push taxpayers to prioritize payment to micro or small enterprises. Additionally, the taxpayer will have to make the payment to micro or small enterprises within the same financial year to claim the deduction in the year of accrual.

NBFC Categorization (Section 43B and Section 43D)

- Classification of NBFC into namely, Systematically Important Non-deposit taking NBFC and Deposit taking NBFC is no longer used by the RBI for the purpose of asset classification.
- Therefore, consequential amendment is proposed in Section 43B and Section 43D which had reference to these categories of NBFC and the same has been substituted to refer to “such class of NBFCs as may be notified by the CG” in this behalf.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

Amendment to Section 44AB of the IT Act

- Section 44AB of the IT Act provides for the requirement to carry out tax audit where the turnover exceeds the threshold limits provided therein. Presently, the first Proviso to Section 44AB(a) provide that tax audit is not required where the turnover exceeds INR 10 million but does not exceed INR 100 million where receipts and payments in cash does not exceed 5% of the total receipts and payments, respectively.
- It is proposed to substitute the first proviso to Section 44AB(a) to provide taxpayers who are opting to pay tax under Presumptive Scheme (under Section 44AD or Section 44ADA) are not liable to conduct tax audit under Section 44AB.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment seeks to get the taxpayers with turnover more than INR 10 million and not opting for presumptive taxation under Section 44AD or Section 44ADA under the purview of tax audit even if their turnover and expenses are in non-cash modes. The said intent is not expressly mentioned in the Explanatory Memorandum and therefore, it is unclear whether the same is an inadvertent error or a conscious decision.

Amendment to Presumptive taxation regime for MSME (Section 44AD) and Professionals (Section 44ADA)

- The threshold limit for offering income to tax on presumptive basis under Section 44AD and Section 44ADA has been raised to INR 30 million and INR 7.5 million respectively provided the aggregate amount received in cash does not exceed 5% of the total turnover/gross receipts of the previous year.
- Further, it is proposed to provide that amounts which are not received through an account payee cheque will be deemed to be received in cash for the purpose of these sections.

- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

Amendment to Presumptive taxation regime for non-resident taxpayers for Oil exploration (Section 44BB) and Civil construction (Section 44BBB)

- Section 44BB and Section 44BBB of the IT Act provides for taxation of income at a presumptive rate of 10% on income earned by non-resident taxpayers engaged in specified businesses. Further, it also provides that where the non-resident taxpayer does not want to offer income to tax at presumptive rate and offer actual income as per normal provisions, the same can be offered provided that the taxpayer maintains books of account and get them audited under Section 44AB of the IT Act.
- It is proposed to insert a new sub-section in Section 44BB and Section 44BBB of the IT Act to provide that where the income in any AY is offered on presumptive basis, set-off of unabsorbed depreciation and brought forward business loss will not be allowed.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly, would apply in relation to the AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment is to prevent abuse of presumptive scheme by non-resident taxpayers where they would opt in and opt out of presumptive scheme to avail benefit of both presumptive and non-presumptive scheme. In a year where they incur losses, they would opt for taxation under normal provision and carry forward the losses whereas in a year where they earn profits such taxpayers would opt for taxation at presumptive rate and set-off the brought forward losses and unabsorbed depreciation.

CAPITAL GAINS

Rationalization of provisions relating to Joint Development Agreement

- Section 45(5A) of the IT Act *inter-alia* stipulates that the capital gain arising to a taxpayer (individual or HUF), from the transfer of a capital asset, being land or a building or both, under a JDA shall be taxable in the year in which the competent authority issues a certificate of completion for all or a portion of the project.
- As per the existing provisions, the full value of consideration for calculating the capital gains on account of JDA is the stamp duty value of the assessee's share, as increased by any consideration received in "cash".
- Finance Bill proposes to amend Section 45(5A) of the IT Act to align the capital gains provisions with Section 194-IC of the IT Act pertaining to TDS provisions on JDA. As per the proposed amendment, full value of consideration for the purpose of computation of capital gains on JDA would include "any consideration paid by way of cheque, draft, or any other mode".
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

Amending the mode of computation of capital gains on transfer of house property

- Section 48 of the IT Act provides for the mode of computation of capital gains. Section 24(b) and Section 80EE of the IT Act provide for deduction of interest payable on borrowed capital for acquiring, renewing or reconstructing a property.
- The Finance Bill proposes to insert a proviso to Section 48(ii) of the IT Act to clarify that the cost of acquisition or cost of improvement of an asset shall not include “interest” claimed as a deduction under the following provisions:
 - Section 24(b) of the IT Act while computing the income from House Property
 - Section 80EE of the IT Act while computing the taxable income.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

This amendment would refrain a taxpayer from claiming double deduction i.e., under the head of “income from house property” or “deduction from gross total income” and also at the time of computing capital gains upon transfer of such house property by adding the interest component to its cost of acquisition.

The Andhra Pradesh High Court in case of *KS Gupta (119 ITR 372)* held that interest payment on monies borrowed for purchase of land should be included in the cost of acquisition of such land. Later, the Bangalore bench of ITAT in case of *Sri Jerry Mathew Elias Kavoor (2021 (10) TMI 91)* relied upon the above decision of the Andhra Pradesh High Court. In this case, the Bangalore bench of ITAT directed the tax authorities to treat the interest not claimed as deduction under Section 24 of the IT Act as cost of acquisition while computing capital gains.

The proposed amendment reaffirms the observations of the Bangalore bench of the ITAT regarding treatment of balance interest (not claimed as deduction under Section 24 or Section 80EE) as cost of acquisition while computing capital gains.

Capital gains on transfer of Market Linked Debenture

- The Finance Bill proposes to insert Section 50AA of the IT Act which contemplates treating gains arising from transfer, redemption or maturity of “Market Linked Debentures” as Short-Term Capital Gains. Further, as per the proposed amendment, while the cost of acquisition of the debenture and expenditure incurred wholly and exclusively in connection with such transfer, redemption or maturity is allowed as a deduction for computing such short-term capital gains, no deduction is allowed for any sum paid on account of securities transaction tax.
- The Explanation to proposed Section 50AA defines “Market Linked Debenture” to mean any instrument, by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to the market returns on other underlying securities or indices. It also includes any security classified or regulated as a market linked debenture by SEBI.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

In recent times, such instruments have gained popularity considering the linkage to market returns and at the same time enjoying indexation as well as lower tax rate benefits if held for the long term. The proposed insertion curbs such benefit by treating gains on such Market Linked Debentures as short-term capital gains irrespective of their period of holding. Thus, any gains arising from transfer, redemption or maturity would be taxed at normal rates and would also be deprived of indexation benefits.

Restrictions on deductions claimed on re-investment in house property

- Section 54 and Section 54F of the IT Act allows deduction from computing tax on transfer of long-term capital assets if the amount of such capital gains or sale consideration, as the case may be, is re-invested in a house property. The current provisions do not limit such deduction.
- Finance Bill proposes to amend Section 54 and Section 54F of the IT Act to the extent that the deductions under these provisions are restricted to reinvestment amount of INR 100 million. The limit of INR 100 million has also been laid down on the transfer of unutilized capital gains or sale consideration to the specified account.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

The objective of Section 54 and Section 54F of IT Act is to promote the house building activity; however, certain taxpayers are using these provisions to claim huge exemption by purchasing expensive properties. The proposed restriction on reinvestment amounting to INR 100 million will prevent such practices. Investment of Capital Gains exceeding INR 100 million would be entirely subject to long term capital gains for the purpose of Section 54 of IT Act whereas investment of net consideration exceeding INR 100 million would be subject to proportionate long-term capital gains for the purpose of Section 54F of IT Act.

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

- The existing provisions of Section 55 of the IT Act, *inter-alia*, define the “cost of any improvement” and “cost of acquisition” for the purposes of computing capital gains. The provisions of Section 55 deem a “Nil” cost of acquisition or cost of improvement in case of certain assets *inter-alia* including goodwill of a business or profession, trademark of a brand name associated with a business or profession, right to manufacture, produce or process any article or thing, right of carry on any business or profession.
- The Finance Bill proposes to amend Section 55 of the IT Act to increase the ambit of such assets whose cost of acquisition or cost of improvement shall be deemed to be “Nil”, to include “any intangible asset or any other right” (other than those already mentioned in Section 55(b)(1) and Section 55(2)(a) of the IT Act).

ELP COMMENTS:

Various courts have consistently held that capital gains computation mechanism would fail where the cost of acquisition of any asset cannot be determined. By inserting a specific provision by earlier Finance Acts, the cost of self-generated goodwill and a few other assets (mentioned in Section 55(b)(1) and Section 55(2)(a) of the IT act) were to be "nil". Finance Bill proposes that the cost of acquisition or the cost of improvement of any intangible asset or right should also be considered as "nil".

CAPITAL GAINS ON ELECTRONIC GOLD RECEIPTS**Amendment to period of holding of short-term capital asset**

- Section 2(42A) of the IT Act is proposed to be amended to provide for the period of holding of short-term capital asset being EGR issued in respect of gold and vice-versa. EGR is an instrument representing gold in electronic and demat form. Trading of EGR is similar to buying and selling of stocks.
- It is proposed that when an EGR is converted into gold, the period of holding of an EGR would be inclusive of the period for which the gold was held by the assessee prior to conversion into EGR. Likewise, where gold is released in respect of an EGR, the period of holding of such gold would be from the time the EGR was held by the assessee.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

Amendment to Section 47 of the IT Act

- Section 47 of the IT Act is proposed to be amended such that the conversion of gold into EGR issued by a Vault Manager or vice-versa is not treated as "transfer".
- Any transfer of gold by a person to the Vault Manager, or by a Vault Manager to a person would not be regarded as transfer and thus would not attract any capital gains.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

Amendment to Section 49 of the IT Act

- Section 49 of the IT Act is proposed to be amended to provide for the cost of acquisition in case of EGR issued by a Vault Manager or gold released against such EGR by a Vault Manager.
- It is proposed that the cost of acquisition of an EGR issued by a Vault Manager shall be deemed to be the cost of gold in the hands of the person in whose name the EGR is issued. Similarly, the cost of acquisition of gold released against an EGR shall be deemed to the cost of EGR in the hands of such person.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

SEBI, in its meeting held on September 28, 2021, approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021. Though the framework for operationalizing the Gold Exchange in India was issued by SEBI, there were no clarifications on the taxation of such EGRs.

Finance Bill has rightly provided that where gold is transferred to the Vault Manager, or the Vault Manager releases such gold, it is simply converting gold into a digital form or vice-versa and hence shall not be treated as transfer. Such EGRs have been classified as “securities” under Section 2(h)(iia) of the Securities Contracts (Regulation) Act, 1956 vide Gazette notification S.O. 5401 (E) dated December 24, 2021. Hence, where such EGRs are ultimately sold to a third person, it shall attract capital gains tax.

For computing capital gains on transfer of EGR, the period of holding would extend to the period where the gold was held by such person.

INCOME FROM OTHER SOURCES

Bringing the non-resident investors within the ambit of section 56(2)(viib) of the IT Act

- Section 56(2)(viib) of the IT Act, *inter-alia*, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head ‘Income from other sources’.
- The existing provisions of Section 56(2)(viib) of the IT Act were not applicable to premium received from non-residents. The Finance Bill proposes to extend the applicability of the provisions of section 56(2)(viib) of the IT Act to investments received from non-residents as well.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

The provisions of Section 56(2)(viib) of the IT Act have been extended to investments received from non-residents as well with a view to prevent generation and circulation of unaccounted money through share premium in excess of its fair market value.

Amendment to Section 56 of the IT Act

- Any sum received by a unit holder from a business trust is proposed to be taxed as income from other sources. In this regard, Section 56 of the IT Act is proposed to be amended by inserting clause (xii) to sub-section 2.
- Such amount shall not include any income in the nature of interest, dividend, rent exempt under Section 10(23FC) and 10(23FCA); or such other income, taxed under Section 115UA of the IT Act.

- It is further proposed that, where the amount received by the unit holder is for redemption of units held by him, he shall be provided the benefit of reducing the cost of acquisition from such amount.
- Consequentially, it has been proposed to insert a new Sub-Section (3A) in Section 115UA of the IT Act to provide that where the sum received by a unit holder is taxed under Section 56(2)(xii), it shall be out of the purview of Section 115UA of the IT Act.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

It is important to note that gains arising on redemption of units shall be subject to income from other sources as against Capital gains. Consequently, any capital loss arising on redemption shall not be available for carry forward in the hands of the unit holders.

Amendment to Section 10(10D) and Section 56 of the IT Act

- Section 10(10D) of the IT Act provides for exemption on the sum received under a life insurance policy, including bonus on such policy, provided the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured.
- Finance Act, 2021 amended Section 10(10D) of the IT Act to provide for taxation of sum received under ULIP where the aggregate premium exceeded INR 0.25 million for any of the previous years during the term of any of the policy. All other kinds of life insurance policies were still eligible for exemption irrespective of the amount of premium payable.
- Section 10(10D) of the IT Act is proposed to be amended to withdraw the exemption on amount received under a life insurance policy (other than ULIP) having premium or aggregate of premium exceeding INR 0.5 million in a year. However, such amount received on death of a person shall be exempt from tax.
- The proposed amendment shall be applicable for policies issued on or after April 1, 2023. Accordingly, the proposed amendment would apply to AY 2024-25 and thereafter.
- In accordance with the proposed amendment in Section 10(10D) of the IT Act, Section 56 of the IT Act is proposed to be amended by inserting clause (xiii) to sub-section 2 to provide for taxation of any sum received under a life insurance policy, including bonus on such policy, where the premium or aggregate of premium exceeds INR 500,000 in a year.
- Such taxable amount shall exclude any sum received under ULIP or Keyman insurance policy.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

The intention of the Government is to curb the exemption provided in Section 10(10D) of the IT Act by investing in policies having large premium contributions and claiming exemption. Hence, the proposal is to ensure that such provisions are not misused by individuals.

India is the fifth largest life insurance market in the world's emerging insurance markets, growing at a rate of 32-34% each year. Further, the Covid-19 pandemic has encouraged people to invest heavily in life insurance policies. The general impression among people is that proceeds of life insurance policies are totally tax free.

Being the most populous country in the world, the Government should encourage individuals to protect their families by opting for life insurance policies. Withdrawing the exemption for all individuals, in the surmise of it being abused by high-net-worth individuals seems unfair. The Government may revisit the proposal and accordingly make amendments in the IT Act.

CARRY FORWARD AND SETOFF**Set off and carry forward of losses and unabsorbed depreciation of public sector companies in case of amalgamation - Amendment to Section 72A of the IT Act**

- Definition of Strategic Disinvestment in clause (iii) of Explanation for clause (d) of Section 72A(1) is proposed to be amended.
- Clause (d) of sub-Section (1) of Section 72A of the IT Act enables carry forward and set off of loss and unabsorbed depreciation in case of amalgamation under strategic disinvestment of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding below fifty-one per cent along with transfer of control to the buyer.
- To facilitate further strategic disinvestment, it is proposed to amend the definition of 'strategic disinvestment' in Section 72A of the IT Act so as to provide that strategic disinvestment shall mean sale of shareholding by the Central Government, the State Government or Public Sector Company in a public sector company or a company which results in:
 - reduction of its shareholding below fifty-one per cent, and
 - transfer of control to the buyer.
- The first condition shall apply in case the shareholding was above fifty one percent before such strategic disinvestment. The requirement of transfer of control may be carried out by either the Central Government or State Government or Public Sector Company or any two of them or all of them.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

Currently, definition of strategic divestment do not include divestment by Public Sector Company. The same is now proposed to be inserted. Further, the Bill proposes to amend the definition to provide that: (i) the condition of reduction of Govt.'s or PSU's shareholding below 51% shall apply in case the shareholding is above 51% prior to sale of shareholding and (ii) transfer of control may be carried out by the Central Govt. or the State Govt. or the Public Sector Company or any two of them or all of them.

Set off and carry forward of losses and unabsorbed depreciation in Banking sector in case of amalgamation - Amendment to Section 72AA of the IT Act

- Clause (i) to Section 72AA of the IT Act is amended to provide for carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of one or more banking company with any other banking institution or a company subsequent to a strategic divestment, if such amalgamation takes place within 5 years of strategic divestment.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

The aforesaid amendment proposes to provide a level playing field to the banking sector in protecting past accumulated losses and unabsorbed depreciation in case of strategic divestment by Government.

Amendment to Section 79 of the IT Act

- Proviso to Section 79(1) of the IT Act is proposed to be amended to enable the eligible start-ups to carry forward its losses under the proviso, if loss has been incurred during the period of ten years instead of seven years beginning from the year in which the company was incorporated.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

The proposed amendment aligns with period of ten years available to an eligible start-up under sub-section (2) of Section 80-IAC of the IT Act. The proposed amendment enables eligible start-ups to set off losses of its initial years of inception against profits generated during later years.

CHAPTER VI-A DEDUCTIONS**Amendment to Section 80G of the IT Act**

- Section 80G of the IT Act specifies the procedure for granting approval to specific institutions/funds receiving donations and the allowable deductions for such donations to the taxpayer making such donations. Section 80(2)

of the IT Act provides a list of institutions/funds to which donations made by the taxpayer are eligible for deduction to the extent of 50%/100% of the amount so donated.

- Finance Bill proposes to amend Section 80G of the IT Act to provide that donations to the following institutions/funds would not be eligible for Section 80G deduction:
 - Jawaharlal Nehru Memorial Fund
 - Indira Gandhi Memorial Trust
 - Rajiv Gandhi Foundation
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

Introduction of new Section 80CCH

- Finance Act proposes to introduce a new section 80CCH to allow 100% deduction of the following amounts to an taxpayer who is a participant in the Agnipath Scheme and who subscribes to the Agniveer Corpus Fund on or after November 1, 2022:
 - Amount deposited by such taxpayer in Agniveer Corpus Fund; and
 - Amount contributed by the Central Government in the Agniveer Corpus Fund.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-24 and thereafter.

Amendment to Section 80-IAC of the IT Act

- The existing provisions of Section 80-IAC of the Act provide for a deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up for 3 consecutive AYs out of 10 AYs, beginning from the year of incorporation, at the option of the taxpayer, subject to satisfaction of the following conditions:
 - The total turnover of its business does not exceed INR 1 billion.
 - It is holding a certificate of eligible business from the Inter-Ministerial Board of Certification; and
 - It is incorporated on or after April 1, 2016 but before April 1, 2023.
- Finance Bill proposes to amend Section 80-IAC of the IT Act to extend the sunset timeline for incorporation of the eligible startup by one year to April 1, 2024.

ELP COMMENTS:

The proposed amendment to the provisions of Section 80-IAC of the IT Act is a welcome step towards promoting the development of start-ups and providing them with a competitive platform. By extending the period of incorporation to April 1, 2024, the government is showing its commitment to support and encourage entrepreneurship in the country. Effectively, eligible start-ups incorporated in FY 2023-24 would also now be able to obtain the benefit of tax holiday.

CONCESSIONAL TAX REGIMES

Extension of scope of Section 115BAC of the IT Act to other persons being AOP, BOI and AJP

- Section 115BAC of the IT Act is proposed to be amended to extend its scope beyond individuals and HUFs, to other persons being AOP (other than a co-operative society), BOI and AJP. The beneficial provisions of Section 115BAC of the IT Act can be availed by such other persons from FY starting from April 1, 2023.
- It is proposed that deduction under proposed Section 80CCH shall be available for persons opting for the new tax regime. Further, deduction under Section 80CCD(2) and 80JJAA would continue to be available.
- It is proposed that a person having a unit in IFSC opts for the new tax regime shall be eligible for deduction under Section 80LA of the IT Act.
- Further, at the time of opting for a new tax regime, the opening WDV of the respective block of the asset shall be increased by such additional depreciation available to the taxpayer.

ELP COMMENTS:

While introducing the new tax regime in the Finance Act, 2020, the main objective of the Government was to eventually move towards a tax regime of low/moderate tax rate. The Government intended to make compliance simpler for the taxpayers and reduce the administrative burden of the Income-tax authorities and employers. Due to the restrictions in claiming certain deductions and exemptions, the first two years of the new tax regime witnessed only ~ 500,000 takers, majorly the new income earners and the retired assesseees who had very few deductions and exemptions to claim.

Emphasizing on its initial objective, going forward, the Government has proposed to make the new tax regime the default scheme for taxation. In this regard, it is proposed to amend not only the tax slabs and tax rates but also extend the scope to AOP (other than a co-operative society), BOI and AJP.

Introduction of concessional tax regime for new manufacturing co-operative society

- Section 115BAE is proposed to be inserted in the IT Act to provide an option to co-operative societies to avail concessional rate of tax at 15% upon fulfilment of certain conditions. The benefit is extended only to resident co-operative societies engaged in manufacturing/production of an article or thing.
- The relevant and important conditions for availing benefit under Section 115BAE are:
 - The “new manufacturing co-operative society resident in India” should be set up on or after April 1, 2023 and should have commenced manufacturing/ production on or before March 31, 2024
 - Such co-operative societies shall be barred from availing certain specified exemptions and deductions provided under the IT Act
 - The business should not be formed up by splitting up or the reconstruction of a business already in existence and does not use second-hand machinery or plant (except second-hand machinery used outside India on fulfilling certain conditions). However, second-hand machinery or plant not exceeding 20% of the total value of the machinery and plant may be used by the co-operative society.

- It is proposed that any additional income of the entities undertaking manufacturing/ production, which is not derived from or is incidental to manufacturing, will be taxed at 22%.
- Certain manufacturing activities i.e., development of computer software, mining, printing of books, production of cinematographic film, bottling of gas in a cylinder, and other activities as notified, are proposed to be specifically excluded from the ambit of Section 115BAE of the IT Act.
- Manufacturing co-operative society desirous of opting for the concessional tax rate shall state their expression in the return of income. Once availed, the beneficial provision of Section 115BAE will be applicable to subsequent years.

ELP COMMENTS:

Section 115BAD and Section 115BAE are mutually exclusive of each other. The erstwhile special provision of Section 115BAD applicable to co-operative societies covers within its ambit all co-operative societies resident in India, whereas Section 115BAE includes only 'new manufacturing co-operative society resident in India'.

The Taxation Laws (Amendment) Act, 2019 inserted Section 115BAB to the IT Act which provides for concessional tax rate at 15% to the new manufacturing domestic companies. Since, this provision does not cover co-operative society in its ambit, it created disparity between the domestic manufacturing company vis-a-vis manufacturing co-operative society resident in India, which led to filing of several representations in this matter.

The provision of Section 115BAE of the IT Act is an outcome of a representation made for providing level playing field between the new manufacturing co-operative society resident in India and new manufacturing companies by applying the same tax rate under the IT Act.

With the insertion of Section 115BAE of the IT Act "manufacturing co-operative societies" have been kept at par with "manufacturing domestic companies" which already enjoys concessional rate of tax @ 15% under Section 115BAB.

OTHER**Exclusion of "online games" from Section 115BB of the IT Act**

- Income by way of winnings from any lottery or crossword puzzle or card game and "other games of any sort" are subjected to income tax at 30% under Section 115BB of the IT Act.
- In view of the insertion of proposed Section 115BBJ, Section 115BB of the IT Act is proposed to be amended to exclude from its ambit winnings from any "online game" as defined in Section 115BBJ of the IT Act.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

Introduction of new Section 115BBJ of the IT Act to tax "online games"

- It is proposed to insert a new Section 115BBJ in the IT Act relating to tax on winnings from online games. The proposed Section seeks to levy income tax on "net winnings from online games", computed in the manner as may be provided by rules, at the rate of 30%.

- The term “online game” has been defined as “a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device”. The terms “internet” and “computer resource” have also been separately defined.
- This amendment will take effect from April 1, 2024 and will, accordingly, apply in relation to the AY 2024-2025 and subsequent AYs.

ELP COMMENTS:

The manner of computation of “net winnings” is yet to be prescribed. It remains to be seen how Gross Gaming Revenue and/ or Contest Entry Amount, other fees and losses are adjusted while computing “net winnings”. This may also require appropriate modifications in the ERP systems as well as terms and conditions of the online gaming platforms as regards withdrawal of winnings by the user.

Amendment to Section 115JC and 115JD of the IT Act

- Section 115JC of the IT Act entails that AMT must be paid by all non-corporate assesses where the income exceeds INR 2 million, if the regular income tax is less than the AMT. Section 115JD provides for tax credit for AMT.
- Section 115JC and Section 115JD of the IT Act are proposed to be amended to provide that such provisions shall not be applicable where the assessee has exercised the option available under Section 115BAC, 115BAD or 115BAE.

Amendment to Section 115TD of the IT Act

- Section 115TD of the IT Act was introduced to prevent a trust or institution from winding-up or merging or converting into a non-charitable organisation and tagging along with them the corpus gathered over the years due to exemptions. Section 115TD, *inter alia*, imposes a tax on the accreted income of a trust or institution, which has dissolved or converted, irrespective of any income tax liability.
- The amendment proposed under Section 115TD is two-fold. Firstly, it proposes that a trust or institution which fails to make an application for grant of approval as per clauses (i) to (iii) of the first provision to Section 10(23C) or as per sub-clauses (i) to (iii) of Section 12A(1)(ac) will be deemed to have converted and not eligible for registration for the purpose of calculation of tax on accreted income under Section 115TD(1).
- Clauses (i) to (iii) of the first provision to Section 10(23C) and sub-clauses (i) to (iii) of Section 12A(1)(ac) provides for registration of certain trusts, universities, educational institutions, hospitals, etc. to claim exemptions.
- Secondly, the amendment proposes that the “date of conversion” of a trust or institution would include the last date of making an application as per clauses (i) to (iii) of the first provision to Section 10(23C) or sub-clauses (i) to (iii) of Section 12A(1)(ac). The tax on the accreted income is calculated from the specified date. The specified date is the date of conversion in a case where a trust or institution is not eligible for registration.

PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT

Amendment to Section 132 of the IT Act

- Section 132 of the IT Act relates to the powers of income-tax authority during the search and seizure proceedings, procedure to be followed, requisition of services of other officers for assistance, examination of books of account or other documents, procedure for custody of evidence, provisional attachment etc. The section also provides the timelines to be followed by the income-tax authority during and post search proceedings.
- Sub-Section (2) of said section provides that during the course of search, the authorised officer may requisition the services of any police officer or any officer of the Central Government to assist him for any of the action required to be performed during the course of such search and it shall be duty of such officer to comply.
- It is proposed to substitute Sub-Section (2) of the said section so as to provide that the authorised officer may requisition the services of any policer officer or any officer of the Central Government, or of both, or other person or entity, as approved by the Principal Chief Commissioner or the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure as may be provided by rules by the Board in this regard, to assist him for the purposes of the search and it shall be the duty of such officer or person or entity to comply with such requisition.
- It is further proposed to substitute Sub-Section (9D) of the said section to provide that, the authorised officer, during the course of a search or within sixty days from the date of the last authorisation, may make a reference to a Valuation Officer referred to in Section 142A or any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner, the Chief Commissioner, the Principal Director General or the Director General, in accordance with the procedure laid down by the Board in this regard, who shall estimate the fair market value of the property in the manner as may be provided by rules, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within sixty days from the receipt of such reference.
- These amendments are proposed to come into effect from April 1, 2023.

ELP COMMENTS:

With changing times, search and seizure procedures could require the use of data forensics, advanced technologies for decoding data etc., for complete and proper analysis of accounts. Further, valuation of undisclosed income held in various forms of assets or investments in addition to immovable property, could require specific domain experts like digital forensic professionals, valuers, archive experts etc. Services of other professionals like locksmiths, carpenters etc. may also be required, due to typical nature of the operations. The aforesaid amendments are proposed with a view to provide that during the course of search, the Authorized Officer may requisition the services of such persons/entities.

- Explanation 1 to the said Section is proposed to be substituted, so as to provide that for the purposes of Sub-Sections (9A), (9B) and (9D), execution of an authorisation for search shall be deemed to have been executed, in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose

case the warrant of authorisation has been issued; and in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the authorized officer.

- This amendment is proposed to come into effect retrospectively from April 1, 2022.

Amendment to Section 135A of the IT Act

- Section 135A of the IT Act deals with the faceless collection of the information. Sub-Section (2) therein provides that the Central Government may, for the purpose of giving effect to the scheme made under Sub-Section (1) of Section 135A, by notification in the Official Gazette, direct that any of the provisions of the IT Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification. No direction shall be issued after March 31, 2022.
- After the first proviso to sub-section (2) of Section 135A, it is proposed that a second proviso be inserted to provide that the Central Government may amend any direction issued therein on or before March 31, 2022.
- This amendment is proposed to come into effect retrospectively from April 1, 2022.

Amendment to Section 140B of the IT Act

- Section 140B provides for the tax required to be paid for opting to file a return under the Sub-Section (8A) to Section 139 of the IT Act i.e. updated return. Sub-Section (4) therein provides that interest payable under Section 234B of the IT Act in relation to the filing of updated return shall be computed on an amount equal to the assessed tax or the amount by which the advance tax paid falls short of the assessed tax. Further, Sub-clause (i) of clause (a) of Sub-Section (4) provides for reduction of advance tax which has been claimed in the earlier income.
- It is proposed to amend Sub-Section (4) to Section 140B to provide that interest payable under Section 234B shall be computed on an amount equal to the assessed tax as reduced by the amount of advance tax, the credit for which has been claimed in the earlier return, if any. This amendment is clarificatory in nature.
- This amendment is proposed to come into effect retrospectively from April 1, 2022.

Amendment to Section 142(2A) of the IT Act

- Sub-section 142(2A) of the IT Act provides that in case the Assessing officer has doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialized nature of business activity of the assessee at any stage of the proceedings in regards to the nature and complexity of the accounts, volume of the accounts and in the interests of revenue, and is of the opinion that it is necessary, he may with the previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, direct the assessee to get his accounts audited by an accountant, and to furnish report as per rules.
- It is proposed to amend the said sub-section (2A) so as to enable the AO to get the inventory of the assessee also valued by a cost accountant. In this regard, it is proposed to amend Section 142 of the IT Act relating to inquiry before assessment to ensure the following:
- To enable the AO to direct the assessee to get the inventory valued by a cost accountant, nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf. Assessee is

then required to furnish the report of inventory valuation in the prescribed form duly signed and verified by such cost accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

- To provide that the expenses of, and incidental to, such inventory valuation (including remuneration of the cost accountant) shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines and that the expenses so determined shall be paid by the Central Government.
- To provide that except where the assessment is made under section 144 of the IT Act, the assessee will be given an opportunity of being heard in respect of any material gathered on the basis of such inventory valuation which is proposed to be utilized for assessment.
- To define “cost accountant” to mean a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.
- Consequentially, changes have been proposed in Section 153 and Section 295 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2023.

ELP COMMENTS:

The proposed amendment will assist in preventing permanent deferral of taxes through undervaluation of inventory.

Amendment to Section 148 of the IT Act

- Section 148 of the IT Act relates to the issue of notice where income has escaped assessment. The said section, *inter alia*, provides that before making the assessment, reassessment or recomputation under Section 147 of the IT Act, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable.
- It is proposed to amend the said section to provide that such return shall be furnished in a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee.
- Further, a third proviso is proposed to be inserted in the said section to provide that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under Section 139 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2023.

ELP COMMENTS:

With the aforesaid amendment, a fixed time period (of three months from the end of the month in which the notice is issued), will be granted to the assessee to furnish his returns, rather than a time period to be decided at the discretion of the Assessing Officer.

Amendment to Section 149 of the IT Act

- Sub-Section (1) to Section 149 of the IT Act deals with the time limit as to when no notice under Section 148 of the IT Act shall be issued for the relevant assessment year.
- It is proposed to amend the said Sub-Section (1) to insert third proviso after the second proviso to provide that for cases referred to in clause (i), (iii) and (iv) of the Explanation 2 to Section 148 of the IT Act, where a search is initiated under Section 132 of the IT Act or a search under section 132 of the IT Act for which the last of the authorizations is executed or requisition is made under section 132A of the IT Act, after the 15th March of any financial year and the period for issue of notice under section 148 of the IT Act expires on 31st March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 of the IT Act in such case shall be deemed to have been issued on the 31st March of such financial year.
- The proposed fourth proviso provides that where the information as referred to in Explanation 1 to Section 148 of the IT Act emanates from a statement recorded or documents impounded under Section 131 or Section 133A of the IT Act, as the case may be, on or before the 31st March of a financial year, in consequence of, a search under Section 132 of the IT Act which is initiated or a search under Section 132 of the IT Act for which the last of the authorisations is executed or a requisition is made under Section 132A of the IT Act, after the 15th March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of Section 148A of the IT Act in such case shall be deemed to have been issued on the 31st March of such financial year.
- It is also proposed to amend the sixth proviso in the said sub-section to provide that where immediately after the exclusion of the period referred to in the fifth proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148A of the IT Act does not exceed seven days, such remaining period shall be extended.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

In the cases where the aforementioned search, requisition or survey proceedings are conducted after 15th March of a financial year, there is extremely little time to collate this information and issue a notice under section 148 or show cause notice under section 148A(b) of the IT Act. Moreover, the search is conducted by the Investigation Wing and the notice is required to be issued by the Assessing Officers. The aforesaid amendments would allow the

Assessing Officer to carefully consider relevant aspects of the case before issuing notice, rather than being rushed to issue notice in order to meet the limitation period expiring on 31st March of the financial year.

Amendment to Section 151 of the IT Act

- Section 151 of the IT Act deals with the sanction for issue of notice. Clause (ii) therein provided the specified authority for the purposes of Section 148 of the IT Act (procedure to issue of notice where income has escaped assessment) and Section 148A of the IT Act (procedure of conducting inquiry, providing opportunity before issue of notice under section 148).
- It is proposed to amend the said clause (ii) of the said section to provide that the specified authority for the purposes of Section 148 of the IT Act and Section 148A of the IT Act shall be the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

The aforesaid amendment seeks to remove confusion with regards to the specified authority for the cases where re-opening is being done after three years from the relevant assessment year. Additionally, this amendment can also be seen as one to facilitate administrative convenience.

Amendment to Section 153 of the IT Act

- Section 153 of the IT Act deals with time limit for completion of assessment, reassessment and recomputation. It is proposed to amend the third proviso to Sub-Section (1) to provide that the period of nine months specified therein to pass an order of assessment shall be applicable only to the assessment year commencing on April 1, 2021.
- Further a new proviso is proposed to be inserted to provide that an order of assessment relating to the assessment year commencing on or after April 1, 2022 shall be passed within twelve months from the end of the assessment year in which the income was first assessable.
- Similarly, the timeline to pass an order of assessment where an updated return under Section 139(8A) was furnished, has been increased from nine months to twelve months from the end of the relevant financial year in which such updated return was furnished.
- Further, it is proposed to amend Sub-Section (3) of the said Section to provide that the provisions of the said sub-section shall also be applicable to revision order under Section 263 or Section 264, passed by the Principal Chief Commissioner or Chief Commissioner in addition to the revision orders passed by Principal Commissioner or Commissioner, as the case may be.
- Furthermore, it is proposed to insert a new Sub-Section (3A) in the said Section to provide that notwithstanding anything contained in Sub-Sections (1), (1A), (2) and (3) of the said section, where an assessment or reassessment

is pending on the date of initiation of search under Section 132 or making of requisition under Section 132A, the period available for completion of assessment or reassessment, as the case may be, shall be extended by twelve months in a case where such search is initiated under Section 132 or such requisition is made under Section 132A or in the case of an assessee to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or in the case of an assessee to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to (Section 153C).

- Further Sub-Section (4) of the said section which provides for an extension of 12 months in cases referred to transfer pricing officer under Section 92CA(1) of the IT Act is amended to provide that such extension shall also be applicable to cases covered by sub-sections (1A) (updated return) and (3A) (search or requisition) of Section 153 of the IT Act.
- It is also proposed to amend Sub-Section (5) of the said section to provide that the time-limit three months from the end of the month in which order under Section 263 or Section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. Currently this sub-section is only applicable to an order under Section 263 or Section 264 passed by the Principal Commissioner or Commissioner.
- Sub-Section (6) of the said section is proposed to be amended to provide that nothing contained in sub-Section (1A) relating to updated return shall apply to the classes of assessments, reassessments and recomputation mentioned therein.
- Clause (i) of the sub-section (6) of the said Section provides that where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Section 250 (order by Commissioner Appeal), section 254 (order by ITAT), section 260 (order by High Courts), Section 262 (order by Supreme Court), Section 263 (revision), or Section 264 (revision) or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, such assessment, reassessment or recomputation shall be completed on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be. The provisions of the said sub-section is also proposed to be applicable to an order under Section 263 or Section 264 passed by the Principal Chief Commissioner or Chief Commissioner.
- It is also proposed to amend the first proviso to Explanation 1 of the said section which provides a period of sixty days to the AO for making an order of assessment, reassessment or recomputation, as the case may be, where the period of limitation computed as per Explanation 1 is less than sixty days, so as to make it available to an updated return under Sub-Section (1A) of the said section.
- These amendments will take effect from April 1, 2023.
- Further, clause (iv) of Explanation 1 to the said section is proposed to be amended so as to exclude the period for inventory valuation through the cost accountant for the purposes of computation of time limit.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-25 and thereafter.

ELP COMMENTS:

The aforesaid amendment provides an alignment of various timelines with respect to assessment order or reassessment order (Section 143), best judgement assessment order (Section 144), order of reassessment for updated return (under Section 139(8A)). The timeline for assessment has been increased in certain cases.

Amendment to Section 155 of the IT Act

- Sub-Section 155(11A) of the IT Act provides that where in the assessment for any year, the deduction under section 10A or section 10B or section 10BA has not been allowed on the ground that such income has not been or partly received in convertible foreign exchange in India and subsequently such income or part thereof has been received in, or brought into India, the Assessing Officer shall amend the order of assessment so as to allow such deduction later.
- It is proposed to amend the said sub-section to give reference of section 10AA to allow the Assessing Officer to amend his assessment order later to provide deduction in respect of any income or part thereof not received in, or brought into India, within prescribed time limit, but has been subsequently realised.
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.
- Further, a new sub-section (20) is proposed to be inserted in Section 155 so as to provide that where any income has been included in the return of income furnished by an assessee under Section 139 for any assessment year (herein referred to as the relevant assessment year) and tax on such income has been deducted at source and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year, the Assessing Officer shall, on an application made by the assessee in the prescribed form within a period of two years from the end of the financial year in which such tax was deducted at source, amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year, and the provisions of Section 154 shall, so far as may be, apply thereto and the period of four years specified in Sub-Section (7) of that section shall be reckoned from the end of the financial year in which such tax has been deducted. However, the credit of such tax deducted at source shall not be allowed in any other assessment year.
- This amendment is proposed to be made effective from October 1, 2023.

ELP COMMENTS:

The proposed amendment will facilitate the assessee in claiming the credit of tax deducted at source for the assessment year in which such income is included in the return of income furnished by the assessee under Section 139 of the IT Act even if the said income is paid to the credit of the Central Government in a subsequent financial year.

PROVISIONS FOR IFSC

Simplification of Procedures

- Presently, to set up a Unit in the IFSC - GIFT City, an approval is initially required from the SEZ Development Commissioner. Post such approval, a licence is to be obtained from the IFSCA recognising the applicant as a Finance Company / Finance Unit. The broad process is as follows:
 - An application for approval required to be filed with both, the SEZ Development Commissioner as well as the IFSCA.
 - Thereafter, a presentation by the applicant is required to be made before the Unit Approval Committee, which is presided over by the SEZ Development Commissioner. During this presentation, it is determined whether the applicant satisfies the requirements of the SEZ law and accordingly an in-principle approval is granted.
 - Once such in-principle approval is received, another presentation is required to be made by the applicant before the IFSCA, for seeking approval as a 'Finance Company' / 'Finance Unit'.
 - Once the above steps are completed, the applicant is required to approach other relevant authorities for remaining approvals / licences such as (a) the jurisdictional GST office for obtaining GST registration, (b) DGFT for obtaining IEC, (c) SEBI / IRDAI for business-specific approvals, etc.
 - Concluding the above steps required a substantial investment of time, generally taking around 3-5 months for a unit to start its operations.
- In the present Budget speech, the following has been *inter alia* proposed:
 - Delegating powers under the SEZ Act to IFSCA to avoid dual regulation.
 - Setting up a single window IT system for registration and approval from IFSCA, SEZ authorities, GSTN, RBI, SEBI and IRDAI.
- By delegating the powers under the SEZ Act, as also opening single window clearance for various approvals, the process setting up of a unit in IFSC has been simplified and the duality of governing authorities *qua* SEZ / IFSCA has been overcome.

Tax Incentives

- An exemption from capital gains tax in case of relocation of funds currently established and operated in a jurisdiction outside India to the IFSC was introduced in the Budget of 2021. Such exemption was available only in cases where transfer of assets of the original fund or if its wholly owned special purpose vehicle, to a resultant fund that was carried out prior to March 31, 2023. It is noteworthy that the other conditions associated with such exemption have not been amended and the exemption would continue to be available only where consideration for such transfer is in the form of a share, or unit or interest in the resultant fund to:
 - Shareholder or unit holder or interest holder of the original fund, in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in original fund, in lieu of their shares or units or interests in the original fund; or

- The original fund, in the same proportion as referred to in sub-clause (i), in respect of which the share or unit or interest is not issued by resultant fund to its shareholder or unit holder or interest holder
- Last year the Honourable Finance Minister had introduced Section 10 (4E) to exempt the income of non-residents on transfer of ODI. However, such ODI also results in generation of income in the form of interest, dividend, etc. in the hands of the ODI holders, earned by the IFSC Banking Unit (Issuers of such ODI to non-resident investors) from downstream investments. Such incomes in the nature of interest, dividend, etc. even though being taxed in the hands of IFSC Banking Unit were not exempt in the hands of the ODI holders. Section 10 (4E) is now being amended to exempt such income distributed to the holders of offshore derivative instruments. This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.
- In addition to the above, amendments have been carried out in IFSC related provisions to include funds registered under the IFSCA (Fund Management) Regulations, 2022 introduced on May 19, 2019 within the definition of “Specified Fund”, “Resultant Fund” and “Investment Fund”. Consequentially, Section 10(4D), Section 115UB and Section 47(viiad) of the IT Act.

Corporate Law Changes

- **Permitting acquisition financing by IFSC banking units of foreign banks**

Acquisition financing is the funding, a company uses specifically for the purpose of acquiring another company. Typically, the Reserve Bank of India (RBI) restricts an Indian bank’s ability to finance the acquisition of equity shares. The FM in her budget speech has now permitted acquisition financing to be undertaken by a branch of a foreign bank permitted by the Reserve Bank of India under the Banking Regulation Act, 1949 to operate from an IFSC.

- **Establishing a subsidiary of EXIM bank for trade re-financing**

The Finance Minister in her budget speech has suggested that the EXIM bank will now establish a subsidiary in IFSC so as to facilitate trade refinancing, such that traders can have the option to refinance their existing debt obligations with this subsidiary and seek to obtain more favourable borrowing terms in view of the ever-evolving global economic conditions.

- **Recognizing offshore derivative instruments as valid contracts**

- An offshore derivative instrument means any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it in India, as its underlying.
- Section 18A of the SCRA provides that the contracts in derivative are legal and valid only when such contracts are traded on a recognized stock exchange, settled on the clearing house of the recognized stock exchange or in accordance with the rules and bye-laws of such stock exchange.
- The amendment to Section 18A of the SCRA proposes to include contracts regulated by the IFSCA in an IFSC and issued by an FPI as legal and valid contracts in derivative. This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.
- By recognizing contracts regulated by IFSCA as valid contracts in derivative, this amendment enhances the accessibility for trading and thus boosting the business activities in GIFT IFSC.

AMENDMENTS PERTAINING TO CHARITABLE TRUST TAXATION

Amendment to Section 10(23C)/11/12A/12AB/80G of the IT Act

Depositing back of corpus and repayment of loans or borrowings

- To ensure that there is no double deduction, it is proposed to provide under Section 10(23C) and Section 11 of the IT Act to provide that application out of corpus or loans or borrowings before April 1, 2021 will not be allowed as application for charitable or religious purposes when such amount is deposited back or invested into corpus or when the loan or borrowing is repaid.
- Further, it is proposed to provide that if the trust or institution invests or deposits back the amount into corpus or repays the loan within 5 years of application from the corpus or loan, then such investment/depositing back in to corpus or repayment of loan will be allowed as application for charitable or religious purposes.
- Further, it is to be noted that there are certain conditions that are required to be satisfied while making the application from the corpus or loan or borrowing. Therefore, where the application from corpus or loan does not satisfy the conditions that are required for application for charitable or religious purposes, the repayment of loan or investment/depositing back into corpus of such amount will not be treated as application.
- These amendments are proposed to come into effect from April 1, 2023 and will accordingly apply to the AY 2023-24 and thereafter.

Treatment of donation to other trusts

- Presently, donation (other than corpus donation) by trust / eligible institution to another trust / eligible institution is considered as application of income.
- However, the said provision was defeating the intent of the legislature wherein multiple layer trust structure was used and 15% was accumulated by each of such trust.
- Section 10(23C) and Section 11 of the IT Act is proposed to be amended to provide that only 85% of the eligible donations to another trust / eligible institution made by a trust or eligible institution shall be treated as application only to the extent of 85% of such donation to plug the lacuna in the current law.
- These amendments are proposed to come into effect from April 1, 2024 and will accordingly apply to the AY 2024-25 and thereafter.

Omission of redundant provisions related to roll back of exemption

- In order to rationalize Section 12A, it is proposed to omit the second, third and fourth proviso to sub-section (2) of section 12A of the IT Act relating to roll back of exemption which have become redundant after the amendment of section 12A of the IT Act by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.
- These amendments are proposed to come into effect from April 1, 2023 and will accordingly apply to the AY 2023-24 and thereafter.

Combining provisional and regular registration in some cases

- It has further been proposed to amend the provisions to remove the difficulties and to rationalize the provisions proposed to allow for direct final registration/approval for trust and institutions in some cases.
- Following are the amendments which are proposed:
 - Trusts and eligible Institutions under the regime referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) (i.e., the first regime) of Section 10(23C) of the IT Act shall be allowed to make application for the provisional approval only before the commencement of activities under proposed sub-clause (A) of clause (iv) of the first proviso of Section 10(23C) of the IT Act.
 - Trusts and Institutions under the regime which are registered under Section 12AA or Section 12AB of the IT Act shall be allowed to make application for the provisional registration only before the commencement of activities under proposed item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of Section 12A of the IT Act.
 - Similarly trusts and institutions under Section 80G of the IT Act shall be allowed to make application for the provisional approval only before the commencement of activities under proposed sub-clause (A) of clause (iv) of the first proviso to sub-section (5) of Section 80G of the IT Act.
 - Trusts and Institutions under the regime referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Section 10(23C) of the IT Act which have already commenced their activities, shall make application for a regular approval under proposed sub-clause (B) of clause (iv) of the first proviso of Section 10(23C) of the IT Act.
 - Trusts and Institutions under the regime which are registered under Section 12AA or Section 12AB of the IT Act which have already commenced their activities, shall make application for a regular registration under proposed item (B) of sub-clause (vi) of clause (ac) of sub-section (1) of Section 12A of the IT Act.
 - Similarly trusts and institutions under section 80G of the IT Act shall be allowed to make application for the provisional approval only before the commencement of activities under proposed sub-clause (B) of clause (iv) of the first proviso to sub-section (5) of Section 80G of the IT Act.
 - Such application shall be examined by the Principal Commissioner or Commissioner as per the procedure provided under clause (ii) of the second proviso to clause (23C) of Section 10 of the IT Act for the trusts and institutions referred in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Section 10(23C) of the IT Act, under clause (b) of sub-section (1) of Section 12AB of the IT Act for the trusts and institutions referred in Section 12AA or Section 12AB of the IT Act and under clause (ii) of the second proviso to sub-section (5) of Section 80G of the IT Act for trusts and institutions referred under Section 80G of the IT Act.
 - Where the Principal Commissioner or Commissioner is satisfied about the objects and genuineness of the activities and compliance of other requirements provided in law, registration or approval in such cases shall be granted for 5 years. The Principal Commissioner or the Commissioner shall pass and order granting or rejecting such applications within 6 months calculated from the end of the month in which such application was received.
- These amendments will take effect from October 1, 2023.

Meaning of “Specified violations” under Section 12AB and fifteenth proviso Section 10(23C) of the IT Act

- It has been proposed to insert clause (g) in Explanation 2 to the fifteenth proviso of Section 10(23C) of the IT Act to provide that the “specified violation” shall also include the case where the application referred to in the first proviso is not complete or it contains false or incorrect information.
- Similarly, it has been proposed to insert clause (g) in Explanation to sub-section (4) of Section 12AB of the IT Act to provide that “specified violation” shall also include the case where the application referred to in clause (ac) of sub-section (1) of Section 12A of the IT Act is not complete or it contains false or incorrect information.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-24 and thereafter.

Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

- It has been proposed to provide for filing of Form No. 10A/9A at least two months prior to the due date specified under sub-section (1) of Section 139 of the IT Act for furnishing the return of income for the previous year. Accordingly, necessary amendments have been proposed to be introduced under Section 10(23C) and Section 11 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-24 and thereafter.

Denial of exemption where return of income is not furnished within time

- It has been proposed to amend the twentieth proviso of Section 10(23C) of the IT Act to provide that the fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of Section 10(23C) of the IT Act shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of Section 139 of the IT Act, within the time allowed under sub-section (1) or sub-section (4) of that section.
- Further, it has been proposed to amend clause (ba) of sub-section (1) of Section 12A of the IT Act to provide that the person in receipt of the income shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139 of the IT Act, within the time allowed under sub-section (1) or sub-section (4) of that section.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-24 and thereafter.

Removal of certain funds from section 80G

- It has been proposed to omit sub-clauses (ii), (iiic) and (iiid) of clause (a) of sub-section (2) of section 80G of the IT Act (which are funds based on names of the persons) to remove the funds mentioned therein;
- This amendment is proposed to come into effect from April 1, 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

AGNIPATH SCHEME, 2022

- Agnipath Scheme came into force from November 1, 2022. Under the said scheme, taxpayer (“the Agniveer”) to contribute in the Agniveer Corpus Fund and a matching amount will be contributed by the Central Government. On completion of the scheme period of four years, Agniveer will receive one time amount comprising of its own contribution along with Central Government’s contribution and interest thereon.
- For the purposes of this clause, it is proposed to define “Agnipath scheme” as a scheme for the enrolment in Indian Armed Forces introduced by the Central Government, and “Agniveer Corpus Fund” as a fund defined in Para 2(c) of Agnipath Scheme, 2022 notified by the Central Government.
- It is proposed to insert a new clause (12C) in Section 10 of the IT Act to provide that any payment received from the Agniveer Corpus Fund by Agniveers under the Agnipath Scheme, 2022, or their nominee shall be exempted from Income Tax.
- New Section 80CCH of the IT Act to be inserted to provide that taxpayer to be allowed a deduction of the whole of the amount deposited by him and also the amount contributed by the Central Government to his account in the Agniveer Corpus Fund, from his total income. Further, it is proposed to amend to provisions of Section 115BAC of the IT Act, to provide the said relief to taxpayer under the new tax regime as well.
- It is also proposed to insert a new sub-clause (viii) in clause (1) of Section 17 of the IT Act so as to provide that the contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in Section 80CCH of the IT Act shall be considered as salary of the Agniveer.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

Under the Agnipath scheme, while the contribution made by the Central Government to Agniveer Corpus Fund is chargeable to tax as salary income of the Agniveer, a corresponding deduction from the total income is proposed be given under Section 80CCH of the IT Act for whole of the amount deposited by the Agniveer and also the amount contributed by the Central Government to the Agniveer Corpus Fund of the taxpayer.

REBATES AND RELIEF

Rebate under section 87A

- As per the existing provisions of Section 87A of the IT Act, resident individuals having total income below INR 0.5 million are eligible to claim a rebate of 100% of the income tax payable.
- Effective AY 2024-25, threshold for claim of 100% rebate of the income tax payable by resident individuals opting for optional tax regime under Section 115BAC (1A) of the IT Act has been increased to INR 0.7 million.

Abolition of Section 88 of the IT Act and consequential amendments

- Section 88 of the IT act provides for rebate on life insurance premia, contribution to provident fund, etc. However, the Finance Act, 2005 introduced deductions under Section 80C and introduced a sunset clause under Section 88(9) of the IT Act which provided that no deduction was eligible under Section 88 of the IT Act from AY 2006-07.
- Given its redundancy, Finance Bill proposes to omit Section 88 of the IT Act effective 1 April 2023. Further, the Finance Bill also proposes following consequential amendments:
 - Amendment of Section 54EA, Section 54EB, Section 54EC, Section 54ED, Section 80C (7), Section 80CC(3)(a), Section 80CCC(4)(a), Section 111A and Section 112 to omit mentions of Section 88 of the IT Act
 - Amendment of Section 87 of the IT Act to omit mention of Section 88, Section 88A, Section 88B, Section 88C and Section 88D of the IT Act

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Reduction in time provided for furnishing TP information and document

- Section 92D of the IT Act provides that taxpayer shall keep and maintain any information or document in relation to its international transaction or specified domestic transaction as prescribed under Rule 10D of IT Rules and furnish the same to tax authorities within 30 days from the date of receipt of notice. Additionally, such period may be further extended on application made by the taxpayer for a further period not exceeding 30 days.
- It is proposed to amend Section 92D of the IT Act to reduce the initial period for furnishing the TP information and document to the tax authorities from 30 days to 10 days.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to notices issued on or after April 1, 2023.

ELP COMMENTS:

In light of the proposed amendment of reducing the initial period for furnishing TP information and document from 30 days to 10 days, taxpayers will now be required to keep the TP information and document ready to be furnished so as to avoid default of furnishing the same.

Thin capitalization provision not to apply to notified NBFCs

- Section 94B of the IT Act provides restrictions on deduction of interest expense in respect of any debt issued by a non-resident AE's of the borrower being an Indian company or permanent establishment of foreign company in India excluding where taxpayer is engaged in the banking or insurance business.
- It is proposed to amend Section 94B of the IT Act to further exclude the applicability of Section 94B to taxpayer being notified NBFCs.
- This amendment is proposed to come into effect from April 1, 2024, and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

Over the years, various representations were made by NBFCs to be allowed relief similar to banking and insurance companies with respect to interest limitation rules. Accordingly, heading to the representations, the Finance Bill proposes to provide exclude notified NBFCs from applicability of interest limitation rules.

BUSINESS REORGANIZATIONS**Provisional attachment of assets in proceedings for imposition of penalty under Section 271AAD**

- Finance Act 2022 introduced Section 170A of the IT Act to provide that in case of business reorganization, the successor shall be obligated to file a modified return of income within a period of 6 months from the end of the month in which order is issued, in respect of the period starting from the appointed date till the effective date of the order of such Tribunal, Court or the adjudicating authority.
- Finance Act 2022 did not specify the provisions for modification of return in case the original return is filed by the predecessor. Finance Bill proposes to amend the provisions of Section 170A to substitute the word “successor” by “entity” in order enable modification of return filed by the predecessor entity
- Further, Finance Act 2022 did not provide any procedure/ mechanism to be adopted by the Assessing for assessment/ reassessment once the modified return is submitted. Finance Bill proposes to amend the provisions of Section 170A of the IT Act to provide that where the assessment or reassessment proceedings for an AY relevant to a previous year to which the order in respect of the business reorganization applies:
 - Have been completed on date of modified return – The Assessing officer shall pass order modifying the total income basis the modified return.
 - Are pending as on the date of the modified return – The Assessing officer shall pass order considering the modified return.
- Finance Bill additionally stipulates that all other provisions of this IT Act shall apply and that the tax shall be charged at the rate or rates that are applicable to such AY in an assessment or reassessment performed in relation to an AY under Section 170A of the IT Act
- This amendment would be effective from April 1, 2023.

ELP COMMENTS:

Insertion of Section 170A of the IT Act by Finance Act 2022 brought formal mechanism to file revise return post receipt of order of the adjudicating authority giving effect to the business re-organization for the period between the appointed date and the effective date of final order of the competent authority on business reorganization.

The proposed amendment by Finance Bill provides further clarity on the assessment proceedings w.r.t. business organizations and provides much needed clarity in cases where the original return was filed by the predecessor entity.

PROVISIONS RELATING TO TAX DEDUCTED / COLLECTED AT SOURCE

Proposed reduction of TDS rate to 20% on EPF scheme withdrawals in non-PAN cases

- Section 192A of the IT Act provides for TDS on payment of accumulated balance due to an employee under the Employees' Provident Fund Scheme, 1952 to be deducted at the rate of 10% with no deduction required if the aggregate amount paid is less than INR 50,000.
- The second proviso to the said section provides that if the person entitled to receive such payment fails to furnish his PAN, the deduction shall be at the maximum marginal rate, i.e., the highest income tax slab rate.
- The second proviso is proposed to be omitted so that tax will be deducted at the rate of 20% as in other non-PAN cases in accordance with section 206AA of the IT Act.
- This proposed amendment would come into effect from April 1, 2023

ELP COMMENTS:

The proposed omission intends to mitigate the hardships to employees of lower income group who do not have PAN where TDS was hitherto deducted at highest income tax rate

Proposed withdrawal of TDS exemption on interest paid on listed securities to residents

- Currently, as per clause (ix) of the proviso to Section 193 of IT Act, no tax is required to be deducted on interest payable on a security issued by a company, which is in dematerialized form and listed on a recognized stock exchange in India.
- It is proposed to omit the said clause (ix) of proviso to Section 193 of the IT Act.
- Accordingly, TDS will be required to be deducted on such interest paid on debentures securities.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The proposed amendment appears to safeguard against any under reporting of interest income by debenture holders. This is also a step to achieve accuracy in the pre-filing of returns.

On TDS and taxability on winnings from horse races, lottery, crosswords, etc.

- In terms of Sections 194B and Section 194BB of the IT Act, TDS is deductible at the rates in force:
 - By a bookmaker or any person licensed to engage in horse racing or arranging for wagers/betting in a race course, while paying a person any income exceeding INR 10,000/-.
 - On winnings from lottery, crossword puzzles, gambling and betting of any form or nature, when such winnings exceed INR 10,000/-.
- These provisions are proposed to be amended to provide that the deduction of tax shall be on the amount or aggregates of amounts exceeding INR 10,000 during the financial year.

- This proposed amendment would come into effect from April 1, 2023.
- Further, a new proviso is proposed to be introduced to the Section 194B to exclude online games from the purview of the said Section from July 1, 2023, since a new Section 194BA is proposed to be introduced for deduction of TDS on winnings from online games from the said date.

ELP COMMENTS:

Bookmakers, wagers etc. were applying the threshold of INR 10,000/- on a per-transaction basis in order to avoid deducting TDS and the winnings were split into multiple transactions of below INR 10,000. The proposed amendment seeks to seal this loophole and clarify the position for all.

New provision for TDS on net winnings from online games

- A new Section 194BA is proposed to be introduced in the IT Act to provide for TDS deductions on net winnings from online games from July 1, 2023.
- Net winnings shall be computed in the prescribed manner.
- TDS shall be deducted at the time of withdrawal of net winnings from the user account during the financial year. On the remaining amount, which is not withdrawn from user account, TDS shall be computed in the manner as prescribed at the end of the financial year.
- If the net winnings are wholly or partly in kind, and where the cash portion is not sufficient to meet the TDS amount, the person paying or giving the winnings will be responsible to ensure that tax has been paid by the recipient on the net winnings.
- The said provision also proposes to provide power to the Board in clarifying difficulties arising out of the said Section by issuing guidelines post approval of the Central Government.
- Explanation to the said provision provides the definition to certain terms such as online game, etc.
- This proposed amendment would come into effect from July 1, 2023.

ELP COMMENTS:

The proposed Section 194BA in the IT Act will cover TDS payments on net winnings of online games. It is noteworthy that where the winnings are partly in kind, the provision places the onus on the deductor to ensure that tax is paid by the recipient on the entire net winnings. The manner of computation will be clear once the Rules are prescribed.

Further, Section 194BA requires 'any person' to deduct tax when paying to 'any person' any income by way of winnings from online games. Thus, seemingly, TDS obligation will get triggered even in cases where payment is made by an Indian online gaming platform to a person resident outside India, as well as in case of a non-resident online gaming platform paying a resident in India. Clarity on this aspect is desirable.

Increasing threshold limit for co-operatives to withdraw cash without TDS under Section 194N

- Section 194N of the IT Act lays down that when a banking company, a co-operative society engaged in carrying on a banking business or a post office pays a sum exceeding an amount or aggregate of amounts of INR 10 million in cash during the year to any recipient, they shall deduct an amount equal to 2% of such sum as TDS.
- This provision is proposed to be amended to provide that where the recipient is a co-operative society, the threshold shall be INR 30 million instead of INR 10 million.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The proposed amendment would provide relief to co-operatives engaged in banking business by increasing the threshold for TDS applicability. This is part of the slew of beneficial measures introduced for the co-operative sector

Clarification in respect to TDS deduction from benefit or perquisite under Section 194R, whether in cash or kind

- Section 194R of the IT Act, inserted by the Finance Act 2022 provides for deduction of tax on benefit or perquisite provided to a resident in respect of business or profession at the rate of 10% of the value or aggregate value of such benefit or perquisite.
- An Explanation is proposed to be added to this provision to clarify that the above deduction would apply to any benefit or perquisite, whether in cash or in kind or partly in cash and partly in kind.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The aforesaid proposed amendment has been issued in furtherance to Circular No. 12 of 2022 dated 16.06.2022 issued by CBDT wherein it was clarified that Section 194R clearly brings within its scope, situations where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

The proposal to include cash / monetary perquisite within the ambit of Section 28(iv) and Section 194R greatly increases the compliance burden on the businesses, which is contradictory to the Budget theme regarding ease of compliance.

The purpose of Section 194R was to tap income on account of non-monetary perquisites to widen the tax net since these items were going unreported at the recipient's end in some cases. Withholding tax on cash perquisites is not in keeping with this intent. This amendment would increase compliance without commensurate benefit on the tax collection front.

Further, the proposal disturbs the legal position settled by the Hon'ble Supreme Court in the case of CIT v. Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32 (SC) where it was held that the said section only taxes the non-monetary business perquisites and excludes any cash / monetary perquisites from its ambit.

Certain relaxations introduced in the Guidelines under Section 194R, such as loan waiver by financial institutions, are not extended to Section 28(iv), which may lead to litigation. The proposal will impact various sectors including FMCG, retail, pharma and other consumer facing sectors.

Tax treaty relief to be considered while deducting TDS on payment to non-resident or foreign company under Section 196A

- Section 196A of the IT Act provides for deduction of tax at the rate of 20% on payment of income (in respect of units of a Mutual Fund specified under Section 10(23D) or from the specified company referred to in the Explanation to Section 10(35)) to a non-resident (not being a company) or a foreign company. In this regard, several representations have been filed requesting that if a tax treaty provides for a lower rate than 20%, such benefit may be considered.
- In order to grant relief on this account, it is proposed to add a proviso to Section 196A, stating that the tax deductible would be at 20% or the rate(s) provided in the agreements referred to in Section 90(1) or Section 90A(1) of the IT Act, whichever is lower. This would be applicable to payees to whom such agreement applies and upon submission of a tax residency certificate (mentioned in Sections 90(4) or 90A(4) of the IT Act) by such payee.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The abovementioned proposed amendment rightly seeks to give effect to tax treaties that the Government of India has entered with different countries. Relevant to note that an assessee may adopt a beneficial TDS rate only upon fulfilling the prescribed conditions including submission of the tax residency certificate.

Extension of Nil or lower rate of TDS by business trusts

- Section 197 of the IT Act provides for grant of certificate for Nil or lower rate of TDS on incomes under various Sections of the IT Act, if the Assessing Officer is satisfied that the recipient's total income justifies such lower deduction.
- An amendment is proposed to sub-section (1) of the said Section to include within its ambit Section 194LBA as an eligible section for issuance of Nil / lower deduction certificate. Section 194LBA of the IT Act *inter alia* provides that a business trust shall deduct and deposit tax at the rate of 5% on interest income of non-resident unit holders.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The Section 194LBA of the IT Act *inter alia* provides for TDS by business trust on interest income of non-resident unit holders. This resulted in deduction of TDS on incomes of notified sovereign wealth and pension funds that are exempt. However, such benefit could not be availed at the time of tax deduction since Section 194LBA was not listed within the ambit and scope of Section 197 of the IT Act. The proposed amendment irons out this issue.

Proposed exclusion from “specified person” liable for higher rate of TDS / TCS due to non-filing of IT returns

- Section 206AB and Section 206CCA of the IT Act provides for special provision for higher TDS and TCS respectively for non-filers of income-tax returns. Such non-filers are referred to as “specified person” and have been defined under the respective sections.
- The Finance Bill has proposed to amend the proviso to sub-section (3) of both Section 206AB and Section 206CCA so as to exclude a person who is not required to furnish the return of income and who is notified by the Central Government in the Official Gazette in this behalf.
- This proposed amendment would come into effect from April 1, 2023.

ELP COMMENTS:

The proposed amendment clarifies the intention of the Government that higher deduction in cases of persons who have not furnished returns will not extend to cases where such persons are not required to furnish the return of income.

Increase in TCS rates for certain foreign remittances

- Section 206C of the IT Act deals with TCS on profits and gains from the business of trading in alcoholic liquor, forest produce, scrap etc. sub-section (1G) of Section 206C is proposed to be amended to provide for increased rate of 20% as income tax without any threshold limit on:
 - an authorized dealer receiving an amount for remittance out of India from a buyer remitting such amount under the LRS of the RBI
 - seller of an overseas tour program package receiving an amount from a buyer who purchases such package
- Further, the 1st and the 2nd proviso to the said sub-section are proposed to be amended to provide for TCS on the amount collected by an authorized dealer from the buyer for the purposes of education or medical treatment, as follows:
 - if such amount or aggregate of amounts remitted is less than INR 7,00,000 – No TCS
 - if such amount or aggregate of amounts is in excess of INR 7,00,000 – TCS at 5%
- The proposed amendments would come into effect from July 1, 2023.

PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT (APPEALS)

Introduction of the authority of Joint Commissioner (Appeals)

- Section 246 of the IT Act provides for filing of appeal before Deputy Commissioner (Appeals) which was discontinued from June 1, 2000. It is proposed to substitute Section 246 of the IT Act to introduce a new authority of Joint Commission (Appeals) in order to reduce the existing burden on Commissioner of Income Tax (Appeals).

- Accordingly, it is proposed to define 'Joint Commissioner (Appeals)' in Section 2(28CA) of the IT Act. Further, the proposed definition of 'Joint Commissioner (Appeals)' also includes 'Additional Commissioner of Income-tax (Appeals)' within its ambit. Consequently, Section 2(19B) of the IT Act is proposed to be amended to exclude Additional Commissioner of Income-tax (Appeals) from the definition of Deputy Commissioner (Appeal).
- Sub-section (1) of the proposed Section 246 of the IT Act provides that any taxpayer aggrieved by any of the following orders of an AO (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals):
 - an order being an intimation under sub-section (1) of Section 143 of the IT Act, where the taxpayer objects to the making of adjustments, or any order of assessment under sub-section (3) of Section 143 or Section 144 of the IT Act, where the taxpayer objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;
 - an order of assessment, reassessment or recomputation under Section 147 of the IT Act;
 - an order being an intimation under sub-section (1) of Section 200A of the IT Act;
 - an order under Section 201 of the IT Act;
 - an order being an intimation under sub-section (6A) of Section 206C of the IT Act;
 - an order under sub-section (1) of Section 206CB of the IT Act;
 - an order imposing penalty under Chapter XXI of the IT Act; and
 - an order under Section 154 or Section 155 of the IT Act amending any of the orders mentioned above.
- Proviso under sub-section (1) of the proposed Section 246 of the IT Act provides that appeal shall not be filed before the Joint Commissioner (Appeals) where an order is passed by or with the approval of an income-tax authority above the rank of Deputy Commissioner.
- Sub-section (2) of the proposed Section 246 of the IT Act provides that the Board or income-tax authority authorized by the Board may transfer existing matters filed before the Commissioner (Appeals) to the Joint Commissioner (Appeals) who may proceed with such matter from the stage at which it was before it was so transferred. Sub-section (3) of the proposed Section 246 of the IT Act provides that the Board or income-tax authority authorized by the Board may transfer matters pending before a Joint Commissioner (Appeals) to the Commissioner (Appeals) who may proceed with such matter from the stage at which it was before it was so transferred.
- Sub-section (4) of the proposed Section 246 of the IT Act provides that where an appeal is transferred under sub-section (2) or sub-section (3) as above, the appellant shall be provided an opportunity of being reheard.
- Sub-section (5) of the proposed Section 246 of the IT Act provides that, for the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a Scheme, by notification in the Official Gazette to dispose appeals in an expedient manner with transparency and accountability by eliminating the interface between the Joint Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
- Sub-section (6) of the proposed Section 246 of the IT Act provides that the Board may specify that appeal provision under sub-section (1) of the proposed Section 246 of the IT Act shall not apply to any case or any class of cases.

- Further, Sections 250 and 251 of the IT Act are also proposed to be amended to make certain related and consequential amendments to ensure that functioning of the Joint Commissioner (Appeals) is aligned with that of the Commissioner (Appeals) with respect to powers, procedure etc.
- Consequential amendments have been specified in other Sections of the IT Act.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly, would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

As per the current appeal mechanism, the first appellate authority is the Commissioner (Appeals) and the second appellate authority is the Tribunal. For reducing the burden at the level of Commissioner (Appeals) and expediting the appeal process, a new first appellate authority is proposed at Joint Commissioner / Additional Commissioner level to handle certain class of cases involving small amount of disputed demand. Further, faceless appeal and e-proceedings scheme are proposed to be introduced with respect to adjudication of appeals at the Joint Commissioner level as well. This amendment will reduce the pendency of appeals at first appellate authority level.

Amendment to Section 253 of the IT Act

- Section 253(1) of the IT Act provides for appeal to the Appellate Tribunal against the orders mentioned therein.
- Section 253(1) of the IT Act is proposed to be amended to additionally include the following orders as appealable orders before the Appellate Tribunal:
 - Penalty orders passed under Sections 271AAB, Section 271AAC, Section 271AAD of the IT Act by the Commissioner (Appeals);
 - Order passed by Joint Commissioner (Appeals) under Section 154, Section 250, Section 270A, Section 271, Section 271A, Section 271AAC, Section 271AAD, and Section 271J of the IT Act; and
 - Revision of orders passed by Principal Chief Commissioner and Chief Commissioner under Section 263 of the IT Act or an order under section 154 of the IT Act rectifying such order.
- Section 253(4) of the IT Act allows the respondent in an appeal against an order of Commissioner (Appeals), to file a memorandum of cross-objection before the Appellate Tribunal. Section 253(4) of the IT Act is proposed to be amended to enable filing of cross-objection in all cases and not limited to where appeal has been filed against an order of Commissioner (Appeals).
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

Sections 271AAB, 271AAC and 271AAD of the IT Act were amended vide Finance Act, 2022 to enable Commissioner (Appeals) to pass an order imposing penalty under the said Sections. Further, Section 263 of the IT Act was amended vide Finance Act, 2021 to enable Principal Chief Commissioner and Chief Commissioner to pass an order of revision under the said Section. However, reference to the said orders passed by Commissioner (Appeals),

Principal Chief Commissioner or Chief Commissioner were absent under sub-section (1) of Section 253 of the IT Act for the purpose of filing appeal against the same. Consequently, appeals against such orders were not maintainable before the Appellate Tribunal. Therefore, sub-section (1) of Section 253 of the IT Act is proposed to be amended to include the said orders.

Further, Section 253(4) of the IT Act allows only the respondent in an appeal against an order of Commissioner (Appeals) to file a memorandum of cross-objection before the Tribunal. The same has been held by the Tribunal *inter alia* in *Raman Lakha v. Income Tax Officer, 2017 (2) TMI 1522 - ITAT AMRITSAR*.

PENALTY & PROSECUTION

Amendment to Section 270AA of IT Act

- Section 270AA of the IT Act deals with application to AO to grant immunity from imposition of penalty under Section 270A and initiation of proceedings under Section 276C or Section 276CC.
- Sub-section (6) of Section 270AA of the IT Act is proposed to be amended to provide that no appeal under Section 246 of the IT Act, in addition to appeal under Section 246A and application for revision under Section 264 of the IT Act, shall be admissible against the order passed by the AO where application for immunity has been accepted by the AO.
- These amendments are proposed to come into effect from April 1, 2023 and will accordingly apply to the AY 2023-24 and thereafter.

Amendment to Section 271C of IT Act

- Section 271C of the IT Act deals with penalty for failure to deduct TDS as required by or under Chapter XVII-B or for failure to pay tax as required under Section 115-O(2) or Proviso to Section 194B.
- The scope of Section 271C(1)(b) is proposed to be expanded to cover within its ambit, failure to remit TDS under Section 194R (benefit or perquisites relating to business or profession), Section 194S (transfer of virtual digital assets) and Section 194BA of the IT Act (TDS on net winnings from online gaming which is proposed to be inserted). Further, drafting changes are also proposed to align the language with the main provisions.
- This amendment is proposed to be made effective from April 1, 2023, in the case of Section 194R and Section 194S and from July 1, 2023, in the case of Section 194BA.

Amendment to Section 271FAA of IT Act

- Section 271FAA of the IT Act deals with the penalty for furnishing inaccurate statement of financial transaction or reportable account.
- Section 271FAA is proposed to be renumbered as sub-section (1) and amendment has been made to clarify that the income-tax authority as prescribed under subsection (1) of Section 285BA shall be empowered to levy penalty under Section 271FAA.
- Further, in order to penalize false self-certification, sub-section (2) is proposed to be inserted which states that a penalty of INR 5,000 shall be levied on the prescribed reporting financial institution for every inaccurate reportable

account due to false or inaccurate information submitted by the account holder. Further, the reporting financial institution may recover the amount so paid on behalf of the account holder or retain out of any moneys that may be in its possession or may come to it from every such reportable account holder.

- This amendment is proposed to be made effective from April 1, 2023

Amendment to Section 276A of IT Act

- Section 276A of the IT Act deals with imposition of penalty in case a liquidator fails to comply with provisions of Section 178 of the IT Act.
- A proviso is proposed to be inserted after the existing proviso to Section 276A, to provide that proceedings shall not be initiated under this section on or after April 01, 2023.
- This amendment is proposed to be made effective from April 01, 2023.

Amendment to Section 276B of IT Act

- Section 276B of the IT Act deals with imposition of penalty in case of failure to pay tax to the credit of Central Government under Chapter XII-D (levy of tax on distributed profits of Domestic Companies) and Chapter XVII-B (Deduction of tax at Source).
- Clause (a) of Section 276B is proposed to be amended to align the language of said clause as per the amendments proposed to be made in clause (b).
- Clause (b) of Section 276B is proposed to be substituted to include failure to pay tax or to ensure payment of tax, as required by or under the first proviso Section 194R (1), the proviso to Section 194S (1) and sub-section (2) of Section 194BA in addition to sub-section (2) of Section 115-O and the proviso to Section 194B, for imposition of penalty under Section 276B of the IT Act.
- This amendment is proposed to be made effective from April 01, 2023, for all instances, except for failure to deduct tax under Section 194BA (2) which is proposed to be made effective from July 1, 2023.

OTHERS

Amendment to Section 241A and Section 245 of the IT Act

- Under Section 241A of the IT Act, during preliminary assessment under Section 143 (1) of the IT Act, if the AO is of the opinion that grant of refund is likely to adversely affect the revenue, he may withhold the refund due to the assessee with previous approval of the Principal Commissioner or Commissioner. This was applicable to assessment years on or after 2017-18.
- Section 245 of the IT Act deals with set-off of refund against tax that is remaining to be paid under the IT Act by the person to whom the refund is due with an intimation in writing regarding the proposed action.
- Considering the overlap between the abovementioned provisions it is proposed to render Section 241A of the IT Act inapplicable from April 1, 2023. Further Section 245 of the IT Act is proposed to be substituted to include powers under Section 241A in Section 245 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

Amendment to Section 245D of the IT Act

- Under Section 245D (9) of the IT Act, clause (iv) is proposed to be substituted to extend the time limit for amending any order or filing of rectification under subsection (6B) to September 30, 2023.
- This amendment is proposed to take effect retrospectively from the February 1, 2021.

Amendment to Section 244A of the IT Act

- Under Section 150 of the IT Act, sub-section (20) is proposed to be inserted to remove the difficulty arising from mismatch of TDS due to TDS being credited after disclosure of income in the return of income of past year.
- By way of the proposed amendment, under Section 150 (20) of IT Act the assessee shall be allowed to make an application in the prescribed form to the AO within two years from the end of FY in which such tax was deducted at source. Thereby, the AO shall amend the order of assessment or any intimation allowing credit of such TDS in the relevant AY.
- In light of the above provision, a proviso is proposed to be inserted in Section 244A (1) (a) of the IT Act after sub-clause (ii) whereby interest on refund shall be calculated at 1.5% from the date of such application till the date on which the refund is granted. This amendment is proposed to come into effect from October 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.
- Amendment has also been proposed in Section 244A (1A) of the IT Act, by way of proviso whereby in case any assessment or reassessment proceedings are pending, additional interest shall not be payable to the assessee from the date on which tax is withheld by the AO till the date on which assessment and reassessment is pending. This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

Amendment to Section 269SS and 269T of the IT Act

- Section 269SS of the IT Act provides that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is INR 20,000 or more. Similarly, Section 269T of the IT Act provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is INR 20,000 or more.
- Section 269SS and Section 269T of the IT Act are proposed to be amended to raise the limit of INR 20,000 to INR 200,000 for Primary Agricultural Credit Societies and Primary Co-Operative Agricultural and Rural Development Bank.
- These amendments are proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

Presently, Primary Agricultural Credit Societies and Primary Co-Operative Agricultural and Rural Development Bank are liable for penalty under Section 271D of the IT Act on accepting loan or deposit in cash exceeding INR 20,000 and penalty under Section 271E in the case of repayment of loan and deposit in cash exceeding INR 20,000. Since Primary Agricultural Credit Societies and Primary Co-Operative Agricultural and Rural Development Bank are providing credit facilities at the grass-root level, it is proposed to provide relaxation vide the amendment.

Directions related to faceless schemes and e-proceedings

- Various schemes have been introduced to digitize the processes under the IT Act. Given below are the proposed time limits for incorporating amendments for such schemes:

Section	Scheme	Time-limit
135A	e-Verification Scheme, 2021	March 31, 2022
245MA	e-Dispute Resolution Scheme, 2022	March 31, 2023
245R	e-advance rulings Scheme, 2022	March 31, 2023
250	Faceless Appeal Scheme, 2021	March 31, 2022
274	Faceless Penalty Scheme, 2021	March 31, 2022

INDIRECT TAX

CENTRAL GOODS AND SERVICES TAX ACT, 2017

The following changes shall come into effect from the date on which the Bill receives presidential assent, unless otherwise specifically provided

Composition Levy

- Section 10(2) and Section 10(2A) of the CGST Act provide for the category of registered persons eligible to opt for the composition scheme. However, registered person engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under Section 52 of the CGST Act is not eligible for composition scheme.
- It has now been proposed that the registered person engaged in supply of goods through electronic commerce operator shall be eligible to opt for the composition scheme.

ELP COMMENTS:

The proposed amendment is beneficial to the taxpayers supplying goods through e-commerce operators who intend to opt for the composition scheme and would now enable such suppliers to supply goods through the e-commerce platform without losing the benefit under the composition scheme.

Reversal of ITC for non-payment to supplier

- Second proviso to Section 16(2) of the CGST Act provides that where a recipient fails to pay the amount towards value and tax to the supplier within a period 180 days from the date of issue of invoice, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest payable thereon.
- It has now been proposed that in case of non-payment of consideration to the supplier, instead of adding to the output tax liability, the recipient will have to pay the same along with interest under Section 50 of the CGST Act.
- Further, third proviso to Section 16(2) of the CGST Act provides that the recipient shall be entitled to avail ITC on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon. In this regard, it has now been proposed that such payment should be made by the recipient to the supplier for availing the ITC.

ELP COMMENTS:

Typically payment of ITC under Section 16(2) was made either through Form DRC-03 or reversing the ITC in Form GSTR-3B. The proposed amendment to pay the ITC instead of adding to the output liability is now aligned with the methodology adopted by the taxpayers. Moreover, with regards to the payment to the supplier as proposed in the third proviso, in certain circumstances the payment is not made to the supplier, but rather to other stakeholders such as tax authorities or the insolvency professional in the event of insolvency (IBC). The proposed amendment creates an interpretation issue on whether payments made by the recipient to other stakeholders will now be construed as payments made to the supplier, thereby making the recipient eligible for ITC.

Computation of value of exempt supply

- Section 17(3) of the CGST Act provides the value to be considered of exempt supplies for the purpose of reversal of ITC. Explanation to Section 17(3) provides that the value of exempt supply shall not include the value of activities or transactions specified in Schedule III, except for value of sale of land and sale of building post receipt of occupancy/ completion.
- It has now been proposed to also include transaction covered under Para 8(a) of Schedule III i.e. the value of supply of warehoused goods to any person before clearance for home consumption for the computation of value of exempt supply with the consequence of reversal of credit under Section 42 of the CGST Act.

ELP COMMENTS:

The proposed amendment attempts to overturn the decision of Bombay High Court in case of Sandeep Patil v. UOI [2019 (31) GSTL 398] and Kerala High Court in case of CIAL Duty Free & Retail Services Limited [2020 (42) GSTL 481], wherein it was held that supply of warehoused goods before clearance for home consumption would not disentitle the supplier of ITC on corresponding procurements even if no GST is paid on such supplies.

Ineligible ITC

- Section 17(5) of the CGST Act provides for the restrictions on ITC.
- A new clause (fa) has been proposed to be inserted thereunder to restrict ITC in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013.

ELP COMMENTS:

With the introduction of this new clause, the favorable rulings by the Advance Rulings Authorities (in case of Bambino Pasta & Dwarikesh Sugar) on eligibility of credit related to CSR activity no longer holds good. This comes as a significant blow to the industry as it inflates CSR spend by the rate of tax applicable on relevant procurements (typically in range of 12-18%) thereby reducing the funds available/allocated for actual CSR spend. The proposition is also contrary to certain other ITC restrictions, where an exception to statutory obligations has been given such as in case of food & beverages, travel, health related expenses, etc.

This amendment is also likely to expose previous ITC claims made by corporates to litigation. However, the taxpayers can now argue that a specific prospective restriction would mean that ITC was available for the period prior to amendment.

Persons not liable to obtain registration

- Section 23 of the CGST Act provides for the persons not liable to obtain registration which *inter alia* includes person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under CGST Act or IGST Act. Section 23 is now proposed to be substituted retrospectively from 01.07.2017 to provide that Section 23 of the CGST Act shall override Section 22 and Section 24 of the CGST Act (which provides for compulsory registration in specific cases).

ELP COMMENTS:

The proposed amendment is a beneficial change for the taxpayers engaged only in supply of exempted goods and services. A position was being contemplated as to whether such an assessee was liable to obtain registration under Section 24 in case where RCM liability was to be discharged. By virtue of the proposed amendment, a view can be taken that once the assessee is covered within the ambit of Section 23, he is not required to obtain registration for discharging liability under RCM.

Introduction of time limit for furnishing of various returns / statements

- A new sub-section (5) has been proposed to be inserted to Section 37 of the CGST Act to introduce a time limit of three years upto which the details of outward supplies under Section 37(1) of the CGST Act for a tax period can be furnished by a registered person (Form GSTR-1)
- A new sub-section (11) has been proposed to be inserted to Section 39 of the CGST Act to introduce a time limit of three years upto which the return under Section 39 for a tax period can be furnished by a registered person (Form GSTR-3B).
- A new sub-section (2) has been proposed to be inserted to Section 44 of the CGST Act to introduce a time limit of three years upto which the annual return under Section 44 of the CGST Act for a financial year can be furnished by a registered person (Form GSTR-9).
- A new sub-section (15) has been proposed to be inserted to Section 52 of the CGST Act to introduce a time limit of three years upto which the statement under sub-section (4) to Section 52 for a month can be furnished by an electronic commerce operator (TCS Return in Form GSTR-8)
- Further, a proviso has been inserted in all the aforesaid cases empowering the Government, to extend the said time limit by way of notification, on the recommendation of the Council, for any registered person or a class of registered persons, subject to such conditions and restrictions, as may be prescribed.

ELP COMMENTS:

The proposed amendment seeks to restrict the time limit of furnishing of return/statement in GSTR-1, GSTR-3B, GSTR-5, GSTR-6, GSTR-7, GSTR-8, GSTR-9 and GSTR-9C to a maximum period of three years from the due date of filing of the relevant returns. However, the proposed amendment also seeks to empower the Government to relax the said time limit of three years for a registered person or a class of registered persons.

It is to be noted that in terms of Rule 21 of CGST Rules, a registration is liable to be cancelled if the return under Section 39(1) i.e., GSTR-3B is not filed for a continuous period of six months. Once a registration is cancelled or suspended, GSTN portal does not allow furnishing of return for the period subsequent to the date of such cancellation / suspension. However, the returns for the period prior to the date of cancellation / suspension can be filed.

In case of any ongoing litigation challenging an order of cancellation of registration, there could arise a situation where the time limit of three years may lapse before the finality of the dispute. In such cases, unless there is provision introduced granting relaxation by the Government or a relief is obtained by way of a Writ under Article 226 of the Constitution of India, the taxpayers may not be able to file the returns, *inter alia* leading to a loss of ITC.

Refund of Tax

- Section 54(6) of the CGST Act provides for refund on a provisional basis on account of zero-rated supply. Currently, this amount was calculated after excluding provisional ITC. Section 54(6) has been proposed to be suitably modified to align with the existing provisions which no longer acknowledge the concept of provisional availment of ITC.

Interest on delayed refund

- Section 56 of the CGST Act provides that if any tax ordered to be refunded to an applicant is not refunded within 60 days from the date of receipt of application, interest shall be payable from the date post 60 days from the date of receipt of refund application till the date of refund of such tax.
- Section 56 of the CGST Act is proposed to be amended to empower the Government to prescribe conditions, restrictions and the manner of ascertaining the period of delay for the purpose of computation of interest.

ELP COMMENTS:

As per the prevalent provision, proper officer is required to issue the refund order within 60 days from the date of receipt of refund application. Where application is complete in all respects, an acknowledgement in FORM GST RFD-02 is to be issued by the proper officer and the time limit of 60 days starts from the actual date of filing the refund application. However, where a deficiency memo is issued vide FORM GST RFD-03, the taxpayer is required to file a fresh refund application after rectification of such deficiencies and acknowledgement in FORM GST RFD-02 is issued. One can hope that while prescribing the conditions, the date of filing of the original application is considered for ascertaining the delay and consequential interest unless the deficiency is so apparent or the delay is attributable to a taxpayer whereby the proper officer may not be in a position to process the refund claims. It is to be noted that in many cases, courts have directed to consider the original date of application for counting the days of delay.

Penalty for certain offences

- Section 122 of the CGST Act provides for penalty for certain offences. A sub-section (1B) is proposed to be inserted for imposition of penalty of INR 10,000 or the amount of tax involved, whichever is higher, on Electronic Commerce Operators in the following cases:
 - If the Electronic Commerce Operator allows supply of goods or services or both through it by an unregistered person other than those explicitly exempted;
 - If the Electronic Commerce Operator allows inter-state supply of goods or services or both through it by ineligible persons;
 - If the Electronic Commerce Operator fails to furnish statement containing the details of outward supplies of goods or services or both effected through it.

Punishment for Certain Offences

An amendment is proposed to Section 132(1) of the CGST Act whereby the following offences shall be decriminalized:

- Obstructing/ preventing any officer from discharging their duties under the CGST Act (clause g).
- Tampering or destruction of any material evidence/ documents (clause j).
- Failure to furnish information or furnishing false information summoned under the CGST Act (clause k).
- Abetment in commission of any of the aforesaid offences.

Further, an amendment is proposed in clause (iii) of sub-section (1) of Section 132 to restrict the punishment under the said clause to an offence relating to issuance of fake invoice without supply.

ELP COMMENTS:

Section 132 of the CGST Act provides for arrests in respect of certain specified offences and has consistently been invoked by the tax authorities for instances relating to issue of fake invoices or availing of ITC without invoices etc. The proposed amendment seeks to decriminalize certain offences which are trivial in nature. It is to be noted that the larger issue with respect to invoking the powers to arrest is pending before the three member bench of the Supreme Court in *UOI vs. Sapna Jain* [SLP(Crl.) Nos. 4322-4324/2019], wherein the powers of the Commissioner to arrest without issuing an FIR or a SCN under Section 74 of the CGST Act, is pending for determination.

The restrictive amendment proposed in the clause (iii) has effectively enhanced the monetary limit to invoke arrest only for those offences where the amount of tax evaded or the amount of ITC wrongly availed or utilized exceeds INR 20 million, except for offence specified under clause (b) viz. issuance of invoice without supply of goods or services. An interpretation issue that still remains open is whether the arrest provisions would apply to offences prescribed under clause (h) and (i) where evasion of tax may not be quantifiable.

Compounding of Offences

An amendment is proposed to Section 138(a) of the CGST Act (which denies the benefit of compounding in cases where compounding has already been allowed once) whereby the following offences shall be added:

- Acquisition/ Possession of any goods liable for confiscation.
- Receipt or association in any manner, with a supply which is made in contravention of the GST Laws.
- Attempt to commit or abetment in commission of an offence which is liable for prosecution under Section 132 of the CGST Act.
- Issuance of fake invoice leading to availment/ utilization of ITC.

Further, the restriction placed under clause (b) of sub-section (1) of 138 has been omitted to allow compounding in all cases other than those covered by proposed clause (a) (as above) without any monetary restriction. Earlier, compounding under this clause had a monetary limit of supplies exceeding INR 10 million.

It is proposed to substitute existing clause (c) of sub-section (1) of Section 138. The existing clause (c) restricts the benefit of compounding to those cases where an offence under GST Law is also an offence under any other law. The proposed substitution under clause (c) would allow availment of the benefit of compounding even in those cases where an offence under GST Law is also an offence under any other law, except for offence under Section 132(1)b) which deals with issuance of fake invoices.

Further, Section 138(2) has been amended to enhance the lower and upper limits of the amount for compounding of an offence to 25% of tax and 100% of the tax respectively.

ELP COMMENTS:

The offences in connection with the issue of fake invoices without supply has been explicitly disallowed for compounding. The widening of the scope of the compounding for offences, other than those offences which are covered under Section 132 without any monetary limit is a welcome step.

Consent based sharing of information furnished by taxable person

- A new Section 158A in the CGST Act is proposed to be inserted to provide that the information furnished by the registered person in his returns, viz. Form GSTR 3B, Form GSTR 5, Form GSTR 6 etc.; annual returns; application of registration; statement of outward supplies (Form GSTR 1); details uploaded for generation of electronic invoice; E-way bill or any other details, as may be prescribed, can be shared by the common portal with such other systems, as may be notified, subject to prescribed consent and conditions.

ELP COMMENTS:

The proposed amendment empowers the Government to share the information furnished by the taxpayers on the GSTN portal with all tax as well non-tax regulatory authorities as may be notified. In other words, the details furnished by the taxpayers under the CGST Act, may be a subject matter of indirect scrutiny by the other non-GST regulatory authorities. There are several on-going investigations where the authorities have corroborated evidence basis submissions made by the taxpayer to different regulators.

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services -Schedule III

- Schedule III was amended from February 1, 2019 to include Out and Out exports, supply of warehoused goods before clearance for home consumption, and high sea sales. It has been clarified that the said amendment will be applicable with retrospective effect from July 1, 2017. However, where tax has already been collected in respect of any such transactions for the prior period, no refund shall be available.

ELP COMMENTS:

While grant of retrospective application is a welcome move, the taxpayers who have already paid tax in respect of past transactions will be in an adverse position as refund of the same is proposed to be denied. Constitutionality of such denial of refund may have to be tested before the courts of law.

INTEGRATED GOODS AND SERVICES TAX ACT, 2017

OIDAR provisions

- The definition of 'OIDAR' has been proposed to be amended to exclude the condition of 'essentially automated and involving minimum human intervention'.
- Further, the definition of non-taxable online recipient is proposed to be substituted to mean "any unregistered person receiving online information and database access or retrieval services located in taxable territory". It is also proposed to be clarified that unregistered person shall include persons who are solely registered for the purpose of TDS such as department or establishment of Central Government, State government, local authority, government agencies.

ELP COMMENTS:

The proposed amendment significantly enhances the scope of taxability for OIDAR services by covering every service as listed in the definition, irrespective of the level of human intervention. In addition, the non-resident supplier will be liable to GST for all unregistered recipients, whether or not the services are used for business or commerce.

The interpretation of the term 'essentially automated and involving minimum human intervention' was being subjected to litigation by the tax authorities, including the issue as to what is the extent of intervention to qualify as minimal. With the proposed exclusion as aforesaid, the issue pertaining to automation and the degree of human intervention is done away with.

A confusion that however gets aggravated is the coverage under the definition of OIDAR services. The scope of the definition is very wide to cover almost all online services. There could therefore be a dispute on the person liable to pay tax if a view is taken either by the non-resident service provider or by the GST authorities as to the coverage of services under the definition. Also, even in a situation where the non-resident service provider incorrectly fails to pay GST, the authorities may allege levy of tax in the hands of the recipient under RCM which will then have to

be defended. Hence, it becomes imperative for a recipient to obtain a certainty on whether the GST has been discharged by the non-resident service provider on services availed by it.

Place of supply of services by way of transportation of goods

- Proviso to Section 12(8) of the IGST Act which provides that the place of supply in case of transportation of goods to a place outside India shall be the place of destination of such goods is proposed to be omitted.

ELP COMMENTS:

With the proposed amendment, the place of supply of services for transportation of goods in case where the goods are being transported to a place outside India, shall either be:

- in case of registered person, the location of such person or
- in case of person other than registered person, the location where such goods are handed over for transportation.

EXCISE TARIFF CHANGES

- Increase in NCCD rates in respect of cigarettes by way of amendment in seventh schedule to the Finance Act 2001 effective from February 2, 2023. The proposed duty rates are as under:

Sr. No.	CTH	Description of Goods	Unit.	Excise Duty (INR per thousand)	NCCD (INR per thousand)
1	2402 20 10	Other than filter cigarettes, of length not exceeding 65 millimeters	Tu	1280	230
2	2402 20 20	Other than filter cigarettes, of length exceeding 65 millimeters but not exceeding 70 millimeters	Tu	2335	290
3	2402 20 30	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) not exceeding 65 millimeters	Tu	1280	510
4	2402 20 40	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) exceeding 65	Tu	1740	510

		millimeters but not exceeding 70 millimeters			
5	2402 20 50	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimeters or its actual length, whichever is more) exceeding 70 millimeters but not exceeding 75 millimeters	Tu	2335	630
6	2402 20 90	Other	Tu	3375	850
7	2402 90 10	Cigarettes of tobacco substitutes	Tu	4006	690

- Notification No. 05/2023-Central Excise dated February 1, 2023, effective from February 2, 2023 has been issued to exempt excise duty on blended CNG from so much of the amount as is equal to the GST paid on Bio Gas/Compressed Bio Gas (CBG) contained in the blended CNG, subject to the fulfilment of the conditions as specified below:
 - Maintenance of detailed records regarding the quantum of Biogas or CBG blended with CNG, along with the value thereof, at the registered premises;
 - Submission of reconciliation statement, certified by the statutory auditor to the jurisdictional Commissioner of Central Excise by 10th of the month following every quarter; and
 - Payment of short-paid duty of excise along with applicable interest after such reconciliation.

ELP COMMENTS:

The intention of the proposed notification is to avoid the levy of excise duty to the extent of GST paid in respect of Bio Gas/CBG which is used in the manufacture of blended CNG to promote the manufacturing of the green gases.

CENTRAL SALES TAX ACT, 1956

- CESTAT will have jurisdiction over any disputes relating to inter-State sale of goods
- Central Sales Tax Appellate Authority will no longer be functional. Pending cases to be transferred to CESTAT
- Section 19 of the CST Act which provides for functions, powers and composition of the Central Sales Tax Appellate Authority is proposed to be substituted. As per the new provision, CESTAT will have jurisdiction to adjudicate any dispute relating to inter-state sales.
- An amendment is proposed to omit Section 24 of the CST Act which deals with the constitution of the Central Sales Tax Appellate Authority. The Central Sales Tax Appellate Authority will no longer be functional as per the proposed amendment.

- All the proceedings pending before the Central Sales Tax Appellate Authority will stand transferred to CESTAT once the proposed amendments are notified.

ELP COMMENTS:

The CST Appellate Authority has been non-functional for over a year. This amendment provides much required clarity in relation to appeals pending before the CST Appellate Authority.

CUSTOMS - LEGISLATIVE CHANGES

Validity of two years for conditional exemptions shall not apply in specified cases

- In 2021, for the first time the Central Government introduced Section 25(4A) to the Customs Act to provide that all conditional exemptions (unless otherwise specified or varied or rescinded) are valid only upto 31st day of March falling immediately after two years from the date of new exemptions or from 01.02.2021 in case of old exemptions. The provision aimed at achieving the objective to eliminate outdated exemptions and introduce new exemptions with a limited validity.
- Now this Section is proposed to be amended by insertion of a second proviso, to the effect that the conditional exemptions granted to or in relation to the following are excluded from such automatic expiry after two years:
 - Multilateral or bilateral trade agreements;
 - Obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
 - Privileges of constitutional authorities;
 - Schemes under the FTP;
 - Central Government Schemes having validity of more than two years;
 - Re-imports, temporary imports, goods imported as gifts or personal baggage;
 - Any duty of customs under any law for the time being in force, including IGST leviable under Section 3(7) of the CTA, other than BCD leviable under Section 12 of the Customs Act.

ELP COMMENTS:

The amendment introduced in 2021 which provided that all conditional exemption notification(s) shall be valid only upto March 31 falling immediately after two years of their issuance, created a doubt amongst taxpayers as to whether certain special duty benefits availed under FTAs, export incentive schemes under FTP, etc. can be unilaterally withdrawn by enforcing such sunset clause. The position in this regard was somewhat clarified through the TRU letter dated 01.02.2022 issued along with Finance Bill 2022, which mentioned that the sunset date stipulated under Section 25(4A) of the Customs Act will not apply to exemptions granted under the trade agreements, or concessions given under the FTP (Advance Authorization). But the legislative backing to this clarification was absent, which has now been dealt with this proposed amendment. However, in case the Finance

Bill does not receive the Presidential assent till 31.03.2023, the sunset clause would trigger, unless all such specific notifications are otherwise amended to independently prescribe the extended time limits.

It is also interesting to note that the proposed amendment, may create an ambiguity for such exemption notifications which exempts both BCD and IGST, given that clause (g) of the proposed second proviso keeps an IGST exemption outside the scope of applicability of the sunset clause. Hence, it remains to be seen whether IGST would continue to be exempt even when BCD exemption on such goods has expired by virtue of the sunset clause.

Re-introduction of statutory time limit of 9 months for disposal of settlement application

- Section 127C of the Customs Act is proposed to be amended by insertion of a new sub-section (8A) to the said provision to provide a time limit of 9 months (extendable to a further period upto 3 months for reasons to be recorded in writing) for the Settlement Commission to dispose of an application filed before them. The said time limit is to be reckoned from the last date of the month in which the application was made. Further, the proposed amendment provides that if the Settlement Commission fails to pass an order in the said time limit, the settlement proceedings shall abate, and the adjudication proceedings would continue as if no such settlement application was made.

ELP COMMENTS:

With respect to applications preferred before the Settlement Commission, the prescription of timely closure (i.e., 9 months period) is not a new norm. Such time limit existed even during an earlier period until omitted vide Finance Act, 2015. Nonetheless, the proposed amendment seeks to reinstate the said time limit of disposal of cases by the Settlement Commission. Resultantly, the debate qua efficacy of such provision as to whether an applicant can at all be subjected to an adjudication proceeding, where the delay to dispose of the application is on the part of Settlement Commission, would resurface. Similar issue was raised in the case of *Gurjeet Singh vs. Union of India & Ors.*, 2022 (7) TMI 727 (Bombay High Court), wherein the Hon'ble Bombay High Court on the basis of the law laid down by Hon'ble Supreme Court in *Union of India vs. Star Television News Ltd.*, 2015 (4) TMI 90, granted liberty to the applicant to file a fresh application as the delay was not attributable to the applicant. Thus, upon reinstating such provision, an applicant would be put in an onerous position which may lead to fresh round of litigation.

All the above legislative changes to the Customs Act shall be applicable from the date on which the Finance Bill receives assent of the President.

CUSTOMS - TARIFF CHANGES

Amendment to General Rules for interpretation of the First Schedule – Import Tariff of the CTA

The Finance Bill proposes to amend the General Rules for interpretation of the First Schedule – Import Tariff of the CTA as under:

- Paragraph 1 of the General Explanatory Notes is proposed to be amended to the effect that where the description of an article or group of articles is preceded by “---”, the said article or group of articles shall also be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “---”.

- The list of abbreviations has been proposed to be substituted with a new list to align with Harmonized System Nomenclature 2022 Edition (HS22).

This amendment is proposed to come into effect from 01.05.2023.

ELP COMMENTS:

The General Explanatory Notes, when literally read, states that the articles preceded by “----” can be classified as per description of articles which has “-” or “--”, and not as per description of articles which has “---”. This was leading to a confusion and was rendering the descriptions with “---” as redundant for classification of its succeeding articles with “----”. Although in practice, courts in various cases, including, GAIL (India) Ltd. vs. Commissioner of Central Ex. & S.T., Vadodara-II (2019 (24) G.S.T.L. 626 (Tri. - Ahmd.)), held that articles preceded by “----” will be a sub-classification of the immediately preceding description of the articles which has “---”, so as to not make such description otiose. The proposed amendment aims to deal with this disconnect and bring consistency in classification.

Key changes in effective rate of BCD

- Union Budget 2023 continued the trend of the past years, of carrying out thematic tariff changes that aims at boosting domestic manufacturing and enhancing domestic value addition.
- First Schedule of Customs Tariff has been amended to introduce new tariff lines as well as modify existing tariff lines with effect from May 1, 2023. For instance, bituminous coal under Tariff Heading 2701 has been sub-classified into “Coking coal” (2701 12 10) and “Other” (2701 12 90).
- Following are key changes in effective rate of BCD from February 2, 2023; unless otherwise mentioned:

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1.	0802 99 00	Pecan nuts	100	30
2.	1504 20	Fish lipid oil for use in manufacture of aquatic feed	30	15
3.	1520 00 00	Crude glycerin for use in manufacture of Epichlorohydrin	7.5	2.5
4.	2902 50 00	Styrene	2	2.5
5.	2903 21 00	Vinyl chloride (chloroethylene)	2	2.5
6.	4005	Compounded Rubber	10	25% or INR 30 per kg., whichever is lower
7.	4011 30 00	New Pneumatic Tyres, of Rubber, of a kind used on aircraft other than for aircraft covered by 8802	3	2.5 (Refer Note 2)
8.	2102 20 00	Algal Prime (flour) for use in manufacture of aquatic feed	30	15
9.	25, 28, 32, 39, 40, 69, 73, 85	Specified chemicals/items for manufacture of Pre-calcined Ferrite Powder	7.5	Nil
10.	2710	Denatured ethyl alcohol for use in manufacture of industrial chemicals	5	Nil
11.	2710	Naphtha	1	2.5

12.	2301 20	Fish meal for use in manufacture of aquatic feed	15	5
13.	2301 20	Krill meal for use in manufacture of aquatic feed	15	5
14.	2309 90 90	Mineral and Vitamin Premixes for use in manufacture of aquatic feed	15	5
15.	2529 22 00	Acid grade fluorspar containing by weight more than 97% of calcium fluoride	5	2.5
16.	2701, 2702, 2703	Coal, peat, lignite	1	2.5 (Refer Note 1)
17.	Any chapter	Inputs or parts, other than camera lens, for use in manufacture of Camera Module of cellular mobile phones	As Applicable	2.5
18.	Any chapter	Camera lens for the use in manufacture of Camera Module of cellular mobile phones	As Applicable	Nil
19.	Any chapter	Inputs or sub-parts for use in manufacture of Camera lens of Camera Module of cellular mobile phones	As Applicable	Nil
20.	7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form	7.5	10 (Refer Note 2)
21.	7113, 7114	Articles of precious metals	20	25 (Refer Note 2)
22.	7117	Imitation Jewellery	20% or INR. 400 per kg, whichever is higher	25% or INR 600 per kg, whichever is higher (Refer Note 2)
23.	7102, 7104	Seeds for use in manufacturing of rough lab-grown diamonds	5	Nil
24.	71	Gold dore bar, having gold content not exceeding 95%	11.85	10
25.	71	Silver dore bar having silver content not exceeding 95%	6.1	10
26.	71 or 98	(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger (ii) Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	12.5	10
27.	71 or 98	Silver, in any form including ornaments, but excluding ornaments studded with stones or pearls, imported by the eligible passenger	7.5	10
28.	7108	All goods other than gold dore bar, having gold content not exceeding 95%	12.5	10
29.	7108	Gold Dore (as replenishment under scheme for export through exhibition / export promotion tours / export of branded jewellery under Para 4.46 of the FTP)	11.85	9.35

30.	7106	Silver Dore (as replenishment under scheme for export through exhibition / export promotion tours / export of branded jewellery under Para 4.46 of the FTP)	6.1	9.35
31.	7108 11 00, 7108 12 00, 7108 13 00	All goods other than gold dore bar (imported from UAE under CEPA)	6.6	10
32.	7106	All goods other than silver dore bar having silver content not exceeding 95%	7.5	10
33.	7110 11 10, 7110 11 20, 7110 19 00, 7110 21 00, 7110 29 00, 7110 41 00, 7110 49 00	Platinum, unwrought or in semi-manufactured form, or in powder form other than those used in manufacture of noble metal compounds, noble metal solutions and catalytic converters	12.50	10 (Refer Note 1)
34.	7107 00 00	Base metals clad with silver, not further worked than semi-manufactured	12.5	10
35.	7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	12.5	10 (Refer Note 1)
36.	7109 00 00	Base metals or silver, clad with gold, not further worked than semi-manufactured	12.5	10 (Refer Note 1)
37.	7111 00 00	Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured	12.5	10 (Refer Note 1)
38.	7112	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal other than goods of heading 8549	12.5	10 (Refer Note 1)
39.	7118	Coin	12.5	10 (Refer Note 1)
40.	8414 60 00	Hoods having a maximum horizontal side not exceeding 120 cm (i.e., electric kitchen chimney)	7.5	15
41.	8529	Specified goods for use in the manufacture of open cell of LCD and LED TV panels of heading 8524 (chip on film, PCBA, cell)	5	2.5
42.	8516 80 00	Heat coil for use in the manufacture of electric kitchen chimneys	20	15
43.	8712 00 10	Bicycles	30	35
44.	8802 20 00 8802 30 00 8802 40 00	Aero planes and other aircrafts	3	2.5 (Refer Note 1 and 2)

45.	8703	Motor cars vehicles (excluding electrically operated vehicles) principally designed for the transport of persons, if imported as a CKD kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle with engine or gearbox or transmission mechanism in pre-assembled form but not mounted on a chassis or a body assembly.	30	35
46.	8703	Motor cars vehicles (excluding electrically operated vehicles) principally designed for the transport of persons, other than as CKD kit, other than with CIF value more than USD 40,000, other than with engine capacity more than 3000 cc (petrol) or 2500 cc (diesel)	60	70
47.	8703	Electrically operated vehicles if imported incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, whether or not individually pre-assembled, with any of the above components, parts or sub-assemblies inter-connected with each other but not mounted on a chassis	30	35
48.	8703	Electrically operated vehicles other than in knocked down kit if imported incomplete or unfinished, as a knocked down kit containing necessary components, parts or sub-assemblies for assembling a complete vehicle, whether or not individually pre-assembled, with CIF value less than USD 40,000	60	70
49.	39, 40, 58, 70, 72 73, 83, 84, 85, 87, 90	Vehicles, automobile parts/ components, sub-systems and tyres specified in List 36, when imported by notified testing agencies for the purpose of testing and/ or certification, subject to conditions	As applicable	Nil
50.	84, 85	Specific capital goods/machinery for manufacture of Lithium-ion cell for use in battery of electrically operated vehicle (EVs)	As applicable	Nil
51.	9503	Toys and parts of toys (other than parts of electronic toys)	60	70

Notes:

1. The effective Customs duty remain constant as there is corresponding rate change (increase / decrease) of SWS and / or AIDC.
2. Revised rate will be effective from date of Presidential assent.
 - Heading 9801 of the First Schedule of CTA is being amended to exclude solar power plant or solar power project from the purview of Project Imports with effect from the date of Presidential assent.

ELP COMMENTS:

Notification No. 54/2022 – Customs dated October 19, 2022 amended the Project Imports Regulations, 1986 to exclude solar power plants or power projects from the purview of project import. The present amendment in the First Schedule of the CTA has been made to align with the regulations.

DISCONTINUATION OF EXEMPTIONS UNDER NOTIFICATION NO 50/2017 - CUSTOMS

- Concessional rate of BCD available under Notification No 50/ 2017 - Customs June 30, 2017 is proposed to be discontinued on following illustrative products as under:

Sr. No.	CTH	Description of Goods
Concession discontinued with effect from April 1, 2024		
1.	3208, 3815,3901, or 3920	Specific goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or back sheet, which are in turn used in the manufacture of solar photovoltaic cells or modules
2.	26	Gold ores and concentrates for use in the manufacture of gold
3.	30 or any other Chapter	Drugs and materials
4.	3209 90 90	Organic / inorganic coating material for manufacture of electrical steel
5.	70	Toughened glass with low iron content and transmissivity of minimum 91% and above, for use in solar thermal collectors or heaters
6.	71	Rough diamonds (industrial or non- industrial)
7.	7325	Metal parts for use in the manufacture of electrical insulators falling under heading 8546
8.	73	Pipes and tubes for use in manufacture of boilers
9.	7326 90 99	Forged steel rings for manufacture of special bearings for use in wind operated electricity generators
10.	7408	Flat copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacture of solar photovoltaic cells or modules
11.	84 or any other Chapter	Parts/ inputs for manufacture of catalytic convertors or its parts
12.	84, 85 or 90	Goods required for basic telephone/ internet service and their parts
13.	8507 60 00	Lithium-ion cell used in manufacture of battery or battery pack of items other than cellular mobile phone, electrically operated vehicle or hybrid motor vehicle

Sr. No.	CTH	Description of Goods
14.	Any Chapter	Components or parts of aircraft for manufacture of aircraft (except unmanned aircraft used as television camera, digital camera or video camera recorder) or for manufacture of parts of aircraft imported by PSUs under Ministry of Defence
15.	9022	X-Ray Baggage Inspection Systems and parts thereof
16.	90 or any Other Chapter	Medical and surgical instruments, apparatus and appliances including spare parts and accessories thereof
Concession discontinued with effect from April 1, 2025		
1.	28,29, 30 or38	(i) Specified drugs, medicines, diagnostic kits or equipment (ii) Bulk drugs used in the manufacture of drugs or medicines
2.	84 or any other Chapter	Raw materials and parts for manufacture of wind operated electricity generators
3.	Any Chapter	Raw material and parts (including dredger) for use in the manufacture of ships/ vessels
Concession discontinued with effect from April 1, 2028		
4.	Any Chapter	Used bonafide personal and household effects belonging to a deceased person

Other Tariff Changes

- Specific end date has been notified in respect of certain Customs exemption notifications.
- SWS exemption has been extended to certain goods such as silver, imitation jewellery, specified aeroplanes and other aircrafts, etc.
- Rate of AIDC has been modified for certain goods.

INTERNATIONAL TRADE

AN AMENDMENT ON APPEALABILITY AGAINST TRADE REMEDIAL INVESTIGATIONS

Section 125 of the Finance Bill introduced in the Union Budget has proposed amendments to Sections 9, 9A, and 9C of the CTA. As per the Finance Bill, this amendment has been proposed to amplify the intent and scope of the aforesaid provisions of the CTA.

India follows a two-tiered procedure to levy anti-dumping/countervailing duties. First, the DGTR conducts a detailed investigation of key parameters such as dumping/subsidy, injury, and causal link, pursuant to which it may make a recommendation to the Central Government (i.e., Ministry of Finance) for the levy of duty. If a positive recommendation for the levy of duty is made, the Ministry of Finance can levy (or not levy) the duty so recommended within three months from the date of such a recommendation made by the DGTR.

In numerous recently concluded investigations, the Ministry of Finance decided not to accept the DGTR's recommendations, whereby it did not impose the recommended duties. The Ministry of Finance's non-levy was signified either by (a) the issuance of an office memorandum; or (b) its inaction before the expiry of the three months. Accordingly, aggrieved domestic producers have filed various appeals under Section 9C of the CTA (i.e., provision prior to the proposed amendment under the Finance Bill, 2023) before the Hon'ble CESTAT against such decisions of the Ministry of Finance. Simultaneously, writs have also been preferred before the Hon'ble High Courts and the Hon'ble Supreme Court.

A key question of law in these appeals was whether or not an appeal lies against the Ministry of Finance's decision not to levy the duty. The Hon'ble CESTAT (in the cases heard thus far) has decided that an appeal lies against the Ministry of Finance's decision not to levy the duty. Particularly, the Hon'ble CESTAT, in one of the earliest such appeals i.e., *Jubilant Ingreiva Limited vs Union of India & others*, Anti-dumping Appeal No. 50461 of 2021 held that the decision of the Ministry of Finance not to levy the duty is an "order of determination" under Section 9C of the CTA, whereby an appeal does lie against such an order.

Subsequently, the Hon'ble CESTAT also set aside several of such Ministry of Finance decisions and held as follows:

- The Ministry of Finance has the discretion to levy (or not levy) duty and is not duty-bound to impose the duty recommended by the DGTR.
- The Ministry of Finance exercises a quasi-judicial function, whereby it is required to offer reasons when it chooses not to impose the recommended duty.
- Accordingly, the office memorandum communicating the non-levy of duty was set aside, and the Ministry of Finance was directed to decide the matter afresh, with reasons to be provided.

Section 125 of the Finance Bill now proposes an amendment to Section 9C of the CTA, which is the governing provision for appeals before the Hon'ble CESTAT. The amendment appears to be intended to ensure that appeals can only be preferred against the DGTR's determination of dumping, injury, and causal link (often referred to as the Final Finding), which is rendered under the relevant rules prescribed under Sections 8B, 9, 9A and 9B of the CTA.

The other proposed amendments to Sections 9 and 9A of the CTA seem to have been made to clarify that the Central Government makes no determination of dumping, injury, or causal link.

ELP COMMENTS:

The Finance Bill proposes to make amendments to Section 9C of the CTA applicable retrospectively from 1 January 1995 in order to negate the issue at hand pending before the Courts. The above amendment, when brought into force, will have implications on all the CESTAT decisions rendered on the issue of whether an appeal lies against the Ministry of Finance's decision not to levy the recommended duties. It would be interesting to follow the developments of the pending matters before the Hon'ble High Courts and the Hon'ble Supreme Court, considering the retrospectivity of the amendments as well as the interpretation to be given to the proposed amendments. Depending on the outcome in the aforesaid matters, the aggrieved domestic industry may be only left with the choice of re-approaching the DGTR by filing a fresh petition subject to satisfying the prescribed rules. In addition to implications for existing appeals, the impact of the amendment on appellate challenges to future findings will also be interesting to follow.

AMENDMENTS TO CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES 2017

Sr. No.	Name of the Product	Change in the Basic Customs Duty rate	Trade Remedial Amendments/Implications
1	Carbon Black	5% to 7.5%	The product attracted AD duties until December 31, 2020 from China and Russia. The Directorate General of Trade Remedies ("DGTR") recommended extension of duties vide final findings in review investigation dated December 22, 2020 However, the Ministry of Finance decided.

CORPORATE LAWS

CONTRACTS REGULATED BY IFSCA SHALL CONSTITUTE VALID CONTRACTS IN DERIVATIVE

Amendment to Section 18A of the SCRA

- Section 18A of the SCRA provides that the contracts in derivative are legal and valid only when such contracts are traded on a recognized stock exchange and settled on the clearing house of the recognized stock exchange or in accordance with the rules and bye-laws of such stock exchange.
- The Bill proposes to expand the said section to also include contracts in derivative regulated by the IFSCA established in an IFSC and issued by an FPI.
- It has further been clarified that for the purpose of this clause, an FPI shall have the meaning assigned to it under Rule 2(u) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 which in turn means a person registered in accordance with the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to AY 2023-24 and thereafter.

ELP COMMENTS:

By recognizing contracts regulated by IFSCA as valid contracts in derivative, this amendment enhances the accessibility for trading and thus boosting the business activities in GIFT IFSC.

RELIEF TO MSMES

- It is proposed that the government and government undertakings would return 95% of the forfeited amount relating to bid or performance security in situations where MSMEs failed to execute contracts during Covid period and hence, proving relief to the MSMEs.
- The credit guarantee scheme for MSMEs was revamped in the budget 2022-23. It has now been announced that that this scheme shall take effect from April 1, 2023 through infusion of INR 90 billion in the corpus. This will enable additional collateral-free guaranteed credit of INR 2,000 billion and reduce the cost of credit for MSMEs by about 1%.

ELP COMMENTS:

This move is expected to enable MSMEs to raise funds from banks and NBFCs without furnishing collateral. It is also expected that this revamped scheme shall give comfort to banks which are normally averse to lend to MSMEs in the absence of adequate collateral.

REVAMPING EASE OF DOING BUSINESS IN INDIA

The Budget 2023 proposes to introduce changes that amplify the ease of doing business in India which include:

- Reduction in 39,000 compliances, decriminalization of 3,400 legal provisions, amendment to 42 central acts;
- Simplifying of the KYC process adopting a 'risk based approach' instead of a 'one size fits all' approach; financial sector regulators encouraged to have a KYC system to meet the requirements of digital India;
- One stop solution for reconciliation and updating of identity and address of individuals maintained by various government agencies, regulators and regulated entities using the DigiLocker service and Aadhaar as foundational identity;
- PAN to be used as a common business identifies for all digital systems of specified government agencies, which will be facilitated through a legal mandate;
- Setting up of unified filing process on a common portal for submission of information to different government agencies;
- Entity DigiLocker to be set up for use by MSMEs, large businesses and charitable trusts for the purpose of storing and sharing documents online securely with various authorities, regulators, banks and other business entities, whenever required.
- Setting up of a national financial information registry to serve as the central repository of financial and ancillary information to facilitate efficient flow of credit, promote financial inclusion, and foster financial stability. This legislative framework will be designed in consultation with the RBI;
- A central processing centre for faster response to companies through centralized handling of various forms filed with field offices under the CA2013;
- Establishing an integrated IT portal for investors to reclaim unclaimed shares and unpaid dividends from the Investor Education and Protection Fund Authority with ease.

ELP COMMENTS:

In continuation with the Government's efforts to improve ease of doing business and developing on the changes proposed in last year's budget 2022-23, the above proposals in Budget 2023 seem to be a positive step towards creating an attractive environment for business in India.

MISCELLANEOUS

EXEMPTION ON PAYMENT OF STAMP DUTY ON LIFE INSURANCE POLICY UNDER PRADHAN MANTRI JEEVAN JYOTI BIMA YOJANA

Amendment to Division D of Article 47 under Schedule I of the Indian Stamp Act, 1899:

- In terms of Item 91 of the Union List (Seventh Schedule of the COI), the Parliament has the exclusive power to make laws relating to rates of stamp duty in respect of policies of insurance.
- Division D of Article 47 under Schedule I of the Indian Stamp Act, 1899, provides the rates of stamp duty on policies of life insurance, group insurance, or other insurance which has not been specifically provided for under Article 47. Currently, an exemption has been granted in respect of payment of stamp duty on policies of life insurance granted by Director-General of Post Offices in accordance with the rules for Postal Life-Insurance issued under the authority of the Central Government.
- Division D of Article 47 under Schedule I of the Indian Stamp Act, 1899 is proposed to be amended to extend the exemption on payment of stamp duty to policies of life insurance under the Pradhan Mantri Jeevan Jyoti Bima Yojana.

ELP COMMENTS:

The government wishes to widen the scope of the exemption under the Indian Stamp Act, 1899 by including policies of life insurance issued under the Pradhan Mantri Jeevan Jyoti Bima Yojana.

EXTENSION OF EXEMPTION ON PAYMENT OF INCOME TAX TO SUUTI ADMINISTRATOR AND ALTERNATIVE MECHANISM FOR VACATION OF SUUTI ADMINISTRATOR'S OFFICE

SUUTI is the successor of the erstwhile Unit Trust of India (UTI) and is mandated to liquidate the Government liabilities on account of erstwhile UTI. SUUTI has been exempted from payment of income-tax up to March 31, 2023 and the SUUTI Administrator is mandated to vacate his office immediately on redemption of the schemes transferred to SUUTI under the UTI Repeal Act and the payment of entire amount to investors. Based on the representations that the redemption of all schemes and payment of entire amount to remaining investors may take time and the work of SUUTI pertaining to redemption of schemes, payments of entire amounts, pending litigation, etc., is expected to extend beyond March 31, 2023, the Government has proposed to amend Section 8(1) and Section 13(1) of the UTI Repeal Act, which shall take effect from April 1, 2023.

Amendment to Section 8(1) and Section 13(1) of the UTI Repeal Act

- Section 8(1) of the UTI Repeal Act is proposed to be amended to provide that the SUUTI Administrator shall vacate his office upon the earlier of: (i) redemption of all the schemes of the specified undertaking and the payment of entire amount to investors; or (ii) from such date as may be notified by the Central Government in the Official Gazette.

- Section 13(1) of the UTI Repeal Act is proposed to be amended to extend the period of tax exemption from March 31, 2023 to September 30, 2023 exempting the SUUTI Administrator from payment of income tax or any other tax in respect of any income, profits or gains derived, or any amount received in relation to the schemes transferred to SUUTI under the UTI Repeal Act.
- This amendment is proposed to come into effect from April 1, 2023.

ELP COMMENTS:

The UTI was an initiative of the GOI and RBI which started the journey of mutual funds in India. It was set up under the Unit Trust of India Act, 1963 and was under the regulatory and administrative control of the RBI. Following the UTI Repeal Act, the UTI was bifurcated into two separate entities i.e., SUUTI and UTI Mutual Fund. By way of the proposed amendment to Section 8(1) of the UTI Repeal Act, the Government has included the option to notify a date for the vacation of office of the SUUTI Administrator and the tax exemption to the SUUTI Administrator in Section 13(1) of the UTI Repeal Act, has been extended from March 31, 2023 to September 30, 2023.

BROADENING THE DEFINITION OF HIGH COURT AND AMENDING THE STARTING DATE FOR CALCULATION OF PERIOD OF APPEAL UNDER THE BENAMI ACT

Amendment to Section 2(18) and Section 46 of the Benami Act

- Section 2(18) of the Benami Act is proposed to be amended to broaden the definition of “High Court” under the Benami Act by also including, in the definition, the jurisdiction of the High Court under which the office of the ‘Initiating Officer’ under the Benami Act is located, in case the aggrieved party does not ordinarily reside or carry on business or personally work for gain within the jurisdiction of any High Court, or in case the government is itself the aggrieved party and any of the respondents do not ordinarily reside or carry on business or personally work for gain in the jurisdiction of any High Court.
- Section 46 of the Benami Act is proposed to be amended to change the starting date from which the 45-day period within which appeals against any order passed by an adjudicating authority under the Benami Act must be filed before the Appellate Tribunal. The 45-day period, which, until now, began from the date the order was passed, is now proposed to be amended to begin from the day the order is received by: (i) the aggrieved party (including the ‘Initiating Officer’ under the Benami Act); or (ii) any other person aggrieved by an order passed by the adjudicating authority under Section 54-A of the Benami Act (which deals with penalties for failure to comply with summons or furnishing information).
- This amendment is proposed to come into effect from April 1, 2023.

ELP COMMENTS:

These amendments seek to empower the aggrieved parties under the Benami Act by widening the jurisdiction of the High Courts before which the aggrieved parties can file an appeal arising out of orders passed by the Appellate Tribunal under the Benami Act. The amendments should also provide relief to aggrieved parties intending to appeal against an order passed by the adjudicating authority under the Benami Act by calculating the starting date

of the 45-day period for appealing the order from the date the aggrieved party receives such order (instead of the date the order is passed by the adjudicating authority).

AGRICULTURE ACCELERATOR FUND

The Government proposes to setup an Agriculture Accelerator Fund (AAF) to encourage startups in the agricultural sector by young entrepreneurs in rural areas. The AAF will aim at bringing innovative and affordable solutions for challenges faced by farmers and modern technologies to transform and grow the agricultural sector.

ELP COMMENTS:

While further particulars around the AAF are awaited, the AAF should provide a source of patient capital to startups in the agricultural sector, particularly to seed and early-stage startups in this space.

ADVANCEMENT OF PHARMACEUTICAL INDUSTRY

- Introduction of a new program through 'Centers of Excellence' for promotion of research and innovation in pharmaceuticals.
- Identification of priority areas of research and development and encouraging investment in research and innovation in pharmaceuticals.
- Promoting the adoption of futuristic medical technologies and the use of the same by medical professionals in India by introducing dedicated courses at the existing colleges and institutions.

ELP COMMENTS:

Given the recent turmoil caused by the Covid pandemic prior to the development of an effective vaccine, the Government has announced measures to boost the pharmaceutical industry and effectively take pre-emptive steps to mitigate any future health disasters that may arise. Centers of Excellence have been established to help the pharmaceutical industry reduce the time for launch, and improve the cost-efficiency of new products. The new program announced by the Hon'ble FM would foreseeably seek to provide such centers with subsidies or other benefits in order to promote research and development in areas that the Government may deem critical. Additionally, the Government has observed the recent advancements in medical technologies and is taking steps to ensure that upcoming Indian doctors are given the necessary training and learning so that they may efficiently utilize such technologies and devices and may even contribute to its development.

PROMOTION OF ARTIFICIAL INTELLIGENCE INDUSTRY

- Creation of three 'Centers of Excellence' in top educational institutions across the country whose primary focus will be on development of domestic artificial intelligence (AI) systems.
- Identification of the need to use AI for growth of sustainable cities and to develop solutions for agricultural and health-care problems.

- To achieve the abovementioned goals, the Government has announced that leading industry players should jointly conduct research and develop AI applications to promote India's AI ecosystem.

ELP COMMENTS:

With the recent wave of artificial intelligence tools emerging across the globe, threatening to render long-standing practices, systems and industries obsolete, the Government has announced the need for India to stay ahead of the curve. The proposed creation of three 'Centers of Excellence' would enable Indians to be sufficiently educated on the development, management and utilization of AI systems. It is expected that additional centers would be announced as soon as practical to train the vast population. In the meanwhile, Indian companies engaged in AI research and development have been encouraged to work with the Government to develop solutions for critical problem areas and identify a pathway for India's exponential growth.

GSPA AMENDED TO INCLUDE PM CARES FOR CHILDREN SCHEME; TIMELINE FOR PRODUCTION OF DOCUMENTS IN CASE OF DEPOSITOR'S DEATH INCREASED

Amendment to Part A of Schedule to GSPA

In addition to the government savings schemes as provided, the amendment to GSPA has clarified that the GSPA will not be applicable to savings certificates i.e. Kisan Vikas Patra (which was restarted from 23rd September, 2014) and National Savings Certificates (VIII Issue), and shall now be applicable to the National Savings Certificates (VIII Issue) Scheme, 2019, Kisan Vikas Patra Scheme, 2019, and the PM CARES for Children Scheme, 2021.

Amendment to Section 4A(4) of the GSPA

- Section 4A(4) of the GSPA currently provides that if a depositor dies and no nomination is in force at the time of his death, and the: (i) probate of his will; or (ii) letters of administration of his estate; or (iii) a succession certificate granted under the Indian Succession Act, 1925 (Succession Documents), are not produced before the authorized officer of the Government Savings Bank within 3 (three) months from the death of the depositor, the deposit (if not exceeding the limits as prescribed) (Eligible Balance) shall be paid to any person appearing to the authorized officer, to be entitled to receive it or to administer the estate of the deceased.
- This provision has been proposed to be substituted with the new Section 4A(4) having the following changes:
 - A legal heir certificate issued by the revenue authority not below the rank of Tahsildar having jurisdiction has been added to the list of Succession Documents;
 - The timeline for production of documents has been increased from 3 (three) months to 6 (six) months from the date of death of the depositor;
 - The amendment states that after the aforementioned period of 6 (six) months, the authorized officer shall pay the Eligible Balance to the person legally entitled to receive it or to administer the estate of the deceased, after recording reasons in writing.

- These amendments shall come into force on such date as may be notified by the Central Government in the Official Gazette.

ELP COMMENTS:

These amendments to the GSPA are a welcome change since: (1) The scope of the act has been widened to include the PM CARES for Children Scheme, 2021 in addition to the 9 other schemes governed by it; and (2) the timeline for production of documents before the authorised officer, in case of death of depositor, has been increased to 6 months which may act as a breather for such persons who may be entitled to receive the payment of deposit.

NATIONAL DATA GOVERNANCE POLICY TO FACILITATE INNOVATION AND RESEARCH

The Finance Minister announced in her speech that in order to facilitate innovation and research, a National Data Governance Policy will be brought out. The policy shall set out the framework for governments and private entities to safely provide access to anonymized data to the Research and Innovation eco-system.

ELP COMMENTS:

In 2022, the Ministry of Electronics and Information Technology had introduced a draft of the National Data Governance Framework Policy, which is yet to be finalized. The policy, which shall form part of India's data privacy regime, must be aligned with international standards, and should be positioned to boost exports of services and technology.

Note: Vivad se Vishwas II – Settling Contractual Disputes is provided in the Infrastructure Section

BANKING & FINANCE | STRESSED ASSETS

CRITICAL DEVELOPMENTS IN THE FINANCIAL SECTOR:

The Economic Survey 2023 highlighted the following critical developments with respect to the financial sector.

- The GNPA ratio of SCBs has fallen to a seven-year low of 5.0, while the CRAR remains healthy at 16.0 and well above the regulatory requirement of 11.5. NNPA's have dropped to a ten-year low of 1.3 % of total assets.
- The health of NBFCs has continued to improve as well. The recovery rate for the SCBs through IBC was highest in FY22 compared to other channels.
- The continuous improvement in asset quality is seen in the declining GNPA ratio of NBFCs from the peak of 7.2 % recorded during the second wave of the pandemic (June 2021) to 5.9 % in September 2022, reaching close to the pre-pandemic level.
- Credit extended by NBFCs is picking up momentum, with the aggregate outstanding amount at INR 31.5 trillion as of September 2022.

ELP COMMENTS:

Indian banking sector has shown high resilience as compared to global developments, mostly led by domestic demand. The balance sheet clean-up exercise has been vital in enhancing the lending ability of financial institutions. With increased recovery and reduction in NPA level, the banking sector is poised to see a decent growth in the year.

PROGRESS UNDER IBC

- IBC has so far led to filing of about 5,893 CIRPs cases of which 67 % have been closed. Until September 30, 2022, 553 CIRPs have ended in resolution.
- Of these, around 21 % were closed on appeal or review or settled, 19 % were withdrawn, 46 % ended in orders for liquidation, and 14 % culminated in the approval of resolution plans.
- In terms of the value, 69 % of the distressed assets rescued, realization value was around 178 % of the liquidation value.
- Overall realization through resolution plans was around INR 2400 billion, which is 177.6 % of the liquidation value and 841 % of the fair value of the 553 CDs rescued.

MODIFIED RETURNS CONSEQUENT TO ORDER UNDER IBC

- The Budget has proposed substitution of the existing Section 170A of the IT Act, to facilitate filing of modified returns consequent to an order having been passed under the IBC.
- New Section 170A enables filing of modified return by the successor in business. The modified return is to be filed within a period of six months from the end of the month in which the order was issued. The AO will be required to

pass an order modifying the total income of the relevant assessment year in accordance with such order passed under IBC.

ELP COMMENTS:

While challenges under IBC resolution remain, the IBC has facilitated resolution/liquidation of distress cases of the banking industry in a much shorter time. As per the RBI data, in FY 22, the total amount recovered by SCBs under IBC has been the highest compared to other channels such as Lok Adalat's, SARFAESI Act and DRTs in this period.

The new substituted Section 170A of IT Act will provide relief to new entities formed by way of business reorganization involving the amalgamation or demerger or merger of business of one or more persons under IBC.

DECRIMINALIZATION UNDER SECTION 276A OF I T ACT

- The Union Budget has proposed to decriminalize certain acts of omission of liquidators under Section 276A of the IT Act with effect from April 1, 2023.
- It proposed to insert a proviso in Section 276A of the IT Act, to the following effect:— "*Provided further that no proceeding shall be initiated under this section on or after the 1st day of April, 2023.*".

ELP COMMENTS:

Section 276A, *inter alia*, provides for provides for prosecution in the case of failure to give notice or setting aside the sum in compliance with the provisions of Sections 178(1)/178(3) and prosecution in case the liquidator parts with any of the assets of the company or the properties in his hands in contravention of the provision of Section 178(3).

A person who fails to comply with these provisions is punishable with rigorous imprisonment for a minimum period of 6 months which may extend to 2 years. Section 53 of IBC lays down a waterfall mechanism for settlement and payment of claims of creditors and other stakeholders. Since, on account of provisions of Section 238 of the Code, IBC overrides provisions of IT Act to the extent of contradiction, the proposed proviso formalizes the same by way of specific provisions in the IT Act and save the liquidator from the penal consequences.

FOCUS ON GREEN FINANCING

- As indicated in the Infrastructure section (below), the Union Budget 2023 announced the Green Credit Programme which will be notified under the Environment (Protection) Act. This will incentivize environmentally sustainable and responsive actions by companies, individuals and local bodies, and help mobilize additional resources for such activities.

ELP COMMENTS:

India has shown global leadership in the fight against climate change and has committed itself to achieving net-zero emissions by 2070.

2023 will see a more focused scheme for green financing and more stricter norms for compliance by the industry. Banks are coming out with policies to incorporate conditions in sanction terms to comply with green financing

norms. It may be noted that in 2007, the RBI advised banks to put in place an appropriate action plan for making a meaningful contribution to sustainable development. RBI has also incentivized bank lending towards greener industries and projects by including renewable energy projects under Priority Sector Lending.

In the past SEBI introduced the regulatory framework for issuance of green debt securities as a mode of sustainable finance under the erstwhile SEBI (Issue and Listing of Debt Securities) Regulations, 2008, (ILDS Regulations), vide circular dated May 30, 2017. The definition of “green debt security” was incorporated in the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

REVAMPED CREDIT GUARANTEE SCHEME FOR MSMES (CGTMSE)

- The revamped scheme will take effect from April 1, 2023 through infusion of INR 90 billion in the corpus. Further, the cost of the credit will be reduced by about 1 %.

ELP COMMENTS:

CGTMSE is jointly set up by Ministry of MSME, Government of India and SIDBI to catalyze flow of institutional credit to MSEs without any collateral. Loans up to INR 20 million are provided maximum coverage of 85%. The lending institution may invoke the guarantee in respect of credit facility within a maximum period of three years from date of NPA, if NPA is after lock-in period. CGTMSE pays 75 % of the eligible claim amount as per available guarantee cover on preferring of claim by the lending institution, within 30 days. The balance 25 % of the eligible claim amount will be paid on conclusion of recovery proceedings by the lending institution.

NATIONAL FINANCIAL INFORMATION REGISTRY (NFIR)

- As per the budget announcement, a national financial information registry will be set up to serve as the central repository of financial and ancillary information. This will facilitate efficient flow of credit, promote financial inclusion, and foster financial stability.
- A new legislative framework will govern this credit public infrastructure, and it will be designed in consultation with the RBI.

ELP COMMENTS:

A financial information system is designed to collect and analyze financial data with a view to getting optimal financial planning and improving credit flow in optimal manner. In India, NFRA was set up on October 1, 2018 by the Government of India. It basically makes recommendations on accounting and auditing policies and standards to be adopted by companies for approval by the Central Government. It also monitors and enforces compliance with accounting standards and auditing standards. NFRA, along with RBI, will likely have a larger role to play in formation of the proposed registry.

FINANCIAL SECTOR REGULATIONS

- It is announced in the budget that to meet the needs of Amrit Kaal and to facilitate optimum regulation in the financial sector, public consultation, as necessary and feasible, will be brought to the process of regulation-making and issuing subsidiary directions.

- To simplify, ease and reduce cost of compliance, financial sector regulators will be requested to carry out a comprehensive review of existing regulations. For this, they will consider suggestions from public and regulated entities. Time limits to decide the applications under various regulations will also be laid down.

GOVERNANCE AND INVESTOR PROTECTION IN BANKING SECTOR

For improving governance and enhancement of investors' protection, certain amendments to the Banking Regulation Act, 1949, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Reserve Bank of India Act, 1934 are proposed and the same would be introduced and implemented in due course of time.

ELP COMMENTS:

With the emergence of fintech companies and proposed introduction of the digital currency, these changes will be significantly beneficial for public at large.

INFRASTRUCTURE

INTRODUCTION

- The Union Budget 2023 enumerated seven priorities to act as a guiding force through the 'Amrit Kaal' period.
- Two such priorities were – 'Infrastructure and Investment' and 'Green Growth', with the latter assuming more significance.
- With a capital investment outlay of INR 10 trillion, i.e., 3.3% of the GDP, the focus continued to be anchored on strengthening India's de-carbonation commitments and providing an impetus to the growth of the core infrastructure sector.
- The FM focused on development of urban infrastructure, facilitating energy transition, building hydrogen production capacity, pumped and battery storage systems.

INVESTMENTS IN INFRASTRUCTURE SECTOR

Support to State Governments for Capital Investment

- The GOI in FY 2022-23 launched a special assistance scheme for states for the purpose of capital investment.
- The FM has continued the scheme and enhanced a sum of INR 1,300,000 million in the form of an interest free loan for a period of 50 years to assist the states in catalyzing overall investments in the economy.
- The increase in the public capital expenditure, especially state finance, can have a positive impact in form of investment activity in the infrastructure sector for regional projects.

Enhancing opportunities for private investment in Infrastructure

- IFS was established in FY 2022-23 by the MoF to remove structural issues and to develop and provide a framework to attract investments in the infrastructure sector.
- The FM announced that IFS would assist the relevant stakeholders to attract more private investment in infrastructure, including railways, roads, urban infrastructure and power, which are predominantly dependent on public resources.

Harmonized Master List of Infrastructure

- The Harmonized Master List of Infrastructure guides all agencies providing support to infrastructure and aids in infrastructure development in a more optimal manner.
- The FM announced that the Harmonized Master List of Infrastructure will be reviewed by an expert committee for recommending the classification and financing framework suitable for 'Amrit Kaal' which is understood to be a crucial period for the overall development of India.

Railways

- The FM announced the highest ever capital outlay of INR 2.4 trillion for railways.
- The Economic Survey 2022-2023 expects the passenger traffic on Indian Railways to witness growth.

- The announcement of such a high capital outlay could be used to expand the current network capacity through doubling, tripling of lines, overhauling of existing stock, rolling out future Vande Bharat train sets, beautification of existing railway stations and completing the 100% electrification of railways.

Logistics

- The logistics sector requires innovative ways of financing, faster implementation and transformative approach for economic growth and sustainable development.
- In line with the above, the FM announced that 100 critical transport infrastructure projects, for last and first mile connectivity for ports, coal, steel, fertilizer, and food grains sectors have been identified.
- Such projects would be taken up on priority with investment of INR 750 billion, including INR 150 billion from private sources.
- The aforesaid announcement coupled with the National Logistics Policy, 2022 will ensure the robust development of the logistics sector in India.

Regional Connectivity

- In recent years, the Government has been trying to improve regional air connectivity through its flagship scheme, UDAN, which focuses on connectivity between Tier-2 and Tier-3 cities.
- The FM announced that 50 additional airports, heliports, water aerodromes and advance landing grounds would be revived for improving regional air connectivity.

URBAN INFRASTRUCTURE

Municipal Bonds

- It is predicted that by 2047 nearly half of the population would be residing in urban areas. Hence, it would be crucial for megacities to be able to sustain such a population without hampering their economic growth. It would also be important that Tier 2 and Tier 3 cities develop so that they can take on the mantle in future.
- However, most municipal corporations in India are not financially equipped to manage the growing infrastructural demand. The Union Budget 2023 envisions that to fuel this demand, municipal corporations would issue municipal bonds.
- The RBI in its report on Municipal Finances dated November 10, 2022, had recommended the use of municipal bonds by municipal corporations. Through a renewed thrust brought by schemes such as Atal Mission for Rejuvenation and Urban Transformation (AMRUT), cities such as Pune, Hyderabad, Indore, Bhopal, Vishakhapatnam, Ahmedabad, Surat, Lucknow and Ghaziabad have issued municipal bonds. However, due to issues surrounding transparency and governance of local bodies these municipal bonds did not gain the traction which was required and as a result they petered out. The aforesaid report also recommended the development of a secondary market for listing municipal bonds.

- It is important that megacities prioritize the development of infrastructure to cope with rural-urban migration. The issuance of municipal bonds can be the very impetus required for such an infrastructural boom. However, it is important that there are effective reforms, especially with regards to ring-fencing of user charges which would ensure re-payments to the bond holders.

Urban Infrastructure Development Fund

- The Union Budget 2023 looks to establish an UIDF through use of priority sector lending shortfall, which would be like the Rural Infrastructure Development Fund.
- The objective of the UIDF would be focused on providing funds to government agencies for the development of urban infrastructure for Tier 2 and Tier 3 cities.
- An annual corpus of INR 100 billion would be allocated to UIDF.
- While the focus is largely on developing Tier 2 and Tier 3 cities to meet the demands of a growing economy, it is important that for an efficient and optimal utilization of funds, ancillary systems be set up which would increase transparency and ensure speedy approvals.

Vivad se Vishwas I – Relief for MSMEs

- The FM announced that 95% of the forfeited amount relating to bid or performance security, would be returned to MSMEs by the Government and Government undertakings, if such MSMEs have failed to execute contracts during the COVID period.
- While the announcement is a welcome step, as per Rule 170 of the General Financial Rules, 2017, MSMEs are already exempted from the requirement of a bid security. Accordingly, the question of refund of the bid security may not arise in the first place.
- It remains to be seen whether the relief is a blanket relief for all MSMEs or if the Central Government sets out any conditions for refunding the bid and performance security.

Vivad se Vishwas II – Settling Contractual Disputes

- The FM announced that a voluntary settlement scheme with standardized terms would be introduced to settle contractual disputes of the Government and Government undertakings, involving challenge of an arbitral award before a court. The settlement terms would be graded depending on the pendency level of the dispute.
- The announcement follows the footsteps of the Union Budget 2022 which sought to amend the dispute resolution mechanism under Government contracts in order to improve the ease of doing business in India.
- It may be noted that public contracts generally provide for mediation as a dispute resolution mechanism which could also be treated as a form of voluntary settlement. However, the mediation process often leads to arbitration, followed by a challenge of the arbitral award.
- For the scheme to be truly effective, the Central Government will have to ensure that the terms of the voluntary settlement scheme are commercially viable to make it an attractive option. Further, where an award in favour of

the private party is challenged by a government undertaking, then a settlement may not be in the best interest of the private party.

- The scheme should also take into account the lifting of blacklisting restrictions on settlement of disputes.

GREEN GROWTH

LIFE- Lifestyle for Environment

- The FM stated that India is moving towards the 'panchamrit' and the net-zero carbon emission by 2070 which aims to herald green industrial and economic transition.
- Earlier in November 2021, the Prime Minister had pledged to achieve net zero carbon emissions by 2070 under the Paris Agreement at the United Nations Climate Conference COP26 in Glasgow, United Kingdom.
- The Prime Minister's vision of mass movement for 'LIFE- Lifestyle for Environment' is the key to combatting climate change.
- In pursuance of the above, the FM announced that the aim of the Union Budget 2023 would be to assist green growth in the country.
- With green growth forming part of one of the seven priorities of the Union Budget 2023, the focus has been on reducing carbon intensity in the economy.

Green Hydrogen Mission

- The NGH Mission was launched on January 5, 2023, with an outlay of INR 197 billion for the length of the mission i.e., till 2029-2030. The Expenditure Profile 2023-24 released by the MoF allocates INR 2.97 billion to the NGH Mission as the budget estimates 2023-24
- The NGH Mission is expected to facilitate the transition of the economy to low carbon intensity, reduce dependence on fossil fuel imports and make India assume technology and market leadership in this sunrise sector.
- By 2030, the NGH Mission aims to make India's green hydrogen production capacity reach 5 million metric ton; enable renewable energy capacity addition of 125 giga-watt; galvanise over INR 8 trillion in total investments and create over 600,000 full time jobs.
- The NGH Mission document states that the Ministry of New and Renewable Energy will frame model guidelines for transparent competitive bidding for procurement of green hydrogen and its derivatives and develop a suitable regulatory framework for certification of green hydrogen and its derivatives as having been produced from renewable energy sources.
- As per the NGH Mission, in order to create bulk demand and scale up the production of green hydrogen, the GOI will specify the minimum share of consumption of green hydrogen or its derivative products such as green ammonia, green methanol, etc. by designated consumers as energy or feedstock.
- To this end the Energy Conservation Act, 2001 was amended in 2022 to enable the same.

Energy Transition

- The FM indicated that INR 350 billion would be provided for priority capital investments towards energy transition, net zero objectives and energy security by the MoPNG.
- In December 2021, the MoPNG had set up an Energy Transition Advisory Committee to suggest ways to increase the share of alternative fuel sources such as bio-fuels, green hydrogen, solar, geothermal, nuclear and tidal in the country's energy mix. The report of the aforesaid committee is still awaited.
- The Expenditure Profile 2023-24 released by the MoF indicates that INR 300 billion has been allocated as capital support to oil marketing companies in the form of capital outlay.
- This capital outlay is expected to help India's oil marketing companies meet their net zero commitments and play a critical role in India's evolving hydrogen economy.

Energy Storage Projects

- The FM announced that to steer the economy on the sustainable development path, battery energy storage systems with a capacity of 4,000 megawatt hour will be supported with viability gap funding.
- The FM also announced that a detailed framework for pumped storage projects would be formulated.
- In 2022, the MoP released the Guidelines for procurement and utilization of battery energy storage systems and notified the energy storage obligation trajectory for obligated entities till the year 2029-30.
- Viability gap funding is expected to help provide critical government support to projects that may otherwise may economically unfeasible.

Renewable Energy Evacuation

- The FM announced that the inter-state transmission system for evacuation and grid integration of 13 giga watt renewable energy from the Union Territory of Ladakh would be constructed with an investment of INR 207 billion which would include central support of INR 83 billion.

Green Credit Programme

- The FM announced that a Green Credit Programme would be notified under the Environment (Protection) Act, 1986 to encourage behavioural change.
- The Green Credit Programme will incentivize environmentally sustainable and responsive actions by companies, individuals and local bodies as well as help mobilize additional resources for such activities.
- The announcement is in line with the Energy Conservation Amendment Act, 2022.
- The Green Credit Programme would also help in decarbonizing the Indian economy.
- From a trade perspective, this may be viewed as a starting point for India to tackle key issues relating to sustainable trade and development.

- In particular, the move may enable India to meet the challenges posed by trade related environmental measures taken by its trading partners, such as the European Union which has announced the introduction of a Carbon Border Adjustment Mechanism.
- Such mechanisms aim to disincentivize the import of products made through carbon intensive methods by placing additional charges on them.
- Other countries such as Australia and the United States have also been reported to be considering such measures.

ELP COMMENTS:

As always, the infrastructure sector continued to be one of the key focus areas of the Union Budget 2023. While the policy announcements for the infrastructure sector were limited, the increase in the capital outlays will aid in the growth of the sector and thereby the economic growth of the country. It is heartening to see the announcements made by the FM towards India's green growth. With India having assumed the G20 presidency recently, this is an opportune time for India to transition to a low carbon intense economy.

REAL ESTATE

PRADHAN MANTRI AWAS YOJANA

The FM announced enhancement in the outlay for PM Awas Yojana by 66 % to over INR. 790,000 million.

ELP COMMENTS:

The Government of India has been a proponent for 'Housing for All' and affordable housing as priority areas. This move, in addition to supporting the PMAY scheme will also boost the construction and real estate sector in India.

URBAN INFRASTRUCTURE DEVELOPMENT FUND

As indicated in the Infrastructure Section above, the FM announced allocation of INR 100,000 million for establishing the UIDF.

- The UIDF has been established with a view to transform cities into 'sustainable cities of tomorrow' and to aid undertaking of urban planning reforms and actions.
- The UIDF would be formed through use of priority sector lending shortfall which will be managed by the National Housing Bank.

It will be used by public agencies to create urban infrastructure in Tier 2 and Tier 3 cities.

ELP COMMENTS:

This will aid the urban local bodies in Tier 2 and Tier 3 cities in execution and implementation of various schemes and projects sanctioned for development of the cities. This will ensure overall infrastructure and real estate development of the country and will have a far reaching impact on the infrastructure, construction and real estate sector. This will ultimately boost real estate prices in Tier 2 and Tier 3 cities in the long run, however, it may make affordable real estate difficult for middle class.

MAKING CITIES READY FOR MUNICIPAL BONDS

The FM has proposed to incentivize cities to improve their credit worthiness for municipal bonds through property tax governance reforms and ring-fencing user charges on urban infrastructure.

ELP COMMENTS:

The Government aims to provide cities means to improve their finances and credit worthiness and help the cities/civic bodies raise funds through municipal bonds. This may in turn improve cities' finances and aid in real estate and infrastructure development.

GREEN BUILDINGS

The FM announced implementation of many programs for green growth including for green buildings among many other proposals. The FM stated that the green growth efforts would help in reducing carbon intensity of the economy and provide for largescale green job opportunities.

ELP COMMENTS:

Green buildings which embody sustainable features may find huge acceptance in India in near future. Several project developers/promoters are looking at green certifications in response to buyers seeking such credentials. This step would prove beneficial for sustainable real estate development and boost real estate sector of the country.

EXEMPTION TO DEVELOPMENT AUTHORITIES ETC.

FM has proposed to provide exemption to any income arising to a body or authority or board or trust or commission, (not being a company) which has been established or constituted by or under a Central or State Act with the purposes of satisfying the need for housing or for planning, development or improvement of cities, towns and villages or for regulating any activity or matter.

ELP COMMENTS:

The proposed amendment will give an impetus to development authorities constituted by or under a Central or State Act and in turn will benefit the public at large.

Note: Broadening the definition of High Court and amending the starting date for calculation of period of appeal under the Benami Act is provided in the Miscellaneous Section.

GLOSSARY OF TERMS

Abbreviation	Meaning
AAF	Agriculture Accelerator Fund
AI	Artificial Intelligence
AIDC	Agriculture and Infrastructure Development Cess
AIF	Alternative Investment Fund
AJP	Artificial Judicial Person
AMT	Alternate Minimum Tax
AMRUT	Atal Mission for Rejuvenation and Urban Transformation
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
BBT	Buy Back Tax
BCD	Basic Custom Duty
Benami Act	Prohibition of Benami Property Transactions Act, 1988
Bill/ Finance Bill	Finance Bill 2022
BOI	Body of Individuals
CA2013	The Companies Act, 2013
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Services Tax Act, 2017
CGTMSE	Credit Guarantee Fund Trust for Micro and Small Enterprises
CIF	Cost Insurance & Freight
CIRP	Corporate Insolvency Resolution Process
COI	Constitution of India
CRAR	Capital-to-Risk Weighted Assets Ratio
CSR	Corporate Social Responsibility
CST	Central Sales Tax
CTA	Customs Tariff Act, 1975
CTH	Customs Tariff Heading
DGFT	Directorate General of Foreign Trade
DGTR	Directorate General of Trade Remedies
DRI	Directorate of Revenue Intelligence
DRT	Debt Recovery Tribunal
DTAA	Double Taxation Avoidance Agreement entered into by India
EGR	Electronic Gold Receipts

EPF Scheme	Employee's Provident Fund Scheme
EWS	Economically Weaker Sections
EV	Electric Vehicle
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investors
FM	Finance Minister
FPI	Foreign Portfolio Investors
FTA	Free Trade Agreement
FTP	Foreign Trade Policy
FY	Financial Year
GDP	Gross Domestic Product
GIFT IFSC	Gujarat International Finance Tec-City, India's first International Financial Services Centre
GOI	Government of India
GNPA	Gross Non-Performing Assets
GSPA	The Government Savings Promotion Act, 1873
GST	Goods and Services Tax
GSTN	GST Number
GW	GigaWatt
HNI	High net worth individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IEC	Importer Exporter Code
IFS	Infrastructure Finance Secretariat
IFSC	International Financial Services Centre
IFSCA	The International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
ILDS	Issue and Listing of Debt Securities
INR	Indian Rupees
InvITs	Infrastructure Investment Trusts
IRDAI	Insurance Regulatory and Development Authority of India
IT Act	The Income-tax Act, 1961
IT Rules	Income-tax Rules
ITAT	Income-tax Appellate Tribunal
ITC	Input Tax Credit
JDA	Joint Development Agreement
KYC	Know Your Customers

LLP	Limited Liability Partnership
LLP Act	Limited Liability Partnership Act, 2008
LRS	Liberalised Remittance Scheme
MAT	Minimum Alternate Tax
MoF	Ministry of Finance
MoC	Ministry of Commerce
MoP	Ministry of Power
MoPNG	Ministry of Petroleum and Natural Gas
MSME	Micro Small and Medium Enterprises
NBFC	Non-Banking Finance Company
NFRA	National Financial Reporting Authority
NGH Mission	National Green Hydrogen Mission
NPA	Non-performing Assets
NNPA	Net Non-Performing Assets
OIDAR	Online Information Database Access and Retrieval Services
ODI	Overseas Direct Investment
PAN	Permanent Account Number
PLI	Production-Linked Incentive
PMAY	Pradhan Mantri Awas Yojana
PSU	Public sector undertaking
RBI	Reserve Bank of India
RBI Act	Reserve Bank of India, Act, 1934
RCM	Reverse Charge Mechanism
REITs	Real Estate Investment Trusts
RTGS	Real Time Gross Settlement
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
SCB	Scheduled Commercial Banks
SCRA	Securities Contracts (Regulation) Act, 1956
SEBI	Securities and Exchange Board of India
SEBI Act	Securities Exchange Board of India Act, 1992
SEZ	Special Economic Zones
SLP	Special Leave Petition
Smugglers Act	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
SUUTI	Specified Undertaking of the Unit Trust of India
SUUTI Administrator	Administrator of SUUTI appointed under Section 7 of the UTI Repeal Act
SWS	Social Welfare Surcharge

TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TP	Transfer Pricing
UDAN	Ude Desh ka Aam Naagrik
UIDF	Urban Infrastructure Development Fund
ULIP	Unit Linked Insurance Policy
UTI Repeal Act	Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002
UTGST	Union Territory Goods and Services Tax
WDV	Written Down Value



**ECONOMIC
LAWS
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI

9th Floor, Mafatlal Centre
Vidhan Bhavan Marg Nariman Point
Mumbai 400 021
T: +91 22 6636 7000

NEW DELHI

801 A, 8th Floor, Konnectus Tower, Bhavbhuti Marg
Opp. Ajmeri Gate Railway Station, Nr. Minto Bridge
New Delhi 110 001
T: +91 11 4152 8400

AHMEDABAD

C-507/508, 5th Floor, Titanium Square
Thaltej Cross Roads, SG Highway,
Ahmedabad – 380054
T: +91 79460 04854

PUNE

202, 2nd Floor, Vascon Eco Tower
Baner Pashan Road
Pune 411 045
T: +91 20 4912 7400

BENGALURU

6th Floor, Rockline Centre
54, Richmond Road
Bengaluru 560 025
T: +91 80 4168 5530/1

CHENNAI

No 18, BBC Homes, Flat-7 Block A
South Boag Road
Chennai 600 017
T: +91 44 4210 4863

GIFT CITY

Unit No. 605, Signature, 6th Floor
Block 13B, Zone - I
GIFT SEZ, Gandhinagar 382355
E: elplaw@elp-in.com



elplaw.in



insights@elp-in.com



[/elplaw.in](https://www.facebook.com/elplaw.in)



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