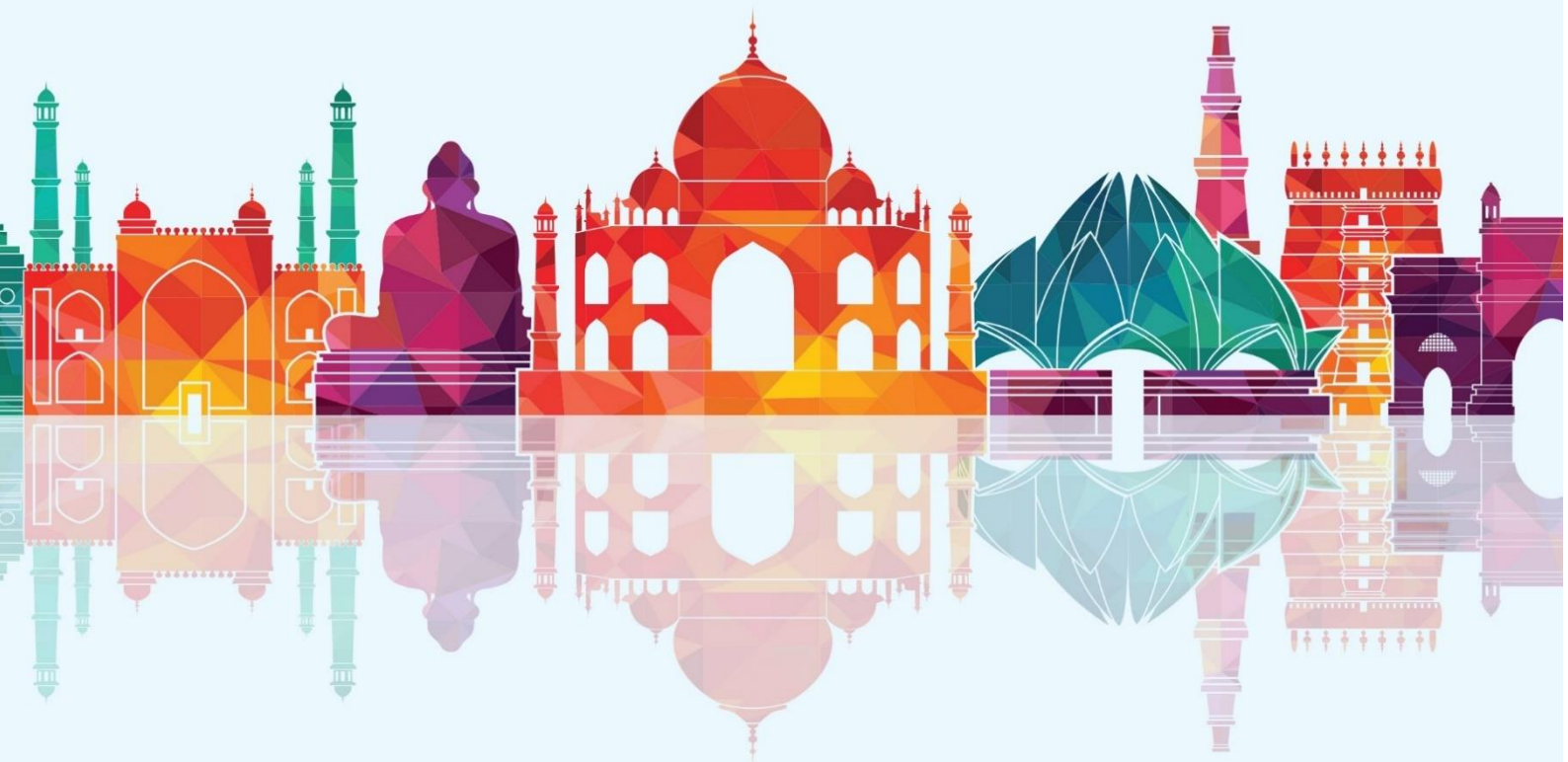




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UNION BUDGET 2022

AN ANALYSIS

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PREFACE

Dear Reader,

This year ELP celebrated its 20th anniversary. Since the first year we have been putting out a comprehensive budget booklet and have had much appreciation from our clients and adulation from a few who have replaced our logo with theirs and put out the same publication (we take that as a compliment).

This budget is qualitatively different as it does not fall in the populist trap and makes significant strides on the new India that is emerging. Expectations were high that this budget would pick sectors and try and repair some of the impact of the Covid years. It does nothing of the sort – it is a play for the future.

Armed with the confidence of record GST collections and flush with the oil profits bonanza which was withheld from the end consumer– the FM has delivered a budget with something for all and nothing for the few who were looking out for special treatment. The usual tweaks to the tax slabs and doles to specific sectors have been foregone for a robust policy play.

With the farmer unrest (over the now scrapped legislations) and impending elections in UP and Punjab – doling out big subsidies was an easy option. Happily, the populist measures have been withheld – and we have a budget with a long-term vision to build a multi trillion-dollar economy.

Besides the additional Minimum Support Price outlay for procurement (which will go directly to the farmers) and a millet policy to improve India's global competitiveness; all the investment is in big ticket items which will benefit the farmer and make the sector self-reliant. Digital land records, drone mapping, agritech universities, eco-farming belts, use of the postal and rail network to enhance farmer efficiency will pay long term dividend and create short term jobs. The preparation for India @100 when 50% of our population will live in urban areas is a sign of the forward thinking that has been brought to bear. In this regard the focus on infrastructure, rail and road connectivity and town planning are welcome measures.

This is not a budget to be viewed in isolation. This is the logical next step in the road map for new India that began over 5 years ago. Privatization, ease of doing business, PLI schemes, a clear semi-conductor strategy, certainty in policies, and departure of government from business and reduced role in litigation are already at play. Add to this electric vehicle policies (battery swapping technology), substantial increase in long term capital expenditure outlay, 25,000kms of new road, PPP models for hilly region infrastructure, guidelines certainty payments in government contracts, streamlining in evaluation of complex tenders, and RBI led digital currency – this is the new India.

Beyond the playing to the galleries with announcements such as banning of imports of umbrella and parts from China (miniscule in terms of value and irrelevant in terms of technology) or the now oft repeated 'atmanirbhar' defense policy – the Indian economy is growing wings. The center is driving an all-India plan and not playing to various lobbies.

This needs to be continued not only in the annual budget but throughout the year – irrespective of the election cycle or the government in power. As the youngest demographic in the world, we can't afford to falter.

As ELP has always done, this booklet deep dives and analyses the budget. We as lawyers, tax advisors and policy shapers dissect the budget from multiple angles. We aim to provide our readers the practical impact of the budget and its 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.

As a final point, an incongruous announcement on foreign universities and arbitration centers in Gujarat IFSC was made. This may not have much in terms of value, but legal services and education have been long protected bastions in the Indian economy. Clearly, the mindset has changed.

Sincerely,



Suhail Nathani, Managing Partner

On behalf of Team ELP

BUDGET HIGHLIGHTS

DIRECT TAXES

- No change in base tax rates for individuals, corporates and LLPs; surcharge on specific AOPs and long-term capital gains capped at 15%
- Introduction of tax on Virtual Digital Assets (viz. Crypto and NFT) at the rate of 30%; deduction allowed only for cost of acquisition; benefit of set off and carry forward of losses not available; gift tax provisions to apply and withholding tax at the rate of 1%
- Tax holiday extended for start-ups incorporated up to 31 March 2023 and Special tax regime for new manufacturing companies commencing operations by 31 March 2024
- Withdrawal of concessional tax rate of 15% on dividend received from foreign companies
- Expenditure to provide any benefit or perquisite to any person to be disallowed if its acceptance is in violation of any laws.
- A new updated return filing system is proposed wherein a voluntary updated return can be filed within 2 years from the end of the relevant AY on payment of additional taxes (25% or 50% of taxes and interest)
- Bonus and dividend stripping made applicable to REITs, InvITs, AIFs and securities
- A person providing any benefit/perquisite arising from carrying out any business or profession under Section 28(iv) of the IT Act to deduct tax at source at the rate of 10% on an amount exceeding INR 20,000

CUSTOMS

- Import tariff rationalization in alignment to flagship “Make-in-India” program and “Atmanirbhar Bharat” policy
- Gradual phasing out of concession duty benefits for imported capital goods including imports under the Project Imports scheme
- Clarified that no applicability of Social Welfare Surcharge in cases, where the aggregate of customs duties (which form the base for computation of SWS) is NIL. No separate exemption notification required.
- Legislative changes proposed to retroactively overcome Hon’ble Supreme Court ruling in Canon India; accordingly, show cause notices issued by officers of DRI, audit and preventive formations in past regularized. Going forward procedure also defined.
- Advance Ruling, under customs, shall remain valid for three years from pronouncement or until change in law or facts, whichever is earlier
- Overhaul of SEZ legislation & procedures proposed

GST

- Transfer of amount available in electronic cash ledger under CGST or IGST of a distinct person has now been permitted
- Limitation period for (a) availment of input tax credit (b) issuance of credit notes (c) rectification of error and omissions in GST return extended from the existing September 30 to November 30, of subsequent year to align with statutory timelines under various other fiscal laws
- Power prescribed to restrict maximum proportion of output tax liability which may be discharged through the electronic credit ledger
- Interest rate for wrongly availed & utilized ITC notified at 18% retroactively
- Provisions introduced for claiming ITC based on auto-generated statements in GSTR 2B

DIRECT TAX

INCOME TAX RATES

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (other than senior and super senior citizens)	Senior Citizens (60 years or more at any time during previous year)	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

No changes have been proposed in the new regime of taxation under Section 115BAC of the IT Act. Accordingly, the rate of tax as applicable for AY 2023-24 is as under:

Income (INR)	Existing and Proposed Rates (%)
	Individuals and HUF
0 - 250,000	NIL
250,001 - 500,000	5
500,001 - 750,000	10
750,001 - 1,000,000	15
1,000,001 - 1,250,000	20
1,250,001 – 1,500,000	25
1,500,001 and above	30

Co-operative Societies

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

Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing & Proposed
1	Rebate	INR 12,500 – If total income does not exceed INR 500,000

2	Surcharge (for income other than that covered under Section 111A, 112 & 112A, Section 115AD(1)(b) of the IT Act and dividend)	<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
3	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
4	Surcharge on income of co-operative society	<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
5	Cess - Health and Education cess	<ul style="list-style-type: none"> ▪ 4%
6	AMT for Individuals, HUFs, AOPs (Including surcharge and cess)	<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 ▪ 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
7	AMT for co-operative societies	<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

For Companies, Firms, LLP

Sr. No.	Description	Existing rates (%) (Including surcharge & Cess)			Proposed rates (%) (Including surcharge & Cess)		
		Net income ≤ INR 10 million	Net Income > INR 10 million, but ≤ INR 100 million	Net income > INR 100 million	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 2020-21 ≤ INR 4,000 million (Base rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
2	Covered under Section 115BA of the IT Act	26.00	27.82	29.12	26.00	27.82	29.12

	(Base rate – 25%)						
3	Covered under Section 115BAA of the IT Act (Base rate – 22%)	25.17			25.17		
4	Covered under Section 115BAB of the IT Act (Base rate – 15%)	17.16			17.16		
5	Any other Company having turnover or gross receipts in previous year 2020-21 > INR 4000 million (Base rate – 30%)	31.20	33.38	34.94	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	15.60	16.69	17.47
7	BBT under Section 115QA of the IT Act (Base rate -20%)	23.30			23.30		
(B)	Foreign Companies	Net income ≤ INR 10 million	Net Income > INR 10 million, but ≤ INR 100 million	Net income > INR 100 million	Net income ≤ INR 10 million	Net Income > INR 10 million, but ≤ INR 100 million	Net income > INR 100 million
1	Regular tax (Base rate – 40%)	41.60	42.43	43.68	41.60	42.43	43.68
(C)	Firms and LLP	Net income ≤ INR 10 million	Net income > INR 10 million	Net income ≤ INR 10 million	Net income > INR 10 million		
1	Regular tax (Base rate – 30%)	31.2	34.94	31.2	34.94		
		Adjusted total income ≤ INR 10 million	Adjusted total	Adjusted total	Adjusted total income > INR 10 million		

			income > INR 10 million	income ≤ INR 10 million	
2	AMT (Base rate – 18.5%)	19.24	21.55	19.24	21.55

Surcharge and Cess

Particulars	Existing & Proposed
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 Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	<ul style="list-style-type: none"> ▪ 10% - Irrespective of the amount of total income
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 and LLP	<ul style="list-style-type: none"> ▪ 12% - If total income > INR 10 million
Cess - Health and Education Cess	<ul style="list-style-type: none"> ▪ 4%

ELP COMMENTS:

Individuals, HUFs

Currently, Individuals and HUFs are subject to a maximum rate of surcharge at 37% in respect of entire income, other than capital gains on listed shares and dividend, wherein surcharge is capped at 15%. The Finance Bill, 2022 proposes to extend capping of surcharge at the rate of 15% for long-term capital gains arising on sale of any capital asset. The said proposal reduces the maximum effective tax rate on long-term capital gains from 28.5% to 23.92%.

However, the Finance Bill, 2022 has not proposed any changes to the widely anticipated increase in thresholds for income-tax slab rates or enhancing deduction on investments, health insurance and interest on housing loan.

Co-operative Societies

The rates of taxation for co-operative societies are proposed to be brought at par with companies by reducing surcharge for income between INR 10 million to INR 100 million from 10% to 7% and AMT from 18.5% to 15%.

BASIS OF CHARGE

Amendment to Slump Sale Definition

- Definition of Slump sale is proposed to be amended to substitute the word “sales” with “transfer” as defined in Section 2(47) of the IT Act.

- This amendment is proposed to have come into effect retrospectively from April 1, 2021, and accordingly would apply in relation to AY 2021-22 and thereafter.

ELP COMMENTS:

The Hon'ble Bombay High Court in the case of Bharat Bijlee Limited [2014] (46 taxmann.com 257) denied taxability of slump exchange in absence of monetary consideration. It observed that only if the transfer is by way of sale, it could be termed as a slump sale to attract Section 50B of the IT Act.

The above decision was overruled by an amendment to Section 2(42C) of the IT Act by the Finance Act, 2021. The amendment provided that slump sales include transfer of an undertaking by any means (and not only by way of sale) as slump sale and included taxation of slump exchange under the head capital gains.

However, an anomaly remained in Section 2(42C) of the IT Act with regard to the term "sales" being used while referring to the value being assigned to assets and liabilities. The proposed amendment removes such anomaly.

INCOME NOT FORMING PART OF TOTAL INCOME

Amendment to Section 10 (8)/(8A)/(8B) and (9) of the IT Act

- A proviso is proposed to be inserted to withdraw exemption available on specified income received by the following:
 - Individual who is assigned with duties in connection with any co-operative technical assistance program entered between Central Government and Government of foreign state
 - Consultant who receives remuneration/fee from the fund available to an international organization under a technical assistance grant agreement between the agency and the Government of a foreign State
 - Individual who is assigned with duties in India in connection with any technical assistance program and project in accordance with an agreement entered into by the Central Government and the agency
 - Family members accompanying above person in India
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

COMPUTATION OF INCOME – HEADS OF INCOME

Amendment to Section 14A of the IT Act

- Section 14A of the IT Act provides that no deduction shall be allowed in respect of expenditure incurred by a taxpayer in relation to exempt income.
- It is proposed to amend Section 14A of the IT Act to include a non-obstante clause in respect of any other provisions of the IT Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this IT Act.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

Over the years many disputes have arisen on account of interpretation of Section 14A of the IT Act. A major dispute which has arisen was with respect to allowance of deduction in relation to exempt income, which has not been earned by a taxpayer. Additionally, it is settled position in law as laid down by the Hon'ble Supreme Court in the case of CIT vs. Chettinad Logistics (P.) Ltd [2018] 95 taxmann.com 250 (SC), PCIT vs. GVK Projects and Technical Services Ltd ([2019] 106 taxmann.

com 181 (SC) and PCIT vs. Oil Industry Development Board ([2019] 103 taxmann.com 326 (SC) and various High Courts, that in the absence of any exempt income, disallowance under Section 14A of the IT Act of any amount is not permissible.

The Finance Bill proposes to overturn the said settled position in law. With this proposed amendment, the intention of legislature has been made clear that irrespective of whether the exempt income is earned during the year of expenditure or not, no deduction shall be allowed. In effect, any expenditure pertaining to exempt income incurred during any year will be disallowed under Section 14A of the IT Act.

SALARY INCOME

COVID-19 relief - Amendment to Section 17 and Section 56 of the IT Act

- Section 17 of the IT Act defines the term “salary”, “perquisite” and “profits in lieu of salary” and Section 17(2) of the IT Act deals with the provisions relating to “perquisites”, which are added to the salary income of an employee.
- Section 17(2) of the IT Act is proposed to be amended by inserting a new sub-clause in the proviso to state that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of “perquisite”.
- Section 56(2)(x) of the IT Act is proposed to be amended by inserting following two new exceptions-
 - any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19, and subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.
 - any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed INR 10 lakhs - where the cause of death of such person is illness relating to COVID-19 and the payment is, received within twelve months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person.
- These amendments are proposed to come into effect retrospectively from April 1, 2020 and will accordingly apply in relation to the AY 2020-21 and subsequent AYs.

ELP COMMENTS:

COVID-19 continue to create financial hardships to people at large. The proposed tax exemption will pave way for a more efficient assistance. Government of India through its Press Release dated June 25, 2021 had decided to provide income-tax exemption on ex-gratia payment received on account of Covid-19 illness with certain thresholds and parameters. The proposed amendments are in line with the Press Release and will be beneficial to all the affected taxpayers.

INCOME FROM BUSINESS AND PROFESSION

Amendment to Section 35(1A) of the IT Act

- Considering the intent of the legislation to allow the deduction in the hands of research association, university, college or other institution, a clarificatory amendment has been proposed to provide that the deduction claimed by the donor with respect to the donation given to any research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (ia) of sub-section (1) of Section 35 of

the IT Act shall be disallowed, unless such research association, university, college or other institution or company files the statement of donations.

- This amendment is proposed to come into effect retrospectively from April 1, 2021 and will accordingly apply in relation to the AY 2021-22 and subsequent AYs.

Amendment to Section 37 of the IT Act

- Section 37 of the IT Act is proposed to be amended to clarify that the expression “expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law” under Explanation 1 to Section 37 of the IT Act, shall include and shall be deemed to have always included the expenditure incurred by an assessee:
 - for any purpose which is an offence under, or which is prohibited by, any law, in India or outside India; or
 - to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, governing the conduct of such person; or
 - to compound an offence under any law, in India or outside India.
- This amendment is proposed to come into effect retrospectively from April 1, 2022 and will accordingly apply in relation to the AY 2022-23 and subsequent AYs.

ELP COMMENTS:

Deduction of expenses under Section 37 of the IT Act has always been a litigated issue, as the taxpayer intends to claim every expenditure as a deduction by contending that the expenditure has been incurred for the purposes of business. Explanation 1 to Section 37 of the IT Act specifically provides that expenditure incurred for any offence, or which is prohibited by law will not be allowed as a deduction.

The proposed amendment has expanded the scope of those expenses which cannot be claimed as a deduction under Section 37 of the IT Act. The expanded scope now includes any expenditure in relation to an offence under a foreign law or which has been prohibited by a foreign law and thus, is not restricted to Indian law as such.

It has also been proposed to include any expenditure in respect of benefit or perquisite which is expressly prohibited by any law, which cannot be claimed as a deduction. With respect to benefit or perquisite, several litigations had arisen on account of the benefits or perquisites provided to medical professionals by pharma companies, as the same has been prohibited by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. With this proposal, the pharma companies will not be able to claim expenditure with respect to any benefit or perquisite provided to medical professionals.

Finally, it has also been proposed that any expenditure incurred for compounding of an offence under Indian law, or a foreign law will not be allowed as a deduction. Under various legislations including FEMA, Companies Act, 2013, companies usually go for compounding of offences and are required to pay heavy amounts to compound these offences. With this proposal, amounts paid to compound offences will not be allowed as a deduction. In this regard, ITAT Mumbai in the case of ITO vs. Reliance Share and Stock Brokers Private Limited ([2014] 51 taxmann.com 215 (Mumbai - Trib.) and DCIT vs. Shri Anil Ambani (ITA No.3676/Mum/2016), has held that the payment made pursuant to the consent order without admission of guilt is an allowable deduction. It would be interesting to note whether such payments will now be hit by the proposed amendment to Section 37 of the IT Act or not.

Amendment to Section 40 of the IT Act

- Section 40 of the IT Act is proposed to be amended to clarify that tax shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.

- This amendment is proposed to come into effect retrospectively from April 1, 2005 and will accordingly apply in relation to the AY 2005-06 and subsequent AYs.

ELP COMMENTS:

As per the proposed clarificatory amendment, surcharge and education cess would not be allowed as a deduction while computing income under the head “Profits and gains of business or profession”.

The proposed amendment overrules the principle laid by the Hon’ble Rajasthan High Court in the case of Chambal Fertilisers vs. JCIT (ITA 52 of 2018) and Hon’ble Bombay High Court in the case of Sesa Goa Limited vs. JCIT (117 taxmann.com 96).

On the other hand, the proposal affirms the principle laid by the Kolkata ITAT in case of Kanoria Chemicals and Industries Ltd. (ITA 2184/Kol/2018) wherein the ITAT ruled in favour of the IT Department.

This proposal will adversely impact the taxpayers who have claimed a deduction of the surcharge and education cess while filing their return of income and/ or during the assessment proceedings. Further, given the retrospective nature of the amendment, appeals on this issue, pending before the ITAT/ Courts may stand disposed of in favour of the IT Department. Having said so, favourable rulings by the High Courts and the clarificatory nature of the proposed amendment should provide a strong defence against potential penalty, if any, raised or to be raised by the tax authorities.

Amendment to Section 43B of the IT Act

- Section 43B of the IT Act provides for certain deductions to be allowed only upon actual payment. It is proposed to amend Section 43B of the IT Act to provide that conversion of interest payable into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly, would apply in relation to the AY 2023-24 and thereafter.

ELP COMMENTS:

The above amendment will overturn the decision of Hon’ble Supreme Court in case of M.M. Aqua Technologies Ltd] 129 taxmann.com 145) wherein the Court treated issue of debentures as actual payment of interest under Section 43B of the IT Act. The proposed amendment will have a negative impact for all those debt-ridden companies which are under negotiation with lenders to recast the loan arrangement by converting loan into debt or any other instruments.

CAPITAL ASSETS & CAPITAL GAINS

Amendment to Section 50 of the IT Act

- Section 50 of the IT Act which is a special provision for computation of capital gains in case of depreciable assets is proposed to be amended by introducing an Explanation to clarify that for the purpose of Section 50 of the IT Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with Section 43(6)(c)(ii)(B) of the IT Act shall be deemed to be transfer.
- This amendment is proposed to come into effect from April 1, 2021 and accordingly would apply in relation to AY 2021-22 and thereafter.

ELP COMMENTS: The proposed amendment is clarificatory in nature. It is pertinent to note that such reduction could result in tax implications where there is no asset in the block or value of block becomes Nil on reduction of goodwill.

SET OFF AND CARRY FORWARD OF LOSSES

Amendment to Section 79 of the IT Act

- A new exception is proposed to be inserted in Section 79 of the IT Act wherein Section 79 of the IT Act would not be applicable to an erstwhile public sector company if the ultimate holding company of such a company, immediately after the completion of strategic disinvestment, continues to hold either directly or through its subsidiary or subsidiaries, a minimum of 51% of the voting power in aggregate.
- It is further proposed that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, then Section 79 of the IT Act will apply for such previous year and subsequent years.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

The present proposal allows the buyer of loss-making PSUs after its strategic disinvestment to carry forward and set-off of losses. Such proposal is brought to make disinvestment of loss-making PSUs deals (such as Air India, NINL, etc.) more attractive to the investors.

Insertion of new Section 79A of the IT Act

- A new provision under Section 79A is proposed to be introduced after Section 79 of the IT Act. The proposed Section provides that notwithstanding anything contained in the IT Act, where consequent to a search proceeding under Section 132 of the IT Act and Section 132A of the IT Act or survey proceedings under Section 133A of the IT Act {other than survey for withholding tax compliances under Section 133A(2A) of the IT Act}, total income of the taxpayer includes any undisclosed income, then, no set off of any loss (including unabsorbed depreciation) shall be allowed against such undisclosed income.
- This amendment is proposed to come into effect from April 1, 2022 and accordingly, would apply in relation to AY 2022-23 and thereafter.

DEDUCTIONS

Amendment to Section 80CCD of the IT Act

- Section 80CCD (2) of the IT Act is proposed to be amended to increase the limit of deduction under section 80CCD (2) of the IT Act from the existing 10% to 14% in respect of contribution made by the State Government to the pension scheme account of its employee. Currently, only employees of Central Government are eligible for deduction at 14% in respect of contribution made by the Central Government to the pension scheme account of its employees.
- This amendment is proposed to come into effect retrospectively from April 1, 2020, and accordingly would apply in relation to AY 2020-21 and thereafter.

ELP COMMENTS:

The proposed amendment will bring parity in terms of the deduction available to the employees of Central Government and State Government in respect of the contributions made by the respective Government in respect of their contributions to NPS account.

Amendment to Section 80DD of the IT Act

- Section 80DD of the IT Act is proposed to be amended to provide that the deduction under Section 80DD(2) of the IT Act shall be available even in cases where insurance scheme provides for payment of annuity or lump-sum amount for the benefit of the dependant, being person with disability, during the lifetime of the insurer on attaining the age of 60 year and provided that the payment to such scheme has been discontinued.
- Further, the amount so received by the dependant disabled person, during the lifetime of the insurer shall not be taxable in the hands of such dependant disabled person.
- 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:

Proposed change in disbursing the policy amount during the lifetime of the insurer is a welcome change where person with disability can obtain the benefit of the insurance amount in a timely manner.

Extension of time-limits for expiry of tax holiday/deductions

Section	Original last date of Incorporation to claim tax holiday	Revised last date of Incorporation to claim tax holiday
80-IAC	April 01, 2022	April 01, 2023

- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

Owing to the pandemic, there have been delay in setting up of start-ups. Extension of time limit will encourage setting up of more start-ups.

SPECIAL TAXATION REGIME FOR VIRTUAL DIGITAL ASSETS**Definition of Virtual Digital Asset**

The term “virtual digital asset” is defined under Section 2(47A) of the IT Act. As per the proposed new clause, a virtual digital asset is proposed to mean any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and can be transferred, stored or traded electronically. Non fungible token and any other token of similar nature are included in the definition.

Taxation of Virtual Digital Assets

- Section 115BBH of the IT Act is proposed to be inserted under the IT Act to provide for taxation of virtual digital assets. This Section inter alia provides that tax on transfer of any virtual digital assets ought to be calculated at the rate of 30%.
- The Section further provides that no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the IT Act in computing the income from transfer of virtual digital asset.

Set-off and carry forward of losses

- It also provides that no set off of any loss arising from transfer of assets shall be allowed against income computed under any other provision of the IT Act to the assessee and such loss shall not be allowed to be carried forward to succeeding AYs.

Gift taxation

- Further, Explanation to Section 56(2)(x) of the IT Act is proposed to be amended by widening the scope of the term “property” to have the same meaning as assigned to it in clause (d) of the Explanation to clause (vii) and to include virtual digital asset.
- This amendment is proposed to come into effect from April 1, 2023 and accordingly would apply in relation to AY 2023-24 and thereafter.

Withholding tax

- A new Section 194S of the IT Act is proposed to be inserted in the IT Act to provide for TDS on payments for transfer of virtual digital asset to a resident at 1% of such sum.
- In cases where the consideration for transfer of virtual digital asset is not wholly in cash, i.e., consideration is paid in kind or through another digital asset, then the person responsible for paying such consideration shall ensure that appropriate tax has been paid in respect of such transaction.
- It is also proposed that if tax has been deducted under Section 194S of the IT Act, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the IT Act.
- No tax is to be deducted where the value or the aggregate of such value of consideration to a resident is less than INR 10,000 (INR 50,000 in case of specified person) during the FY.
- “Specified person” is defined to mean, a person: (i) being an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him does not exceed INR 1 crore or profession exercised by him does not exceed INR 50 lakh, during the FY immediately preceding the FY in which such virtual digital asset is transferred; (ii) being an individual or HUF having income under any head other than the head “Profits and gains of business or profession”.
- This amendment is proposed to come into effect from July 1, 2022.

ELP COMMENTS:

The Finance Bill provided clear tax regime in relation to taxability of profits or gains generated from transaction in crypto currency (virtual digital asset). Considering provisions like no deduction in respect of any expenditure or no set off of any loss arising from transfer of such asset, it seems that government is not in support of trading in virtual digital assets. It will be interesting to see its impact on trading of such assets going forward.

Further, with introduction of TDS provision in relation to transfer of virtual digital assets will enable the Government to regulate collection of taxes on such transactions.

SPECIFIC PROVISIONS FOR IFSC

Amendment to Section 10(4E) of the IT Act

- Section 10(4E) of the IT Act is proposed to be amended to extend the exemption available to a non-resident in respect of income which accrues or arises on account of transfer of offshore derivative instruments or over the counter derivatives entered into with an Offshore Banking Unit of an IFSC.
- Currently, the said exemption was restricted only to the income which accrues or arises on account of transfer of non-deliverable forward contracts.
- This amendment is proposed to come into effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 and thereafter.

Amendment to Section 10(4F) of the IT Act

- Section 10(4F) of the IT Act is proposed to be amended to extend the exemption available to a non-resident in respect of royalty or interest income which arises on account of lease of ship to an IFSC. Further, it is proposed to insert an Explanation to define the term ship as ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.
- Currently, the said exemption was restricted only to the royalty or interest income arising on account of lease of aircraft.
- This amendment is proposed to come into effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 and thereafter.

Insertion of Section 10(4G) of the IT Act

- Section 10(4G) of the IT Act is proposed to be introduced to provide exemption to a non-resident in respect of income from portfolio of securities/financial products/funds which are managed or administered by the portfolio manager in an account maintained with an Offshore Banking Unit in an IFSC.
- The exemption is available to the extent of income accruing or arising outside India and is not deemed to accrue or arise in India.
- Further, it is proposed to define the term “portfolio manager” as defined in Regulation (2)(1)(z) of International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 under the International Financial Services Centres Authority Act, 2019.
- This amendment is proposed to come into effect from April 1, 2023, and accordingly would apply in relation to the AY 2023-24 and thereafter.

Amendment to Section 56(2)(viib) of the IT Act

- Explanation (aa) to Section 56(2)(viib) of the IT Act is proposed to expand the definition of the term “specified fund” to include funds established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the International Financial Services Centers Authority Act, 2019.
- 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 government is taking several proactive steps to promote the IFSC regime by granting maximum tax benefits to the fund set up in IFSC.

Amendment to Section 80LA of the IT Act

- Section 80LA of the IT Act provides income-based deductions for units located in IFSC from payment of income-tax.
- Section 80LA of the IT Act is proposed to be amended to provide that any income arising from transfer of a “Ship” which was leased by any unit of the IFSC to any person shall also be eligible for 100% deduction under section 80LA (1A) of the IT Act, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2024.
- 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 would also encourage shipping companies to setup their businesses in IFSC.

AMENDMENTS PERTAINING TO CHARITABLE TRUST TAXATION

Amendment to Section 10(23C) of the IT Act

- Clause (iv), (v), (vi) & (via) of Section 10(23C) of the IT Act are proposed to be amended to provide that the prescribed authority for approval of trust or institution referred in these clauses is Principal Commissioner or Commissioner.
- Explanation 1A is proposed to be inserted to provide that any voluntary contribution received by a trust or institution for the purpose of renovation or repair of specified property i.e., temple, mosque, gurudwara, church or other notified place, may optionally be treated as corpus donation, subject to the condition that the trust or the institution:
 - applies such corpus only for the purpose for which the voluntary contribution was made
 - does not apply such corpus for making contribution or donation to any person
 - maintains such corpus as separately identifiable
 - invests or deposits such corpus in the forms and modes specified under section 11(5) of the IT Act
- Further, Explanation 1B is proposed to be inserted to provide that in case of violation of conditions specified in Explanation 1A, the contributions would be treated as income of such trust or institution of the previous year during which the violation takes place.
- The above amendments will take effect retrospectively from April 1, 2021, and will accordingly apply in relation to the AY 2021-22 and subsequent AY.
- Explanation 3 is proposed to be inserted to provide that where 85% of income received by any fund or institution or trust or any university or other educational institution is not applied wholly and exclusively to the object to which such trust or institution is established during the previous year, but such income is set aside or accumulated for the object to which such trust or institution is established, then such income would not become part of total income subject to compliance with the specified conditions.
- This proposed amendment would come into effect from April 1, 2023.
- Explanation 4 is proposed to be inserted to provide that in case any of the above conditions are violated by such trust or institution or the said amount is paid to any trust registered under Section 12AA/12AA of the IT Act or to any other trust or institution referred under clause (iv), (v), (vi) or (via) of Section 10 (23C) of the IT Act, then the said amount would be considered as income of such trust or institution of the previous year during which such violation takes place.
- This amendment is proposed to be made effective from April 1, 2023.

- Explanation 5 added to Section 10(23C) of the IT Act provides that where the accumulated or set aside income deposited or invested in terms of Section 11(5) of the IT Act is not applied for the purpose for which it was accumulated or set aside due to circumstances which are beyond the control of trust or institution as referred in Explanation 3, then the AO may allow such trust or institution to apply such income for such other purpose provided that such other purpose is in conformity with the object for which such trust or institution is established. This amendment is proposed to be made effective from April 1, 2023.
- Tenth proviso to Section 10(23C) of the IT Act is proposed to be amended to provide that where the income of the trust or institution as referred in clause (iv), (v), (vi) or (via) exceeds the basic threshold limit before applying exemption, such trust or institution shall be required to keep and maintain books of accounts and other documents in prescribed form and manner in addition to getting their accounts audited. This amendment is proposed to be made effective from April 1, 2023.
- The fifteenth proviso to Section 10(23C) is proposed to be substituted to provide for the instances and procedure where the Principal Commissioner or the Commissioner shall call for documents or information from the trust or institution to satisfy himself about the occurrence or otherwise of any specified violation. The Principal Commissioner or the Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution.
- The Principal Commissioner or the Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution. Such order shall be passed before expiry of six months from the end of the quarter in which the first notice was issued calling for information or documents or making an inquiry. This amendment is proposed to be made effective from April 1, 2023.
- Nineteenth proviso to Section 10(23C) of the IT Act is proposed to be substituted to provide that the expression prescribed authority means Principal Commissioner or Commissioner. These amendments will take effect from April 1, 2023.
- Where the trust or institution referred in clause (iv), (v), (vi) or (via) is not eligible for exemption due to violation of specified provisions, then income chargeable to tax shall be computed after allowing deduction for expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of prescribed conditions.
- It is also proposed to insert an explanation in the twenty second proviso to Section 10(23C) of the IT Act to provide that for the purpose of computing the allowable expenditure, the provisions related to deduction of tax at source and non-payment in cash for expenditure more than INR 10,000 per day; shall apply.
- Lastly, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provision of the IT Act. These amendments are proposed to be made effective from April 1, 2023 and will, accordingly, apply in relation to the AY 2023-2024 and subsequent AY.
- Explanation 3 is proposed to be inserted to clarify that any sum payable by trust referred in clause (iv), (v), (vi) or (via) shall be considered as application of income in the previous year in which such sum is actually paid by it irrespective of the previous year in which the liability to pay such sum was incurred according to the method of accounting regularly employed by the trust.
- Lastly, a proviso is proposed to be inserted to the above Explanation to prescribe that where during any previous year, any sum has been claimed to have been applied by a trust, such sum shall not be allowed as application in any subsequent previous year.
- These amendments will take effect from April 1, 2023. and will accordingly apply to the AY 2023-24 and subsequent AY.

Insertion of Section 115BBI to the IT Act

- Section 115BBI is proposed to be inserted under the IT Act to provide that when the income of an assessee covered under Section 10(23C) (iv), (v), (vi) and (via) of the IT Act or referred in Section 11 of the IT Act includes any specified

income, the income tax shall be computed at the rate of 30% on the aggregate of such specified income. It also provides that no deduction or set off shall be allowed in computing the specified income.

- 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 11 of the IT Act

- Explanation 3A is proposed to be inserted to Section 11(1) of the IT Act to provide that any voluntary contribution received by a trust or institution for the purpose of renovation or repair of specified property i.e., temple, mosque, gurudwara, church or other notified place, may optionally be treated as corpus donation, subject to the condition that the trust or the institution:
 - applies such corpus only for the purpose for which the voluntary contribution was made
 - does not apply such corpus for making contribution or donation to any person
 - maintains such corpus as separately identifiable
 - invests or deposits such corpus in the forms and modes specified under section 11(5) of the IT Act
- Further, Explanation 3B is proposed to be inserted to provide that in case of violation of conditions specified in Explanation 3A, the contribution would be treated as income of such trust or institution of the previous year during which the violation takes place.
- The above insertions shall take effect retrospectively from April 1, 2021 and will accordingly apply in relation to the AY 2021-22 and subsequent AY.
- Section 11(3) of the IT Act is proposed to be amended to provide that where income is accumulated or set apart as per Section 11(2) of the IT Act for application in subsequent years, is not utilized for the purpose for which it is so accumulated or set apart, shall be deemed to be the income of the last previous year of the period, for which the income was accumulated or set apart but not utilized. This amendment will take effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 and subsequent AY.
- Explanation is proposed to be inserted after Section 11(7) of the IT Act, to clarify that at any sum payable by a trust shall be considered as application of income in the previous year in which such sum is actually paid by it, irrespective of the previous year in which the liability to pay such sum was incurred according to the method of accounting regularly employed by it. Lastly, a proviso is proposed to be inserted to the above Explanation to provide that where during any previous year, any sum has been claimed to have been applied by the trust, such sum shall not be allowed as application in any subsequent previous year. These amendments will take effect from April 1, 2022 and will accordingly apply to the AY 2022-23 and subsequent AY.

Amendment to Section 12A of the IT Act

- Clause (b) of Section 12A(1) of the IT Act is proposed to be substituted to provide that where the total income of the trust or institution exceeds the basic threshold limit before applying exemption under Section 11 and 12 of the IT Act, they shall be required to keep and maintain books of accounts and other documents in the prescribed form and manner.
- Presently, the trusts or institutions are required to get their accounts audited if the total income exceeds the basic threshold limit, however, there is no specific provision providing for maintenance of books of accounts.
- This amendment is proposed to be made effective from April 1, 2023 and will, accordingly, apply in relation to the AY 2023-2024 and subsequent AY.

Amendment to Section 12AB of the IT Act

- It is proposed to substitute sub-section (4) of Section 12AB of the IT Act, to provide for the instances and procedure where the Principal Commissioner or the Commissioner shall call for documents or information from the trust or

institution to satisfy himself about the occurrence or otherwise of any specified violation. The Principal Commissioner or Commissioner shall pass an order in writing either cancelling the registration or refusing to cancel the registration of the trust or institution.

- Further, it is also proposed to substitute sub-section (5) of Section 12AB of the IT Act, to provide that the Principal Commissioner or the Commissioner shall pass the order before expiry of six months from the end of the quarter in which the first notice was issued, on or after the April 1, 2022, calling for information or documents or making an inquiry.
- This amendment is proposed to be made effective from April 1, 2022.

Amendment to Section 13 of the IT Act

- It is proposed to amend Section 13(1)(c) of the IT Act to provide that only such part of income which has been applied directly or indirectly for the benefit of the trustee or any other specified person referred to Section 13(3) of the IT Act, shall be taxed, instead of complete denial of exemption.
- It is proposed to amend Section 13(1)(d) of the IT Act to provide that only the that part of income which has been invested in violation of the provisions of the said clause shall be liable to be included in total income.
- Further, it is proposed to insert sub-section (10) in Section 13 of the IT Act to provide clarity in the computation of the income chargeable to tax in a case where the trust or institution is not eligible for exemption - due to violation of specified provisions such as receipts from commercial activity exceeding 20% of the annual receipts, non-audit of books of accounts, etc.
- Income shall be computed after allowing deduction for expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of prescribed conditions.
- It is also proposed to insert an explanation to sub-section (10) to provide that for the purpose of computing the allowable expenditure, the provisions related to deduction of tax at source and non-payment in cash for expenditure more than INR 10,000 per day shall apply.
- Finally, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed under any other provision of the IT Act.
- These amendments are proposed to be made effective from April 1, 2023 and will, accordingly, apply in relation to the AY 2023-2024 and subsequent AY.

ELP COMMENTS:

The trust or the institutions are not eligible for exemption on their total income, if they pass on unreasonable benefits to specified persons or invest in violation of the prescribed manner; irrespective of the amount involved. These provisions are proposed to be rationalized to deny exemption only to that portion of income which has been applied in violation of the provisions of IT Act. Further, the ambiguity in relation to computation of total income where the trust or the institution is not eligible for exemption has been resolved by laying down the computation mechanism.

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

Amendment to Section 68 of the IT Act

- Section 68 of the IT Act provides that where any sum is found to be credited in the books of a taxpayer, and such taxpayer offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO, the sum so credited may be charged to income-tax as the income of the taxpayer.

- A new proviso to Section 68 of the IT Act is proposed to be inserted providing that where the sum so credited consists of loan or borrowing or any such amount by whatever name called, any explanation offered by the taxpayer shall be deemed to be not satisfactory unless:
 - a) The person in whose name such credit is recorded in the books of the taxpayer also offers an explanation about the nature and source of such sum so credited; and
 - b) Such explanation in the opinion of the AO has been found to be satisfactory
- This amendment is proposed to take into effect from April 1, 2023 and will accordingly apply in relation to the AY 2023-24 thereafter.

ELP COMMENTS:

The proposed amendment cast more responsibility on recipient of the money to prove the nature and source of funds not only from the person from whom he has received the fund, but he has to ensure that lender should also be able to provide justification with respect to the source from which he has lent money to the taxpayer. It indicates the clear intention of government that they will not tolerate any black money transactions.

Extension of timeline to Central Government to issue directions

Section	Original timeline to issue directions	Revised timeline to issue directions
Section 92CA - Reference to TPO	March 31, 2022	March 31, 2024

Amendment to Section 92CA of the IT Act

- Section 92CA of the IT Act empowers the AO to make a reference to a TPO with the previous approval of the Principal Commissioner or Commissioner, in relation to such transactions where the assessee has entered into an international transaction or specified domestic transaction in any previous year. On such reference by the AO, TPO carries out transfer pricing assessment and determines the arm's length price of the transactions.
- Finance Act, 2020 empowered the Central Government to make schemes for the purpose of determination of arm's length price by the TPO in a faceless manner and to issue directions and notifications upto March 31, 2022.
- Section 92CA of the IT Act is proposed to be amended to extend the aforementioned timeline for the Central Government by two years i.e., March 31, 2024.

ELP COMMENTS:

The extension of two years is provided to the Central Government to ensure a smooth introduction of a faceless scheme for faceless transfer pricing proceeding.

Amendment to Section 94 of the IT Act

- Section 94 of the IT Act *inter-alia* contains the provisions for bonus stripping and dividend stripping on securities and units of mutual funds. The current provision covers bonus stripping in the case of units of mutual funds only. Bonus stripping on securities and units of InvIT, REIT and AIF were out of the purview of Section 94 of the IT Act.
- Section 94(8) of the IT Act is proposed to be amended to provide for restriction on artificial creation of losses on account of bonus stripping in the case of securities as well.
- 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:

Bonus stripping refers to a concept wherein an artificial capital loss is created by the taxpayers by way of purchase of cum-bonus securities and their disposal immediately after the allotment of bonus shares.

Many taxpayers resorted to a view that conjunct reading of Section 94(7) and Section 94(8) of the IT Act suggested that provisions pertaining to “dividend stripping” were applicable to both units and securities whereas provisions pertaining to “bonus stripping” were applicable only to units. Hence, it can be inferred that the intention of the legislature was to exclude the shares of companies from the ambit of the provisions of section 94(8) of the IT Act.

Bangalore ITAT in the case of B.G. Mahesh [2014] (43 taxmann.com 158) and Pune ITAT in the case of Adar Poonawalla (ITA No.2252/PUN/2014) ruled in favor of the taxpayers by holding that there was no legislative authority to apply Section 94(8) of the IT Act to bonus stripping and deny capital losses intentionally created by the taxpayers. The aforementioned rulings would stand overruled by this proposed amendment.

Interestingly, these provisions have been made applicable from AY 2023-24 and thereafter.

UPDATED RETURN OF INCOME

Amendment to Section 139 of the IT Act

- Section 139 of the IT Act deals provisions for filing of return of income. It casts an obligation on the assessee to file income tax return within a definite time period. A new sub-section (8A) is proposed to be inserted after sub-section (8) to Section 139 of the IT Act to provide the following:
 - In terms of the proposed amendment, a person may furnish the updated return of his income or the income of any such other person in respect of which he is liable to be assessed under the IT Act, for the previous year relevant to such AY, within twenty four months from the end of the AY. Such return is required to be furnished in the prescribed form and manner and shall contain all the prescribed particulars.
 - The proposed insertion shall not apply if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return furnished under Sub-Section (1), Sub-Section (4) or Sub-Section (5) to Section 139 of the IT Act (i.e. an earlier return) or results in refund or increases the refund due on the basis of return furnished under earlier return of such person under the IT Act for the relevant AY.
 - A person shall not be eligible to furnish such updated return where:
 - Search has been initiated against such person or books of account, other documents or any assets are requisitioned as per the IT Act.
 - Survey has been conducted in the case of such person as per the IT Act.
 - Notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned in the case of any other person belongs to such person.
 - Notice has been issued to the effect that any books of account or documents, seized or requisitioned in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.
 - The above Search should have been initiated or Survey should have been conducted or requisition is made in the relevant AY or two AYs preceding such AYs.
 - No updated return shall be furnished:
 - if an updated return has been already furnished for the relevant AY.
 - any proceeding for assessment or reassessment or recomputation or revision is pending or has been completed for the relevant AY, or

- the AO has information in respect of such person for the relevant AY in his possession under other relevant legislations prescribed, or
 - information for the relevant assessment has been received under an agreement referred to in Sections 90 or 90A of the IT Act in respect of such person and the same has been communicated to him, prior to the date of his filing of such updated return, or
 - any prosecution proceedings have been initiated for the relevant AY in respect of such person prior to furnishing the updated return, or
 - he is a person or belongs to a class of persons, as maybe notified by CBDT in this regard.
- Further, the Sub-Section (9) to Section 139 of the IT Act has been proposed to be amended to provide that a return filed under the proposed Sub-Section (8A) shall be defective unless such return is accompanied by the proof of payment of tax as required under the proposed Section 140B of the IT Act.
 - This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

Insertion of Section 140B of the IT Act

- A new Section 140B is proposed to be inserted to provide for the tax required to be paid for opting to file a return under the proposed Sub-Section (8A) to Section 139 of the IT Act.
- The new proposed Section 140B of the IT Act provides for the following:
 - Before furnishing the return under proposed Sub-Section (8A) to Section 139 of the IT Act, the assessee liable to pay the tax due together with interest and fee payable under any other provision of the IT Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax.
 - The updated return should be accompanied by proof of payment of additional tax, interest and fee.
 - In the case of an assessee, where, return of income under Sub-Section (1) or Sub-Section (4) or Sub-Section (5) of Section 139 of the IT Act (i.e. in the earlier return) has been furnished by an assessee, before furnishing the return under Sub-Section (8A) of Section 139 of the IT Act, he shall be liable to pay the tax due together with interest and fee payable under any provision of the IT Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid under the provisions of the IT Act in the earlier return. Such tax payable to be computed after taking into account the following:-
 - the amount of relief or tax, under Sub-Section (1) of Section 140A of the IT Act, the credit for which has been taken in the earlier return;
 - tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B of the IT Act, on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been claimed in the earlier return;
 - any relief of tax or deduction of tax claimed under Section 90 or Section 91 of the IT Act on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;
 - any relief of tax claimed under Section 90A of the IT Act on account of tax paid in any specified territory outside India referred to in Section 90A of the IT Act on such income which has not been claimed in the earlier return;
 - any tax credit claimed, to be set off in accordance with the provisions of Section 115JAA or Section 115JD of the IT Act, which has not been claimed in the earlier return.

- Further, it is proposed that the aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return. The updated return under proposed Sub-Section (8A) to Section 139 of the IT Act is required to be accompanied by proof of payment of such tax, additional tax, interest and fee.
 - The additional tax, payable at the time of furnishing the return under Sub-Section (8A) of Section 139 of the IT Act, shall be equal to twenty-five per cent of aggregate of tax and interest payable, as determined above, if such return is furnished after expiry of the time available under Sub-Section (4) or Sub-Section (5) of Section 139 of the IT Act and before completion of period of twelve months from the end of the relevant AY. However, if such return is furnished after the expiry of twelve months from the end of the relevant AY but before completion of the period of twenty-four months from the end of the relevant AY, the additional tax payable shall be fifty per cent of aggregate of tax and interest payable, as determined above.
 - Further it is clarified that for the purposes of computation of “additional income-tax”, tax shall include surcharge and cess, by whatever name called, on such tax.
 - In addition to the tax payable (including additional income tax) the assessee shall also be liable to pay interest (where no return was previously filed) or differential interest (where return was previously filed) under Section 234A, 234B and 234C of the IT Act as applicable. Consequential amendments have been proposed to be made in Section 234A and Section 234B of the IT Act.
 - This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.
- The impact of proposed amendments to Sections 139 of the IT Act and proposed insertion of Section 140B of the IT Act discussed above, is explained in the table below:

	Scenario A - Where no return is furnished earlier	Scenario B - Where an earlier return is furnished
Obligation:	Tax + Interest + Fee payable for delay in furnishing the return or any default or delay in payment of advance tax + Additional tax	Tax + Interest + Interest and fee payable for any delay in furnishing the return or any default or delay in payment of advance tax + Payment of additional tax - Interest paid
“Tax payable” to include:	The amount of tax, if any, already paid as advance tax	The amount of relief or tax, the credit for which has been taken in an earlier return
	Tax deducted or collected at source	Tax deducted or collected at source, on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been claimed in the earlier return
	Relief of tax claimed under Section 89 of the IT Act	Relief of tax or deduction of tax claimed on account of tax paid in a country outside India on such income which has not been claimed in the earlier return
	Relief of tax or deduction of tax claimed on account of tax paid in a country outside India	Relief of tax claimed on account of tax paid in any specified territory outside India on such income which has not been claimed in the earlier return

	Relief of tax claimed on account of tax paid in any specified territory outside India	-
	Any tax credit claimed to be set off	Tax credit claimed, to be set off, which has not been claimed in the earlier return
Additional Tax shall be equal to:	<u>If updated return furnished before 12 months from the end of the relevant AY:</u> 25% of tax and interest payable <u>If updated return furnished after 12 months, before 24 months from the end of the relevant AY:</u> 50% of tax and interest payable	
Interest Payable shall be equal to:	Under Section 234A of the IT Act – computed on the amount of the tax on the total income as declared in return under Section 139 (8A) of the IT Act Under Section 234C of the IT Act – computed after taking into account the income furnished as the returned income as declared in return under Section 139 (8A) of the IT Act	Under Section 234B of the IT Act, interest payable shall be computed on an amount equal to the “assessed tax” or, as the case may be, on the amount by which the advance tax paid falls short of the “assessed tax”. (Computation of “assessed tax” is in the same manner as “tax payable” as per Scenario B)

ELP COMMENTS:

After filing ROI, there is a possibility of notice of certain errors, omissions or mistakes in estimating the income come to the notice of taxpayers. Now, the proposed Section 139(8A) of the IT Act provides an opportunity to taxpayers to correct such errors for payment of additional tax and with reduced risk of litigation.

It is noteworthy that the provisions for updated return with timeline of 2 years are introduced to only cover cases which are prejudicial to the interest of the revenue.

STREAMLINING PROCESS OF FACELESS ASSESSMENT

Amendment to Section 144B of the IT Act

- The Finance Bill, 2022 has proposed to revamp the provisions pertaining to faceless assessment to address various legal and procedural problems being faced by the administration and the taxpayers in operation of the faceless assessment procedure. The key proposed amendments to the faceless assessment procedure are as follows:
 - The existing Section 144B of the IT Act specifically envisages faceless assessment for only assessment under Section 143(3) and Section 144 of the IT Act whereas Section 151A of the IT Act gives powers to the Central Government to make a scheme for faceless assessment by way of notification, for the purposes of assessment, reassessment or re-computation under Section 147 of the IT Act or issuance of notice under Section 148 of the IT Act or conducting of enquiries or issuance of show-cause notice or passing of order under Section 148A or sanction for issue of such notice under Section 151 of the IT Act. The proposed Section 144B of the IT Act specifically envisages faceless scheme for assessment, reassessment or recomputation under Section 143(3) or under Section 144 or under Section 147 of the IT Act, as the case may be.
 - The existing Section 144B of the IT Act has witnessed a series of litigation where almost every assessment order was being challenged before jurisdictional High Courts on the grounds of violation of principles of natural justice. Under the proposed amendment, an assessment unit is now required to follow the following procedure:
 - First, prepare in writing an income or loss determination proposal in cases where there is no variation prejudicial to the assessee and a show cause notice in other cases to call upon the assessee to submit why the proposed variation should not be made to the income of the assessee.

- The assessee would then be required to file his reply to the show cause notice with NaFAC, which shall thereafter forward such reply to assessment unit or in case of failure of assessee to file a reply within prescribed time, intimate such failure to the assessment unit.
 - The assessment unit shall then prepare an income or loss determination proposal and send it to NaFAC. The NaFAC shall thereafter convey to the assessment unit on the basis of guidelines issued by the Board to prepare a draft order.
 - It is only pursuant to NaFAC conveying to assessment unit to prepare a draft order, that the assessment unit shall be actually required to prepare a draft order.
- There exists ambiguity pertaining to mandatorily grant personal hearing in case such a request is received from the assessee or his authorized representative. The CBDT *vide* its Circular dated 23.11.2020, which was also made applicable to Faceless Assessment Scheme under Section 144B of the IT Act, had clarified that personal hearing would be granted by the Department to assessee where:
- The assessee has submitted written submission in response to the Draft Assessment Order; and
 - The assessee in his/her written response disputes the facts underlying the proposed modification and makes a request for personal hearing.

The said Circular led to the Department taking a view that personal hearing may be granted only in a case where the dispute was on account of facts. Such ambiguity is sought to be addressed by the proposed amendment through use of words “*shall allow such hearing*” as opposed to the words “*may approve the request for personal hearing*” as existing prior to the proposed amendment.

ELP COMMENTS:

The proposed amendment seeks to address the ongoing dispute pertaining to direct issuance of a draft assessment order before any show cause notice has been issued, as being violative of principles of natural justice. As per the new procedure, the assessment unit would now be required to first issue a show cause notice, take into account the reply filed by the assessee and only then prepare a income or loss determination proposal, pursuant to which a draft order may finally be issued.

Further, the controversy pertaining to grant of personal hearing was addressed by the Hon’ble Delhi High Court in recent landmark ruling in the case of *Bharat Aluminium Company Ltd. vs. Union of India & Ors.* [WP(C) 14528/2021] wherein it held that even under the faceless assessment scheme, the assessee would have a vested right to personal hearing and the same has to be given by the Department if an assessee asks for it, irrespective of the facts of each case. The proposed amendment would therefore align the provisions of the IT Act with the aforementioned judgment of the Hon’ble Delhi High Court.

PROVISIONS IN RELATION TO ADMINISTRATION AND ASSESSMENT

Amendment to Section 119(2)(a) of the IT Act

- The said clause provides for the Board to issue general or special orders to be followed by income-tax authorities, by way of relaxation or otherwise of any of the listed provisions of sections, in the work relating to assessment or collection of revenue.
- It is proposed to include Section 234F of the IT Act in the list of Sections in respect of which CBDT can provide relaxation from fee for defaults in furnishing return of income.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

Amendment to Sections 132(8) and 132B of the IT Act

- Section 132 of the IT Act pertains to Search and Seizure. Sub-Section (8) therein provides that the books of accounts and other documents seized shall not be retained by the authorized officer for a period exceeding thirty days from the order of assessment, unless his reasons are recorded in writing and on approval of the listed authorities.
- It is proposed to amend the given sub-section to provide for the provisions therein to also be applicable to an order of reassessment or recomputation made in search cases.
- Similar amendments to include orders of reassessment and recomputation have also been proposed to be made under Sub-section (1) Clause (i) and Sub-section (4) of Section 132B of the IT Act which relates to application of seized or requisitioned assets.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

Amendment to Section 133A of the IT Act

- Section 133A of the IT Act deals with power of survey.
- The said Section is proposed to be amended to provide that, for the purpose of the said Section, income tax authority means such authority who is subordinate to the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner, as may be specified by the Board.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

Amendment to Section 143 of the IT Act

- Section 143(3) of the IT Act *inter alia* provides that the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.
- First proviso to Section 143(3) of the IT Act provided that in respect of certain entities covered under Section 10 of the IT Act, no order of assessment is to be made by the AO without giving effect to the applicable provisions of Section 10 of the IT Act. Such proviso is proposed to be amended to exclude from its ambit fund, charitable trusts and institutions [i.e. (a) fund, institution referred to in sub-clause (iv); or trust or institution referred to in sub-clause (v); (b) or any university or other educational institution referred to in sub-clause (vi) or (c) any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of Section 10 of the IT Act]
- Second proviso to Section 143(3) of the IT Act is proposed to be inserted to provide for steps to be followed by the AO in case he notices offences prescribed under fifteenth proviso to clause (23C) of Section 10 of the IT Act, inserted vide clause 4 of the Finance Bill. In such cases, the AO shall:
 - send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and
 - no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or (iii) of fifteenth proviso to clause (23C) of Section 10 or clause (ii) or clause (iii) of sub-section (4) of Section 12AB of the IT Act.

ELP COMMENTS:

This is a consequential amendment carried out in furtherance of rationalization of the provisions applicable to charitable trusts and institutions proposed in Section 10 of the IT Act the Finance Bill, 2022.

Amendment to Section 144C of the IT Act

- Section 144C (14B) of the IT Act empowers the Central Government to notify a scheme for the purposes of issuance of directions by the dispute resolution panel so as to impart greater efficiency, transparency and accountability. Sub-Section (14C) to Section 144C of the IT Act further provides that the Central Government may 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 order to give effect to the aforesaid scheme.
- The said sub-section is proposed to be amended by extending the date from March 31, 2022, to March 31, 2024.

Amendment to Section 148 of the IT Act

- Section 148 of the IT Act provides that a notice be issued on the assessee by the AO requiring him to furnish a return of his income or income of any other person in respect of which he is assessable under the IT Act, before making the assessment, reassessment or re-computation under Section 147 of the IT Act.
- The proposed amendment inserts a new proviso under the first proviso to Section 148 of the IT Act to the effect that approval to issue notice shall not be required where the AO, with the prior approval of the specified authority has passed an order under clause (d) of Section 148A of the IT Act that it is a fit case to issue a notice under the said section.
- It is also proposed to amend Explanation 1 to the said section to provide that for the purposes of the said section and section 148A of the IT Act, the information with the AO which suggests that the income chargeable to tax has escaped assessment means the following:
 - any information in the case of the assessee for the relevant AY in accordance with the risk management strategy formulated by the Board from time to time; or
 - the information now includes any audit objection in regard to the assessment for the relevant AY in accordance with the risk management strategy formulated by the Board from time to time; or
 - any information received under an agreement referred to in Section 90 or section 90A of the IT Act; or
 - any information made available to the AO under the scheme notified under Section 135A of the IT Act; or
 - any information which requires action in consequence of the order of a Tribunal or a Court.
- Above amendment will take effect from the April 1, 2022.
- It is further proposed to amend Explanation 2 of Section 148 of the IT Act to provide that the AO shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.
- This amendment is proposed to come into effect, retrospectively, from April 1, 2021.

Amendment to Section 148A of the IT Act

- Section 148A of the IT Act relates to the conduct of inquiry by the relevant authority and an opportunity be provided to the assessee before issue of notice under section 148 of the IT Act.
- Clause (b) of the said Section provides an opportunity of being heard to the assessee to show cause as to why a notice under section 148 of the IT Act should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant AY and results of enquiry conducted, if any, with the prior approval of specified authority. It is proposed to omit the requirement of approval of specified authority in clause (b).
- It is further proposed to insert a new clause (d) in the proviso to the said section to provide that the provisions of the said section shall not apply in cases where the AO has received any information under the scheme notified

under section 135A of the IT Act, pertaining to income chargeable to tax escaping assessment for any AY in the case of the assessee.

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

Insertion of new Section 148B of the IT Act

- A new Section 148B of the IT Act is proposed to be inserted relating to the prior approval for assessment, reassessment or re-computation in certain cases.
- The proposed new section seeks to provide that no order of assessment or reassessment or re-computation shall be passed by an AO below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of an AY to which clause (i), clause (ii), clause (iii) or clause (iv) of the Explanation 2 to section 148 apply.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 149 of the IT Act

- Section 149 of the IT Act provides the time limit for issuance of notice under Section 148 of the IT Act for assessment, reassessment or re-computation of income.
- It is proposed to amend the clause (b) of sub-section (1) of Section 149 of the IT Act to provide that no notice under section 148 shall be issued for the relevant AY after three years but prior to ten years from the end of the relevant AY unless the AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of:
 - An asset; or
 - expenditure in respect of a transaction or in relation to an event or occasion; or
 - an entry or entries in the books of account, which has escaped assessment amounts to or likely to amount to INR 5 million or more.
- This amendment is proposed to come into effect from April 1, 2022.
- It is also proposed to amend the first proviso to sub-section (1) of Section 149 of the IT Act to provide that no notice under Section 148 of the IT Act shall be issued at any time in a case for the relevant AY beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C of the IT Act could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of subsection (1) of Section 149 or Section 153A or Section 153C of the IT Act, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.
- This amendment is proposed to be made retrospective from April 1, 2021.
- It is also proposed to insert a new sub-section (1A) to Section 149 of the IT Act to provide that notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the AYs within the period referred to in clause (b) of sub-section (1) of the said section, notice under Section 148 of the IT Act shall be issued for every such AY for assessment, reassessment or re-computation, as the case may be.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 153 of the IT Act

- Sub-section (1A) is proposed to be inserted where an order of assessment under Section 143 or 144 of the IT Act, in respect of an updated return furnished in terms of sub-section (8A) of Section 139 of the IT Act, may be made at any time before the expiry of nine months from the end of the FY in which the said return was furnished.

- Sub-section (3) is proposed to be amended to provide that a fresh order under Section 92CA of the IT Act, in pursuance of an order setting aside or cancelling an order under Section 92CA of the IT Act may be made at any time before expiry of nine months from the end of FY in which the order under Section 254, 263 or 264 of the IT Act is passed.
- Sub-section (5) is proposed to include an order passed by TPO under Section 92CA of the IT Act in consequence to an order under Section 263 of the IT Act.
- New sub-section (5A) is proposed to be inserted to provide time limit to the AO to modify the order of assessment or reassessment or recomputation passed in conformity with order of TPO passed under Section 92CA of the IT Act, giving effect to an order or direction under Section 263 of the IT Act, within two months from the end of the month in which the order of TPO is received by the AO.
- Consequent to the change made in Section 263 of the IT Act, it is proposed to modify clause (iii) of Explanation 1 to omit the reference made in respect of trusts or institution under the first regime “sub clause (iv) or (v) or (vi) or (via) of clause (23C) of Section 10” to be excluded while computing the period of limitation.
- These amendments are proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.
- A new clause (xii) is proposed to be inserted to provide that the period commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A of the IT Act and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A of the IT Act, as the case may be, are handed over to the AO having jurisdiction over the assessee –
 - in whose case such search is initiated under Section 132 or such requisition is made under Section 132A of the IT Act; or
 - to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or
 - to whom any books of account or documents seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, or one hundred and eighty days, whichever is less, should be excluded while computing period of limitation for the purpose of assessment, reassessment or recomputation in respect of the assessee.
- This amendment is proposed to come into effect retrospectively from April 1, 2021.

Amendment to Section 153B of the IT Act

- It is proposed to insert a new sub-section (4) in Section 153B of the IT Act to provide that nothing contained in the said section shall apply to any search under Section 132 or requisition done under Section 132A of the IT Act on or after the 1st day of April, 2021.
- This amendment is proposed to come into effect from April 1, 2022.
- It is proposed to insert a new Explanation to the said Section, to provide for exclusion of the period commencing from the date on which a search is initiated under Section 132 or a requisition is made under Section 132A of the IT Act and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under Section 132 or requisitioned under Section 132A of the IT Act, as the case be, are handed over to the AO having jurisdiction over to the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A of the IT Act, as the case may be or one hundred and eighty days, whichever is less.
- This amendment is proposed to come into effect retrospectively from April 1, 2021.

Insertion of Section 156A of the IT Act

- A new Section 156A is proposed to be inserted relating to modification and revision of notice in certain cases. Section 156A of the IT Act provides that where any tax, interest, penalty, fee or any other sum payable in respect of notice issued under Section 156 of the IT Act is reduced in pursuance of any order passed by any adjudicating authority under Insolvency and Bankruptcy Code, 2016, as a result of which the AO serves a notice modifying the demand payable in conformity with such adjudicating order, such revised notice shall be deemed to be a notice under Section 156 of the IT Act.
- It is further proposed to provide that where the order referred by the adjudicating authority is modified by National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the AO shall modify the notice of demand accordingly.

ELP COMMENTS:

The aforesaid amendment rationalizes the provisions of IT Act with various regulations pertaining to IBC.

Amendment to Section 158AA of the IT Act

- Section 158AA of the IT Act relates to procedure when in an appeal by revenue, an identical question of law is pending before the Hon'ble Supreme Court, for same assessee in different AYs. With the introduction of Section 158AB of the IT Act (discussed below) a sunset clause is proposed to be inserted to provide that no direction shall be given under the sub-section (1) of Section 158AA of the IT Act on or after the 1st day of April, 2022.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

Insertion of new Section 158AB of the IT Act

- New Section 158AB is proposed to be inserted after Section 158AA of the IT Act to provide a procedure where an identical procedure of law is pending before the Hon'ble High Courts or Hon'ble Supreme Court.
- Where the collegium [comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board in this regard] is of the opinion that any question of law arising in the case of an assessee for any AY ("relevant case") is identical with a question of law already raised in his case or in the case of any other assessee for an AY, which is pending before the jurisdictional High Court or the Supreme Court or in a special leave petition under Article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such assessee ("other case"), in such case, it may, decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the Appellate Tribunal or to the High Court against the order of the Commissioner (appeals) or the Appellate Tribunal, as the case may be.
- On receiving the information, the Principal Commissioner or the Commissioner shall direct the AO to make an application in the prescribed form within a period of sixty days from the date of receipt of the order of the Commissioner (Appeals) or one hundred and twenty days from the date of receipt of the order of the Appellate Tribunal, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.
- The above application shall be made only if an acceptance is received from the assessee that the question of law in the other case is identical to that arising in the relevant case. Otherwise, the Principal Commissioner or Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A of the IT Act.
- Further it also provides that where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, is not in conformity with the final decision on the question of law in the other case, when received, the Principal

Commissioner or Commissioner may direct the AO to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order.

- Such appeal shall be filed within a period of sixty days from the date on which the relevant order is communicated to the Principal Commissioner or Commissioner as per the procedure specified by the Board.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

While existing Section 158AA of the IT Act applies in a situation where identical question of law arises for the same assessee but in different AYs and only in relation to appeal before Hon'ble Supreme Court. The proposed Section 158AB is wider in ambit to even cover cases of other assessees and even appeal to Jurisdictional High Court(s). Insertion of Section 158AB shall considerably reduce the amount of time and cost involved in filing appeal for cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available leaving more time and scope for speedy disposal of cases.

Revisional power in respect of order passed by the TPO to be exercised under Section 263 of the IT Act

- Section 263 of the IT Act prescribes that the Principle Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceedings under the IT Act and if he considers that any order passed by the AO is erroneous in so far as it is prejudicial to the interests of revenue, he may pass such order thereon enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.
- Section 263 of the IT Act is proposed to be amended to provide that, in the case where the jurisdictional Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner considers that any order passed by the TPO is erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO. The proposed amendment has been made to clarify as to who has the power under Section 263 of the IT Act to revise the order of the TPO passed under Section 92CA of the IT Act.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly, would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

Hon'ble Mumbai Tribunal in the matter of JCB India Limited, 2022 (1) TMI 1198, Essar Steel Limited, 2014 (4) TMI 809 and Tata Communications Limited, 2014 (5) TMI 114 has held that the Commissioner has no jurisdiction under Section 263 of the IT Act to revise the order issued by the TPO. The present amendment intends to empower the Commissioner to revise the order issued by TPO.

SUCCESSION OF BUSINESS

Amendment to Section 170 of the IT Act

- Section 170 of the IT Act is proposed to be amended to provide that the assessments, reassessments or other proceedings made on the predecessor during the pendency of a business reorganization shall remain valid and be deemed to have been made on the successor.

- In this regard, the term “business reorganization” is proposed to be defined to mean reorganization of business involving amalgamation, de-merger or merger of business of one or more persons.

ELP COMMENTS:

Insertion of new sub-section 2A to Section 170 of the IT Act settles ambiguity in respect of legality of assessment carried out on the predecessor during the pendency or otherwise of the court order for business reorganization. In past, various Courts including Hon’ble Supreme Court in the case of Maruti Suzuki India Ltd. (Civil appeal no. 5409 of 2019), have held that the income tax proceedings and assessments carried on and completed on the predecessor to be illegal since the predecessor assessee ceases to exist. Going forward, the assessment carried out on the predecessor shall remain valid and legal.

Amendment to Section 170A of the IT Act

- A new Section 170A of the IT Act is proposed to be introduced in 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 or Court.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

It is quite common for Companies to enter into Scheme of Arrangement with retrospective appointed dates wherein by the time the order of NCLT sanctioning the Scheme is received, the due date of filing revised return prescribed under the IT Act is already elapsed. In such cases tax department do not accept revised returns filed and insist on obtaining specific approval from CBDT for filing revised return of income.

While Hon’ble Supreme Court in the case of Dalmia Power Ltd and Dalmia Cement (Bharat) Ltd (Civil Appeal Nos. 9496 99 of 2019) ruled in favour of the assessee to allow filing of revised return well after the due date of filing revised return to give effect to the Scheme of Arrangement, this issue has not been free from litigations. Insertion of Section 170A brings formal mechanism to file revised 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.

WITHHOLDING TAX PROVISIONS

Amendment to Section 194-IA of the IT Act

- Section 194-IA of the IT Act is proposed to be amended to provide that TDS is to be deducted at the rate of 1% of the sum paid or credited to the resident towards sales consideration or the stamp duty value of such property, whichever is higher.
- Further, it is proposed to provide that where the consideration paid for transfer of immovable property and the stamp duty value of such property are both less than INR 5,000,000, then no TDS shall be deducted.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly, would apply in relation to AY 2022-23 and thereafter.

Amendment to Section 194-IB, 206AB and 206CCA of the IT Act

- Section 194-IB of the IT Act pertains to deduction of tax on rent paid by certain individuals or a HUF, for whom a simplified tax deduction system has been provided without requirement of TAN.
- Section 194-IB of the IT Act is sought to be amended to provide, that provisions of Section 206AB of the IT Act, which pertains to a special provision of higher deduction for non-filers of income tax, will not apply in relation to such transactions. A corresponding amendment has also been made to Section 206AB of the IT Act.
- Section 206CCA of the IT Act pertains to a special provision for higher collection in case of non-filers of income tax.
- Both Sections 206AB and 206CCA of the IT Act, define “specified person” to mean one who has not filed return of income for the AY relevant to the previous year immediately preceding the FY in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is INR 50,000 or more in the said previous year. It is proposed to amend these sections to reduce the two-year requirement to one year.
- Amendments are also proposed to be made to rectify certain drafting errors in Sections 206AB and 206CCA of the IT Act, wherein the terms “deductor” and “collector” were used incorrectly, and to amend the phrase “filing of return” to “furnishing of return”.

Insertion of new Section 194R of the IT Act

- A new category under the TDS provisions is proposed to be introduced whereby a person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, is required to deduct tax at 10% of the value or aggregate of value of such benefit or perquisite.
- In case the benefit or perquisite is wholly in kind, or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of the entire value of such benefit or perquisite, the person responsible for providing the benefit or perquisite is to ensure that tax has been paid.
- “Person responsible for providing” is defined to mean person providing such benefit or perquisite, or in case of a company, the company itself including the principal officer thereof.
- The above provisions will not apply if:
 - The value of such benefit or perquisite do not exceed INR 20,000
 - In case of an individual or HUF, the total sales / gross receipts / turnover does not exceed INR 10,000,000 in case of business income or INR 5,000,000 in case of profession during the FY immediately preceding the FY in which such benefit or perquisite is provided.
- This amendment is proposed to come into effect from July 1, 2022.

ELP COMMENTS:

The value of any benefit or perquisite, arising from business or exercise of profession is taxed as business income in the hands of the recipient. However, often, the receipt of such perquisite is not reported in the return of income. With a view to widen the tax base and to ensure the receipt of such benefit or perquisite is reported and made chargeable to income tax, TDS has been introduced on such perquisites.

Amendment to Section 201 of the IT Act

- Section 201 of the IT Act provides for consequences in case a person fails to deduct tax. As per Section 201(1A) of the IT Act, a person failing to deduct tax as required under the IT Act is liable to pay interest till the date of deduction of tax.
- A proviso is proposed to be inserted after sub-Section (1A) to specify that in case an order has been passed by the AO in case of default in non-deduction of tax, the interest shall be paid in accordance with the order.

Amendment to Section 206C of the IT Act

- Section 206C of the IT Act pertains to collection of tax at source on profits and gains from the business of trading in alcoholic liquor, forest produce, minerals, scrap, etc. Sub-section (7) states that if any person who is liable to collect tax at source under this provision does not collect the same, or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein.
- A proviso is sought to be added to sub-section (7) of Section 206C of the IT Act to the effect that where an order is made by the AO for default in collection under sub-section 6A, the interest payable will be in accordance with such order.

ELP COMMENTS:

The above provisions will put a rest to frequent litigation arising due to different interpretation in computing the interest on account of non-deduction/ non-collection of tax.

REFUNDS

Insertion of a new Section 239A in the IT Act

- A new Section 239A of the IT Act is proposed to be inserted to allow the deductor to file a claim of refund before the AO in respect of tax deducted and borne by them, on any income paid to a non-resident, other than interest under Section 195 of the IT Act, where the deductor claims that no such deduction was required.
- New Section 239A of the IT Act provides that the AO shall dispose off the application within six months from the end of the month in which such application is made. Further, such order passed by the AO is appealable before the Commissioner (Appels). Consequential changes have been proposed in Section 246A of the IT Act.
- This amendment is proposed to be made effective from April 1, 2022, and accordingly, would apply in relation to the AY 2022-2023 and thereafter.
- Consequentially, the provisions of Section 248 of the IT Act shall not apply to instances where the date of payment of tax to the credit of Central Government falls on or after the effective date.

ELP COMMENTS:

It is very common that payments made to non-resident are required to be grossed-up in accordance with the agreement. The existing mechanism to claim refund of such withholding taxes is cumbersome and does not provide for any timeline.

The proposed procedure to claim refund seems to be simplified and an attempt is made to provide certainty vis-à-vis the timeline for disposal of such refund applications.

However, it may be noted that the refund can be claimed only in cases of 'nil' withholding of taxes and not where the taxpayer believes that taxes should be withheld at a lower rate.

DISPUTE RESOLUTION COMMITTEE IN CERTAIN CASES

Amendment to Section 245MA of the IT Act

- Section 245MA is proposed to be amended by insertion of a new sub-Section (2A) to enable the AO to pass an order giving effect to the resolution of dispute by the Dispute Resolution Committee within 1 month from the end of the month in which the order is received.
- This amendment is proposed to be made effective from April 1, 2022.

ELP COMMENTS:

At present there is no enabling provision to allow the AO to pass an order giving effect to the directions of the Dispute Resolution Committee. This anomaly is proposed to be resolved.

PENALTY & PROSECUTION

Amendment to Section 271AAB of the IT Act

- Section 271AAB of the IT Act deals with imposition of penalty in a case where a search has been initiated.
- The scope of Section 271AAB of the IT Act is proposed to be expanded to empower even the Commissioner (Appeals) in addition to the AO to levy penalty under Section 271AAB of the IT Act.
- The proposed scope of Section 271AAB has also been extended to include re-assessments under Section 148 of the IT Act in addition to the proceeding initiated under Section 153A of the IT Act. This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 271AAC of the IT Act

- Section 271AAC of the IT Act deals with imposition of penalty in specified cases where income determined includes cash credits, unexplained investments, unexplained money, unexplained expenditure, or amount borrowed or repaid on hundi.
- The scope of Section 271AAC of the IT Act is proposed to be expanded to empower even the Commissioner (Appeals) in addition to the AO to levy penalty under Section 271AAC of the IT Act.

Proposed new Section 271AAE of the IT Act

- A new Section 271AAE of the IT Act has been inserted to impose penalty where there is a violation of conditions to be fulfilled for availment of exemptions granted to the following entities referred in Clause 23C of Section 10 of IT Act:
 - Funds or institution referred to in sub-clause (iv);
 - Trust or institutions, referred to in sub-clause (v);
 - University or educational institutions, referred to in sub-clause (vi);
 - Hospitals or medical institution, referred to in sub-clause (via)
- The penalty under Section 271AAE of the IT Act would trigger only if the conditions under twenty-first proviso to clause 23 of Section 10 of the IT Act or clause (c) of the Section 13(1), as the case may be, is violated and could be imposed as under:
 - The aggregate amount of income applied, directly or indirectly, for the benefit of any person referred to in Section 13(3) of the IT Act, where the violation is noticed for the first time.
 - In case of a subsequent violation, the penalty shall be equal to two hundred percent of the aggregate amount of income of such person applied, directly or indirectly, for the benefit of any person referred to in Section 13(3) of the IT Act.

ELP COMMENTS:

The imposition of an additional penalty on the specified funds, institutions, trusts, universities, educational institutions or hospitals seeks to address the cases where unreasonable benefits are passed onto trustees and there is misuse of the funds of the trust or institution.

Amendment to Section 271C of the IT Act

- It is proposed to amend section 271C of the IT Act to broaden penalty in respect of failure to deduct tax under section 194B of the IT Act
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 272A of the IT Act

- Penalty for failure to sign statements, furnish information, returns or statements, allow inspections, etc. under Section 272(2) of the IT Act has been increased from INR 100 per day during which the failure continues to INR 500.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 276AB of the IT Act

- Section 276AB deals with punishment for failure to comply with the provisions of Sections 269UC, 269UE and 269UL of the IT Act. A new proviso is proposed to be inserted which provides that no proceedings would be initiated under this Section 276AB of the IT Act on or after April 1, 2022, as the corresponding provisions have already been repealed.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 276B of the IT Act

- The word 'second' is omitted from in clause (b), in sub-clause (ii) of Section 276B of the IT Act. Such change is proposed to streamline the drafting related anomaly existing in the IT Act.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 276CC of the IT Act

- Section 276CC is proposed to be amended to provide that penalty under the said provision shall not be levied for failure to furnish within due date, the return of income under Section 139(1) of the IT Act, if such a person has furnished the return of income under Section 139(8A) of the IT Act.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 278A of the IT Act

- Section 278A of the IT Act deals with the punishment of second and subsequent offence under various provisions of the IT Act. The scope of the punishment has now been enlarged to encompass the offences falling within the ambit of Section 276BB of the IT Act, which deals with failure to pay tax deducted at source and tax on distributed profits of domestic companies under Chapter XII-D and XVII-B of the IT Act.
- This amendment is proposed to come into effect from April 1, 2022.

Amendment to Section 278AA of the IT Act

- Section 278AA of the IT Act provides that no person shall be punished for any failure under the provisions of the IT Act, if there was any reasonable cause for such failure. The scope of the applicability of Section 278AA of the IT Act has been narrowed down by addition the imposition of penalty under Section 276BB of the IT Act in the exclusion list.
- This amendment is proposed to come into effect from April 1, 2022.

Substitution of section 285B of the IT Act

- As per Section 285B of the IT Act, the producer of cinematographic films is obliged to furnish within 30 days from the end of the FY or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over INR 50,000/- in the aggregate made by him or due from him to each person engaged by him.

- Section 285B of the IT Act is proposed to be amended to include persons engaged in specified activities to fall within the reporting requirements with the ambit of Section 285B of the IT Act.
- Section 285B of the IT Act also proposes to introduce and define the term 'specified activity' to mean any event management, documentary production, production of programmes for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as notified by the Central Government.
- This amendment is proposed to come into effect from April 1, 2022.

OTHERS

Amendment to Section 115BAB of the IT Act

- Section 115BAB(2)(a) of the IT Act has been proposed to be amended to extend the last date of commencement of manufacturing or production of an article or thing by the manufacturing companies to March 31, 2024 in order to be entitled to avail concessional rate of income tax under this provision.
- This amendment is proposed to come into effect from April 1, 2022 and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

The extension of time limit to commence manufacturing by one more year will certainly encourage manufacturing industry to invest in setting up new units. It would also encourage more multinational companies to set up manufacturing units in India to obtain concessional tax rate benefits.

Withdrawal of Section 115BBD of the IT Act

- Section 115BBD of the IT Act is proposed to be amended to withdraw the benefit of concessional rate of tax on the dividend income received by the specified Indian company from a foreign company in any AY beginning on or after April 1, 2023.
- 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 will bring parity between foreign subsidiary and domestic subsidiary in terms of taxability of receipt of dividend from such subsidiaries in the hands of Indian holding company. Considering the proposed amendment increases the tax cost from 17.16% (Existing) to 25.17% (Proposed), the Indian holding company may re-think alternate tax effective options to repatriate profits from its overseas subsidiary.

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

- Section 115JC of the IT Act is proposed to be amended to reduce AMT for Co-operative societies from existing 18.5% to 15%.
- 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 rationalization in AMT rate would stimulate growth of co-operative societies.

Liability of Directors of a Private Company

- Section 179 of the IT Act is proposed to be amended to remove the reference to the word “in liquidation” in the title so as to clarify the intention to apply the provision even to those Private Companies which are not in liquidation. Further, the expression “tax dues” which can be collected from directors is proposed to be amended to also include “fees” in its scope apart from Interest, Penalty or any other sums.
- This amendment is proposed to come into effect from April 1, 2022, and accordingly would apply in relation to AY 2022-23 and thereafter.

ELP COMMENTS:

Section 179 of the IT Act imposes tax liability on the directors of a Private Company in liquidation in cases where any tax due from such private company in respect of any income of any previous year cannot be recovered, provided, the non-recovery is owing to any gross neglect, misfeasance or breach of duty on the part of directors in relation to the affairs of the company.

The proposed amendment extends the liability on directors of private Companies not in liquidation which was otherwise limited only to directors of Companies in liquidation.

INDIRECT TAX

CENTRAL GOODS AND SERVICES TAX ACT, 2017

The following changes shall come into effect from a date to be notified.

Conditions for availing ITC

- Section 16(2) of the CGST Act prescribe the conditions for availment of ITC by a registered person. A new condition has been proposed by introduction of sub-section (ba) under Section 16(2) to provide that ITC would not be available if the same is restricted in the details provided in GSTR 2B under Section 38 of the CGST Act.
- Section 16(4) of the CGST Act is proposed to be amended to prescribe the revised time limit to avail ITC with respect to any invoice or debit note for supply of goods or services or both. As per the proposed amendment, ITC can be availed on or before 30th November following the end of such FY to which such invoice or debit note pertains or furnishing of annual return, whichever is earlier.

ELP COMMENTS:

The amendment in Section 16(4) is a welcome move for the taxpayers as the time-limit has been extended by two months approximately and the taxpayer would be able to rectify the errors which may be observed during the Income Tax audit/filing of return.

Cancellation or suspension of registration

- The proper officer under proposed amendment to Section 29(2)(b) of the CGST Act may cancel the registration of the following taxpayers:
 - **Persons paying tax under Composition scheme:** If the return for the FY has not been furnished within three months from the due date of furnishing the return. As per the existing provision, such cancellation of the registration may trigger in case of failure to file return for three consecutive tax periods.
 - **Other taxpayers:** If the returns have not been filed for a continuous tax period as may be prescribed. As per the existing provision, a specific period of six months has been prescribed to trigger cancellation on account of failure to file return.

Credit Notes

- The time-limit for issuance of credit note under Section 34(2) of the CGST Act in respect of any supply made in the FY is proposed to be extended to 30th November following the end of the FY or the date of furnishing of the relevant annual return, whichever is earlier.

ELP COMMENTS:

The extension in the time limit for issuance of credit note would benefit the assesseees. Further, the said amendment is in line with the proposed amendment of Section 16(4) of the CGST Act which provides for enhancement of time-limit *qua* availment of ITC for invoices and debit notes.

Furnishing details of outward supplies

- The first proviso to Section 37(1) and 37(2) of the CGST Act are proposed to be omitted in order to eliminate two-way communication process in return filing.
- Further, Section 37(3) of the CGST Act is proposed to be amended in order to remove reference of Section 42 and 43 of the CGST Act as the said Sections (pertaining to matching of ITC for availment of credit) are proposed to be omitted.
- Section 37(4) of the CGST Act is proposed to be amended to restrict filing of GSTR-1 for a tax period if GSTR-1 for the previous tax period has not been filed. It is also proposed that by way of notification, a registered person or a class of registered person may be exempted from such restriction.

Furnishing details of inward supplies

- Section 38 (1) of the CGST Act is proposed to be substituted to provide for availment of ITC to the recipient on the basis of auto generated statement containing the details of ITC.
- Further, Section 38(2) of the CGST Act is proposed to provide for the details of auto generated statement which would *inter-alia* include the details of inward supplies and the communication as to whether ITC would be available to the recipient or not.

ELP COMMENTS:

In terms of the existing provisions of the CGST Act, the recipient had an option to modify/ reject/ accept the details furnished by the supplier by filing GSTR 2. However, *vide* the proposed amendments, the requirement of filing GSTR -2 has been done away with and the recipient can avail credit based on the details provided by the supplier of goods and services or both.

Furnishing of returns

- Section 39(5) of the CGST Act is proposed to be amended to reduce the time limit for furnishing of return by a non-resident taxable person from 20 days to 13 days after the end of the calendar month or within 7 days after the surrender of registration, whichever is earlier.
- Section 39(7) of the CGST Act is proposed to be amended to provide an option to the person furnishing return under proviso to Section 39(1) to pay either the self-assessed tax or an amount that may be prescribed.
- Section 39(9) of the CGST Act is proposed to be amended to extend the last date for rectification of errors upto 30th November following the end of the FY or the date of furnishing of annual return, whichever is earlier. As per the existing provisions, such rectification can be carried out upto the due date of furnishing return for the tax period ending September following the end of the FY or the date of furnishing of annual return, whichever is earlier.
- Section 39(10) of the CGST Act is proposed to be amended to restrict filing of GSTR-3B for a tax period if GSTR-3B for the previous tax period or GSTR-1 for the said tax period has not been filed. Section 39(10) of the CGST Act is proposed to be amended to provide that by way of notification, a registered person or a class of registered person may be exempted from such restriction.

Availment of ITC

- Section 41 of the CGST Act is proposed to be substituted so as to do away with the concept of claim of ITC on a “provisional basis”. In case the supplier has not paid the tax, the recipient is required to reverse the ITC along with applicable interest. Thereafter, such credit may be re-availed when the supplier makes the payment of such tax.
- Further, in line with the aforesaid, Section 42, 43 and 43A of the CGST Act are proposed to be omitted.

ELP COMMENTS:

This amendment proposes to levy interest on the recipient for the mistake/error of the supplier. Such amendment is contrary to the rulings of Hon’ble Supreme Court in case of Arise India Limited [2018-TIOL-11-SC-VAT] and Hon’ble Madras High Court in case D.Y. Beathel Enterprises [W.P. (MD) No. 2127 of 2021] wherein it was held that recovery of ITC from the recipient cannot be sought without first exhausting the remedy of recovery proceedings against the suppliers who collected GST from the recipient but failed to deposit the same with the Government.

However, the proposed amendment would be appreciated by the taxpayers in as much as the existing provisions do not permit for re-availment of ITC in the prescribed manner pursuant to payment made by the supplier. Further, it is worth pondering on whether the restriction of time-limit of 30th November would be applicable for reclaim of ITC. It would also be important to note that the provision is silent on the refund of the interest so paid.

Levy of late fee

- In terms of a proposed amendment in Section 47(1) of the CGST Act, late fee should not be applicable on furnishing of inward supplies as there is no requirement to furnish such details.
- Late fee shall be imposed on delayed filing of return under Section 52 of the CGST Act (i.e. tax collected at source).

Goods and Services tax Practitioners

- In terms of proposed amendment to Section 38 of the CGST Act, there shall be no requirement to furnish details of inward supplies. Consequential amendment is proposed to be made in Section 48(2) of the CGST Act to omit the requirement of furnishing details of inward supplies by goods and services tax practitioners.

Utilization of amount available in electronic cash ledger

- Section 49(10) of the CGST Act is proposed to be substituted so that unutilized balance of CGST and IGST in electronic cash ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states) without opting for refund procedure.
- Section 49(12) of the CGST Act is proposed to be inserted, empowering the Government to prescribe the maximum portion of output tax liability which can be discharged through electronic credit ledger by such registered person or class of registered person as may be notified.

ELP COMMENTS:

Provision in respect of transfer of balances of electronic cash ledger between distinct persons is a welcome move as the assesseees will not be required to face the hassles of refund.

Interest applicability on wrongly availed and utilized ITC

- Section 50(3) of the CGST Act, is proposed to be amended retrospectively (i.e. with effect from July 1, 2017), in order to levy interest on ITC wrongly availed and utilised.
- Interest imposed under Section 50(3) of the CGST Act towards wrong availment and utilization of ITC is reduced to 18% (which is at present 24%) with effect from July 1, 2017.

ELP COMMENTS:

Similar amendment was carried out earlier in respect of Section 50(1) of the CGST Act.

The proposed amendment is in line with the erstwhile provisions of Rule 14 of CENVAT Credit Rules, 2004 and judicial precedents in case of Maruti Udyog Ltd- [2007 (214) ELT A50 (SC)] and Bill Forge Private Limited- [2012 (279) ELT 209 (Kar.)].

In terms of the existing provisions, 24% interest is applicable in case of availment of unmatched ITC. Pursuant to the above amendment, the taxpayers can explore an option of claiming refund of differential interest of 6% (24%-18%).

Extension of time limit for rectification of GSTR-8

- Section 52(6) of the CGST Act is proposed to be amended to extend the time limit for rectification of errors made while filling GSTR-8 (i.e. return to be filled by an assessee deducting TCS) to 30th November following the end of the FY or the date of furnishing of annual statement, whichever is earlier. As per the existing provision, such rectification can be carried out upto the due date of furnishing statement for the month of September following the end of the FY or the actual date of furnishing of annual return, whichever is earlier.

Amendments qua refund

- In order to claim refund of balance in electronic cash ledger, it is proposed that an application needs to be filled in such form as may be prescribed. At present, it is linked with return filled under Section 39 of the CGST Act.
- Time limit for filling of refund of GST paid on inward supplies by a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under Section 55, is proposed to be increased to two years (which at present is six months) from the last day of the quarter in which such supply was received.
- Section 54(10) of the CGST Act is proposed to be amended to extend the restriction as regards withholding of refund or adjustment of unpaid tax from refund due for all types of refund claims. At present, such restriction is applicable only to refund claim on account of zero- rated supplies and inverted duty structure.
- A new sub-clause 2(ba) is proposed to be inserted in the Explanation to Section 54 of the CGST Act which provides the relevant date as the due date of furnishing the return under Section 39 for filing refund claim of tax paid in respect of supplies made to SEZ developer/unit or inputs or input services used in such supplies.

ELP COMMENTS:

The proposed amendment in Section 54(10) extends the scope/ power of the authorities to withhold all types of refund claims.

Following changes shall come into effect from date on which the Bill receives presidential assent.

Retrospective Notification of Common Portal

- In terms of clause 114 of the Finance Bill, www.gst.gov.in has been notified as the common goods and services tax electronic portal retrospectively with effect from June 22, 2017.

No GST on supply of unintended waste generated during production of fish meal

- In terms of Section 116 of Finance Bill, it is proposed that GST would not be applicable on supply of unintended waste generated during production of fish meal (falling under Chapter heading 2301) except for fish oil from July 1, 2017 to September 30, 2019.
- However, GST paid (if any) during the period July 1, 2017 to September 30, 2019 on such transactions shall not be available as refund.

Grant of alcoholic liquor license not a supply

- *Vide* Notification No. 25/2019 Central tax (Rate) dated September 30, 2019; an activity of granting alcoholic liquor license against consideration in the form of license fee or application fee shall neither be treated as supply of goods nor supply of services. In terms of Section 117 of the Finance Bill, said amendment is proposed to be made applicable retrospectively i.e., with effect from July 1, 2017.
- However, GST paid (if any) for the past period on such transactions shall not be allowed as refund.

CUSTOMS ACT, 1962

Power conferred upon the CBIC and Principal Commissioner/Commissioner of Customs to appoint officers of DRI, Preventive and Audit as Proper Officer

- The Bill has sought to overcome the ruling of Hon'ble Supreme Court in the case of *Canon India v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.)*, whereby it was held that DRI was not a "proper officer" to issue show cause notices under Section 28 of the Customs Act. The Bill proposes to amend definition of "proper officer" in Section 2(34), substitutes Section 3, amends Section 5 of the Customs Act and validates certain actions of Customs officers retrospectively, as under:
 - Section 2(34) is being amended to specifically state that the proper officer can be appointed by Board or the Principal Commissioner of Customs or Commissioner of Customs in terms of powers conferred upon them under Section 5 of the Customs Act.
 - Section 3 is being substituted to include officers of the DRI, Audit and Preventive as "Classes of officers of customs".
 - Sub-Section (1A) and (1B) to Section 5 are proposed to be inserted to empower CBIC or the Principal Commissioner / Commissioner of Customs to assign functions to Custom officers.
 - Sub-section (4) to Section 5 is being inserted to list down criteria such as territory, class of persons, class of goods etc. which the CBIC may consider while assigning functions to the Customs officer.
 - Sub-section (5) to Section 5 is being inserted to ensure that CBIC can confer concurrent exercise of power and functions on more than one Customs officer.
 - Clause 96 of the Bill seeks to retrospectively validate action taken or functions performed by Customs officer before the enactment of the Bill where the action was in pursuance of their appointment and assigning of functions by the Central Government or the CBIC.

ELP COMMENTS:

This amendment was anticipated as massive revenue of the Government was at stake post the decision in Canon India (supra) which was followed by High Courts and Tribunals to quash show cause notices and proceedings initiated by the DRI officers. The Department's plea of Review Petition pending before the Supreme Court was also not heeded. In fact, in August 2021, the Supreme Court again in Agarwal Metals (C.A. No. 3411 of 2020) proceeded to quash proceedings initiated by the DRI. The direct impact of the amendment will be on the outcome of the pending Petitions / Appeals, wherein the jurisdiction of DRI officer to issue Show Cause Notice has been challenged. These Petitions / Appeals will have to be amended to challenge the constitutional validity of the proposed validation clause, in as much as it seeks to retrospectively validate the past actions of the DRI officers, which is bad in law and without jurisdiction.

A decade back, when the Hon'ble Supreme Court in Commissioner of Customs v. Sayed Ali, 2011 (265) ELT 17 (SC) had held that Collector of Customs (Preventive) is not the "proper officer" to issue show cause notice under Section 28, it was equally overcome by the Government through a validation clause. The writ petitions challenging the validation clause remain pending before the Supreme Court. If the past is anything to go by, these amendments will also see intense litigation till the Supreme Court finally decides on the issue.

Validation of certain actions taken by Customs officer retrospectively

- Clause 96 has been inserted in the Bill to give validation to past action taken by Customs officer under the following specified Chapters, where such action was in pursuance of their appointment and assigning of functions by the Central government or the CBIC, notwithstanding any judgment, decree or order:
 - Chapter V: Levy of, and exemption from Customs Duties
 - Chapter VAA: Administration of Rules of Origin under Trade Agreement
 - Chapter VI: Provisions relating to conveyances carrying imported or exported goods
 - Chapter IX: Warehousing
 - Chapter X: Drawback
 - Chapter XI: Special provisions regarding baggage, goods imported or exported by post, courier and stores
 - Chapter XII: Provisions relating to coastal goods and vessels carrying coastal goods
 - Chapter XIII: Audit
 - Chapter XIII: Searches, seizure and arrest
 - Chapter XIV: Confiscation of goods and conveyances and imposition of penalties
 - Chapter XVI: Offences and Prosecutions
 - Chapter XVII: Miscellaneous
- The clause also validates any Customs notification issued with the purpose of appointing or assigning functions to any Customs officer, including for the purposes of Section 6.
- By way of an Explanation to the above clause, it has been clarified that any proceeding arising out of action taken under the clause and pending on the date of commencement of the Finance Act will be disposed of in accordance with the amended provisions of the Customs Act.

Power to review earlier assessment available solely with Jurisdictional Customs officer

- The Bill proposes to insert Section 110AA in the Customs Act to provide that in case where original functions viz. (a) assessment w.r.t. duty/interest short-levied, not levied, short-paid or not paid and (b) grant of erroneous refund or

duty drawback have been exercised by a jurisdictional Customs officer, then any other Customs officer causing further inquiry, investigation etc., shall submit a report to the jurisdictional Customs officer and in case of multiple jurisdictions, the officer to whom such matter is assigned by the CBIC.

ELP COMMENTS:

The proposed amendment appears to find its root in the decision of the Apex Court in *Canon India (supra)* wherein it was inter-alia held that power to recover duty after the goods have been assessed, is broadly a power to review the earlier decision of assessment and such review can only be done by the Jurisdictional Customs officer.

Section 14 of the Customs Act is proposed to be amended to enable the Government to prescribe Rules for specifying additional obligation on importer in cases where there exists “reason to believe” for under-valuation

Section 14(1) of the Customs Act is proposed to be amended with insertion of clause (iv) to the second proviso of the said section to empower the Government to prescribe rules to impose additional obligations on the importer and checks to be exercised with respect to valuation of the imported goods, where the CBIC has a reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

ELP COMMENTS:

The proposed amendment can have far-reaching implications and appears to have been introduced in the hindsight of the decision of the Hon’ble Supreme Court in the case of *Century Metal Recycling Pvt. Ltd. v. Union of India, 2019 (367) E.L.T. 3 (S.C.)*. In the said case, it has been held that formation of opinion regarding reasonable doubt on correctness of value is mandatory before rejecting transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Such findings were mainly premised on the interpretation of the term “reason to doubt” as deployed in the said Rule 12 instead of the term “reason to believe”. It has been observed that the expression “reason to believe” would require the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation, while the expression “reason to doubt” would require a higher threshold involving un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on ‘certain reasons’. Accordingly, vide the proposed amendment, the Government would now prescribe a set of rules to include such circumstances where valuation can be doubted on the basis of “reason to believe”. One will have to wait and watch to see the exact nature of amendment to the valuation rules to understand the consequent impact.

Amendment with respect to Customs Advance Ruling

Section 28H is proposed to be amended to make provisions for prescribing appropriate fees by Board relating to application for advance Ruling and also give flexibility to the applicant to withdraw his application at any time before a ruling is pronounced from the current 30 days’ time period. Consequently, the sub-section (3) is being omitted.

Further, sub-section (2) under Section 28J is proposed to be substituted so that advance ruling under sub-section (1) of Section 28J is now valid for a period of three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.

A proviso is also proposed to be inserted to provide that for the advance rulings in force on the date on which the Finance Bill, 2022 receives assent of the President, the said period of three years shall be reckoned from the date on which the Finance Bill receives assent of the President.

Pre-Finance Act, 2018, the definition of “applicant” under section 28E(c) included the terms “joint venture in India”, “non-resident”, “Indian company” and “foreign company”. These terms were defined in Explanation to clause (c) and clause (h). The definition of the term “applicant” was substituted *vide* Finance Act, 2018 with new definition, however, Explanation to clause (c) and clause (h) remained unchanged. Therefore, now Section 28E is being amended to omit the Explanation under clause (c) and omit clause (h).

ELP COMMENTS:

While the Advance Ruling was anyway not applicable in case of change in law or facts, prescribing a validity for a period of three years may not be in the interest of applicant. It is not clear that whether the applicant will be required to go for another advance ruling after three years again even when there is no change in law or facts or he may intimate the authority that there is no change in the fact pattern and law. Similar practice was followed qua the SVB proceedings pre-Feb’16 wherein the importer used to intimate about no change in the terms and conditions of the agreement, or pattern of invoicing and on examining these documents, the SVB order issued in the past is renewed for a further period of 3 years. However, this practice was done away with in Feb’16. Be that as it may, this amendment appears to be against the objective of smooth compliance mechanism for the business – contrary to the well adverted policy of the GOI.

Penal Provisions introduced to safeguard unlawful publishing of Import Export Data

A new provision i.e., Section 135AA is proposed to be inserted to protect the import and export data (submitted to Customs authorities by importers or exporters) and to provide that no person shall publish such information unless required under the law. Such publication would be considered as an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to INR 50,000 or with both.

Further, Section 137(1) of the Customs Act is proposed to be amended to provide that no court shall take cognizance of any offence under Section 135AA except with the previous sanction of the Principal Commissioner of Commissioner of Customs.

ELP COMMENTS:

The proposed amendment aims to safeguard the import and export data submitted by importers and exporters in order to curb the leakage of confidential data in the market.

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 (Import of Goods at Concessional Rate of Duty) Rules, 2017 amended to remove existing procedural ambiguities and to automate the entire process

Presently, a large number of importers are taking advantage of concessional rate of Customs duty on import of goods required for domestic production of specified finished goods or rendering output services under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The said rules are proposed to be amended *vide* Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2022 issued under the *Notification No. 07/2022 - Customs (N.T.) dated February 1, 2022*. This amendment is proposed to come into effect from March 1, 2022. The amended rules lay down simplified procedures to avail the benefit of concessional duty by removing the existing ambiguities, and to largely automate the entire process right from availment till reporting in one consolidated monthly return.

The key changes proposed to be introduced are set out under:

- The definition of terms 'common portal', 'customs automated system' and 'date of import' is proposed to be inserted. 'Common portal' is defined as same common customs electronic portal referred under Section 154 of the Customs Act. (Rule 3)
- The importer is required to provide one-time information on common portal as prescribed under Form IGCR-1 as against the existing manual system of filing. On basis of such information, the importer will be allotted an Import of Goods at Concessional Rate Identification Number (IIN). The procedure *qua* submission of continuity bond remains unchanged. (Rule 4)
- The importer intending to avail the exemption benefit has to mention his allotted INN along with continuity bond number in the Bill of Entry filed for the imported goods. The benefit of such exemption will be allowed by the Deputy / Assistant Commissioner of Customs at the time of import, and the respective amount will be debited automatically from the continuity bond. Earlier, the importer was required to provide details of the estimated quantity and value of goods to be imported on an annual basis before undertaking imports. (Rule 5)
- Earlier, in order to verify that the imported goods were actually received at the manufacturing premises, the importer was required to intimate the Jurisdictional Customs Officer regarding receipt of such goods within 2 days of such receipt. This cumbersome requirement of intimation after every import has been done away with. Now, only in cases where imported goods are not received or short received in the relevant premises, intimation is to be filed in Form IGCR-2 immediately on common portal. Further, the requirement of filing quarterly return is proposed to be replaced with filing of monthly statement in Form IGCR-3 on common portal. (Rule 6)
- The pre-requisite to intimate the Jurisdictional Customs Officer at the time of sending goods for job work has been removed. The importer is now required to only maintain records and include details of goods sent for job work in the above monthly statement itself. Additionally, inter unit transfer of goods for further manufacturing is also permitted. (Rule 6A and 6B)
- The importer can now *suo moto* decide to either re-export or clear the unutilized or defective imported goods within six months from the date of import without taking any prior permission from the Jurisdictional Customs authorities, provided details of such clearances is furnished in the above referred monthly statement. (Rule 7)
 - Similar to present rules, the Jurisdictional Customs authorities will continue to have the power to recover duties in cases of (a) failure on part of the importer to comply with conditions of the applicable exemption notifications; or (b) where differential duty and applicable interest is not paid or short paid in case of clearance of unutilized or defective goods/ capital goods. (Rule 8)

ELP COMMENTS:

A few important amendments have been proposed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 essentially to promote the motto of "ease in doing business". The present procedural requirements to avail such benefit are cumbersome on several counts, as it involves multiple reporting requirements, various intimations and permissions are required from the Customs authorities on several occasions and entire process is administered manually. Thus, practically at ground level, importers have been facing challenges to comply with the Rules, and resultantly have been subjected to litigations, more so on account of discretionary powers exercised differently by different port authorities. In fact, in a decision of Hon'ble Madras High Court in the case of Commissioner of Customs, Chennai v. Medreich Sterilab Ltd., 2020 (371) E.L.T. 639 (Mad.), it has been held that the procedures prescribed under the Rules are to be strictly adhered to, which has added to difficulties of the importers. Thus, the proposed amendments, which lay down simplified and automatised procedures is a welcome move.

CUSTOMS TARIFF - LEGISLATIVE CHANGES

Changes in First Schedule to Customs Tariff

First Schedule to Customs Tariff is proposed to be amended with effect from May 1, 2022 to align with complementary amendments to HS 2022 changes. These changes include amendments in the Chapter Notes/ Section Notes and substitution/ insertion of Tariff Heading/Tariff item. Some of the changes are proposed as per recommendations from specific Ministries *inter alia* to identify new categories of Fuels being introduced in the country and clarify manner of determination of Fe content in iron ore being exported.

Applicability of Social Welfare Surcharge in certain cases

The issue of applicability of Social Welfare Surcharge (**SWS**) in cases, where the aggregate of customs duties (which form the base for computation of SWS) is NIL, has been clarified vide Circular 3/2022. The said circular makes it abundantly clear that no SWS shall be payable, basis any notional computation, in such scenarios.

ELP COMMENTS:

The DRI/ customs formation have recently disputed this issue on premise of Apex Court's conclusions in re Unicorn Industries [Civil Appeal Number 9237 of 2019], which held that unless expressly exempted through a notification piggy back cesses/surcharges ought to be computed notionally and paid accordingly.

The clarification would put rest to this debate/dispute in favor of an already meritorious position. Certainly, a welcome relief, enabling ease of doing of business in India!

CUSTOMS TARIFF - RATE CHANGES

Key Changes in Effective Rate of BCD

- Union Budget 2022 continued the trend of the past years, of carrying out thematic tariff changes that aims at supporting India's vision of 'Make in India' and Atmanirbhar Bharat.
- Following are key changes in effective rate of BCD from February 2, 2022; unless otherwise mentioned:

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1	1518	Algal Oil for manufacturing of aquatic feed	30	15
2	1801 00 00	Cocoa Beans, whole or broken, raw or roasted	30	15
3	1520 00 00	Crude glycerin for use in the manufacture of soaps	Nil	7.5
4	1903 00 00	Tapioca and substitutes therefor prepared from starch	30	50
5	2501	Common salt (including Rock Salt, Sea Salt and Table Salt)	Nil	5
6	2710 19	Fuel Oil, Straight run fuel oil, Low sulphur wax residue, Vacuum residue, Slurry, Vacuum gas oil	5	2.5
7	2710 19	Kerosene imported by the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and IBP Company Limited for ultimate sale through the Public Distribution System	Nil	5

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
8	28, 29 or 30	Bulk drugs used in the manufacture of: (i) Poliomyelitis Vaccine (Inactivated and live) (ii) Monocomponent insulins	As per CTH	Nil (up to March 31, 2024) 5 (effective from April 1, 2024) (Note 1)
9	2905 11 00	Methyl alcohol	5	2.5
10	2915 21 00	Acetic Acid	7.5	5
11	3201 90 20	Myrobalan Fruit Extract	2.5	7.5
12	3206 50 00	Triband Phosphor	Nil	7.5
13	3207 10 40	Ceramic colours	5	7.5
14	3207 40 00	All goods	5	7.5
15	3404 20 00	Vinyl Polyethylene Glycol for use in manufacture of Poly Carboxylate Ether	7.5	10
16	35	The following goods for use in the manufacture of Plasma Volume Expanders, namely:- (i) Hydroxyethyl starch, (ii) Dextran	5	As per CTH
17	38	Dipping oil, Paclbutrazol (Cultar)	10	As per CTH
18	28, 29, 30 or 38	(A) Drugs, medicines, diagnostic kits or equipment specified in List 3 (B) Bulk drugs used in the manufacture of drugs or medicines at (A)	5	Nil
19	39, 48 or any other Chapter	Specified goods for use in the manufacture of textile or leather garments for export	As per CTH	Nil (Note 2)
20	4401 21 00 4401 22 00	Wood in chips or particles, imported for use in manufacture of the following, namely:- (i) paper and paperboard; (ii) newsprint.	Nil	5 (Applicable from April 1, 2023)
21	4707	(A) All goods imported for use in, or supply to, a unit for manufacture of paper or paperboard other than newsprint; (B) All goods, imported for use in, or supply to, a unit for manufacture of news print	Nil	2.5

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
22	4811 90 91	Grape guard paper, namely, paper of a type generally used for the packing of grapes and which consists of two sheets of treated white paper pressed together with thin rectangular pouches containing sodium meta-bi-sulphite, with kraft paper pasted thereto or a single paper coated with sodium meta-bi-sulphite, and which is used for the purpose of preventing fungal decay and thus helps prolonged storage in fresh condition, imported for use in the packing of grapes	5	10
23	5208 39	Other Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200g/sq. m.	10	10 or INR 150 per kg., whichever is higher
24	5208 42	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200g/sq. m., plain weave, weighing more than 100g/sq. m.	10 or INR 37 per sq. mtr., whichever is higher	10 or INR 22 per sq. mtr., whichever is higher
25	5209 49	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200g/sq. m., other fabrics of yarns of different colours	10	10 or INR 150 per kg., whichever is higher
26	5210 39	Woven fabrics of cotton, containing less than 85% by weight of cotton, weighing not more than 200g/sq. m., other dyed fabrics	10	10 or INR 150 per kg., whichever is higher
27	5211 31, 5211 32 or 5211 39	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200g/sq. m., dyed plain weave, dyed 3-thread or 4-thread twill, including cross-twill, other dyed fabrics	10	10 or INR 150 per kg., whichever is higher
28	5513 23 00	Other Woven fabrics of polyester staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/sq. m., dyed	20 or INR 25 per sq. mtr., whichever is higher	20 or INR 125 per kg. or INR 25 per sq. mtr., whichever is highest
29	5513 39 00	Other Woven fabrics of polyester staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight not exceeding 170 g/sq. m., other woven fabrics of yarns of different colours	20] or INR 30 per sq. mtr., whichever is higher	20 or INR 125 per kg. or INR 30 per sq. mtr., whichever is highest
30	6101, 6102 or 6103	Men's and women's overcoats etc.	10-20 or INR 425-595 per piece, whichever is higher	20

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
31	6104 19	Women's suits, ensembles etc.	20 or INR 460 per piece, whichever is higher	20
32	6814 90 90	Mica glass tape for use in manufacture of insulated wires and cables falling under heading 8544	7.5	10
33	7102 21 or 7102 31 00	Simply Sawn Natural Diamonds imported under Kimberley Process Certification Scheme	10	Nil
34	71	Cut and polished diamonds	7.5	5
35	71 (except 7104 99 00)	Cut and Polished Natural Gemstones	7.5	5
36	7117	Imitation Jewellery	20	20 or INR 400/kg whichever is higher
37	7325 10 00	S. G Ingot Castings for use in manufacture of plastic processing machineries	10	7.5
38	74 or 76	Copper/Aluminium based Copper clad laminate for use in manufacture of CB/MCPCB	5 / 7.5	Nil
39	84	Cost of exchange of bushing	10	7.5
40	8414 90 11	C-block compressors and crankshafts used in manufacture of refrigerator compressors	5	7.5
41	8419	X-ray machines for medical, surgical, dental or veterinary use	10	5
42	8477 90 00 & 8483 40 00	Linear motion guides and ball screws for use in the manufacture of plastic processing machineries	7.5	5
43	8544 42	Electric conductors for a voltage not exceeding 1,000V, other than USB cables for cellular mobile phones and wrist wearable devices	10	NIL
44	Any Chapter	Camera lens for use in manufacture of camera module of cellular mobile phone	15	2.5
45	32, 39 and 85	Specified parts of transformers for use in manufacture of chargers or adapters	44849	5 (Up to March 31, 2024)
46	39, 73, 85 and others	Parts for manufacture of wearable devices	Nil / 10 / 15 / 20 / as per CTH	Rate increase as per Phased Manufacturing Program
47	8517 79 10 8517 79 90	Printed Circuit Board Assembly for use in manufacture of wrist wearable devices and parts of wrist wearable devices	Nil	Rate increase as per Phased Manufacturing Program
48	8518 21 00 8518 22 00 8518 29 00 8518 30 00	All goods (hearable devices)	15	20 (With effect from April 1, 2022)

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
49	73, 74, 85 and others	Identified parts for manufacture of hearable devices	10 / 15 / as per CTH	Rate increase as per Phased Manufacturing Program
50	39, 74, 75, 76	Aluminium or copper-based copper clad laminates for use in manufacture of Printed Circuit Board or Metal Core Printed Circuit Board	5	Nil
51	8541 42 00	Photo voltaic cells, not assembled in modules or made up into panels	Nil	25 (With effect from April 1, 2022)
52	8541 43 00	Photo voltaic cells, assembled in modules or made up into panels	NIL	40 (With effect from April 1, 2022)
53	84 and 85	Goods required for paging service and their parts falling under any chapter	NIL	Rates as per CTH
54	84 and 85	Specified goods required for public mobile radio trunked service and their parts falling under any chapter	NIL	Rates as per CTH
55	84, 85 or 90	Specified goods for use of agro-chemical sector units	NIL	Rates as per CTH
56	8536 20 90 8539 49 00	Overload protector and positive thermal coefficient, for use in manufacture of refrigerator compressors	5	10
57	8523	Recorded magnetic tapes and floppy diskettes, imported by the University Grants Commission for use in Computers	NIL	10
58	Any Chapter	Artificial kidney	NIL	As per CTH
59	84 or 90	Disposable sterilized dialyzer and micro-barrier of artificial kidney	NIL	As per CTH
60	Any Chapter	Raw materials, parts or accessories for use in manufacture of on artificial kidney and disposable sterilized dialyzer and micro barrier of artificial kidney	NIL	As per CTH
61	90	X-ray machines for medical, surgical, dental or veterinary use	5	10 (with effect from April 1, 2022)
62	9022 14 20 9022 14 90	X-ray machines for medical, surgical, dental or veterinary use	7.5	10 (with effect from April 1, 2022)
63	9028 30 10	Smart meters	15	25 (with effect from April 1, 2022)

Sr No	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
64	85 and 90	Inputs or parts or sub-parts for manufacture of electric and smart meters	NIL / 7.5 / 10 / 15 / as per CTH	Rate increase as per Phased Manufacturing Program
65	95 or any other Chapter	Synthetic tracks and artificial surfaces and equipments required for their installation	Nil	Applicable BCD as per CTH
66	9506 or any other Chapter	Goods for laying synthetic tracks and artificial surfaces	Nil	Applicable BCD as per CTH
67	95	Requisites for games and sports	Nil	20/60 as the case may be
68	9801	Project imports (Refer Note – 3)	10	7.5

Notes:

- 39 items have been removed from List 4 of Entry 167 which provides for exemption on lifesaving drugs/medicines including their salts and esters and diagnostic test kits
 - This entry and associated List 3 in Notification No 50/2017 – Customs is being rationalized. Further, items falling under Chapter 38 has been moved from List 4 to List 3 and consequently, Chapter 38 has been added alongside Chapter 28, 29 and 30.
 - Effective BCD rate would continue to be 'Nil / 2.5% / 5% (as applicable)' till September 30, 2023 for the projects registered till September 30, 2022. For projects registered after September 30, 2022, BCD rate of 7.5% will be applicable. All project imports will attract BCD rate of 7.5% after September 30, 2023.
- Concessional rate of BCD for specified products falling under Notification No 50/2017 - Customs to be discontinued with effect from April 1, 2022. List of such key products are outlined below:

CTH	Particulars
84 or any Chapter	<ul style="list-style-type: none"> Machinery or equipment for effluent treatment plant for handloom sector or handicraft sector Goods specified in List 10 required for use in high voltage power transmission project 1. Concessional BCD rate to be withdrawn for 13 items [List 10 in the notification] that includes Transformers, Reactor, Circuit Breaker etc. All goods, for renovation or modernization of a power generation plant (other than captive power generation plant) All goods, imported by a manufacturer-supplier for the manufacture and supply of machinery and equipment to a power generation plant (other than captive power generation plant) Goods specified in List 13 of the Notification required for setting up crude petroleum refinery, including utility systems, water treatment systems, air handling systems, boilers etc. Kits and its parts required for the conversion of motor- spirit or diesel driven vehicles into Compressed Natural Gas driven or Propane driven or Liquefied Petroleum Gas driven vehicles

- Concessional rate of BCD for specified products falling under Notification No 50/2017 – Customs to be discontinued with effect from April 1, 2023. List of such key products are outlined below:

SI No	CTH	Particulars
1	26	Gold ores and concentrates for use in the manufacture of gold
2	27	The following bunker fuels for use in ships or vessels, namely:- (i) IFO 180 CST (ii) IFO 380 CST (iii) Very Low Sulphur Fuel Oil (VLSFO) meeting ISO 8217:2017 RMG380 Viscosity in 220-400 CST standards/Marine Fuel 0.5% (FO)]
3	2710 or 2714 90	All goods, for the manufacture of Fertilizers
4	2711	Liquefied petroleum gases (LPG), in excess of the quantity of petroleum gases and other gaseous hydrocarbons consumed in the manufacture of polyisobutylene by the unit located in Domestic Tariff Area (DTA), received from the unit located in Special Economic Zone (SEZ) and returned by the DTA unit to the SEZ unit from where such Liquefied petroleum gases (LPG) were received.
5	2716 00 00	Electrical energy supplied to DTA by power plants of 1,000 MW or above, and granted formal approval for setting up in SEZ prior to the July 19., 2012
6	2716 00 00	Electrical energy supplied to DTA from power plants of less than 1,000 MW, and granted formal approval for setting up in SEZ prior to the July 19., 2012- (a) imported coal as fuel (b) domestic coal as fuel` (c) mix of domestic gas/RLNG as fuel (d) RLNG as fuel
7	28, 29, 32, 39, 54, 56, 70, 72 or 90	The following goods, namely:- (A) Goods specified in List 5, for the manufacture of telecommunication grade optical fibres or optical fibre cables (B) Fibre reinforced plastic rods (FRP),for the manufacture of telecommunication grade optical fibres or optical fibre cables (C) Goods specified in List 6 for manufacture of telecommunication grade FRP
8	2844	Medical use fission Molybdenum-99 (Mo-99) for use in the manufacture of radio pharmaceuticals
9	2852 or 3822	Pharmaceutical Reference Standard
10	2914 61 00, 2914 69 90	Anthraquinone or 2-Ethyl Anthraquinone, for use in manufacture of Hydrogen Peroxide
11	30 or any other Chapter	Drugs and materials
12	3208, 3815, 3901, or 3920	The following goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules, namely:- (i) EVA resin (ii) EVA masterbatch (iii) Poly ethylene terephthalate (PET) film (iv) Poly vinyl fluoride (PVF) (v) Poly vinyl di-fluoride (PVDF) (vi) Adhesive resin (vii) Adhesive hardner

SI No	CTH	Particulars
13	32099090	Organic / inorganic coating material for manufacture of electrical steel
14	3824 99 00, 8505 11 90]	The following goods for use in the manufacture of Brushless Direct Current (BLDC) motors, namely:- (i) Magnet Resin (Strontium Ferrite compound/before formed, before magnetization); (ii) Neodymium Magnet (before Magnetization)
15	3815 90 00	Catalyst for use in the manufacture of cast components of Wind Operated Electricity Generator
16	3909 40 90	Resin for use in the manufacture of cast components of Wind Operated Electricity Generator
17	39 or any chapter	Security fibre, security threads, [Paper Based Taggant, including M-feature,] for use in the manufacture of security paper by Security Paper Mill, Hoshangabad and Bank Note Paper Mill India Private Limited, Mysore.
18	39 or any Chapter	Raw materials for use in manufacture of security fibre and security threads for supply to Security Paper Mill, Hoshangabad and Bank Note Paper Mill India Private Limited, Mysore for use in manufacture of security paper.
19	3920 10 99	Calendared plastic sheet for use in manufacturing of Smart Card falling under heading 8523
20	68, 82 or 84	Moulds (including chassis for the manufacture of semi-conductor devices), tools (excluding tungsten carbide micro PCB drills) and dies, for the manufacture of parts of electronic components or electronic equipments
21	68, 72 or 85	The following goods, namely:- (1) Graphite Felt or graphite pack for growing silicon ingots; (2) Thin steel wire used in wire saw for slicing of silicon wafers
22	70	Toughened glass with low iron content and transmissivity of minimum 91% and above, for use in solar thermal collectors or heaters
23	70	Solar tempered glass or solar tempered (anti-reflective coated) glass for use in manufacture of solar cells/panels/modules
24	70	Preform of silica for use in the manufacture of telecommunication grade optical fibres or optical fibre cables.
25	71	Foreign currency coins when imported into India by a Scheduled Bank
26	7225	The following goods, namely: - (i) hot rolled coils; (ii) cold-rolled Magnesium Oxide (MgO) coated and annealed steel; (iii) hot rolled annealed and pickled coils; (iv) cold rolled full hard, (v) for the manufacture of cold rolled grain oriented steel (CRGO) steel falling under tariff item 7225 11 00
27	7325	Metal parts for use in the manufacture of electrical insulators falling under heading 8546
28	73	Pipes and tubes for use in manufacture of boilers
29	7326 90 99	Forged steel rings for manufacture of special bearings for use in wind operated electricity generators
30	7408	Flat copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacture of solar photovoltaic cells or modules

SI No	CTH	Particulars
31	84, 85 or 90	(i) Goods specified in List 16, other than those falling under tariff items 8517 61 00, 8517 62 90, 8517 69 90, required for basic telephone service, cellular mobile telephone service, internet service or closed users's group 64 KBPS domestic data network via INSAT satellite system service (ii) Parts, for manufacture of the goods at (i)
32	84, 85 or 90	The following goods, imported by an accredited press cameraman:- (i) Photographic cameras; (ii) cinematographic cameras; (iii) digital cameras; and (iv) lenses, filters, flash light apparatus and exposure meters required for use with the aforesaid cameras
33	Any Chapter	All parts for use in the manufacture of LED lights or fixtures including LED Lamps
34	Any Chapter	All inputs for use in the manufacture of LED (Light Emitting Diode) driver or MCPCB (Metal Core Printed Circuit Board) for LED lights and fixtures or LED Lamps
35	84 or any other Chapter	Goods such as Machinery for garment sector, Machinery for manufacture of technical textiles, woollen machinery items, Machinery for manufacture of non-wovens textiles, Machinery for manufacture of denim fabrics, Machinery for use with shuttleless looms etc. as specified in List 12 to the notification No. 50/2017-Customs, and parts for their manufacture for use in textiles industry
36	84 or any other Chapter	Machinery for use in the silk textile industry
37	84 or any other Chapter	High Voltage DC Divider and CT, High Voltage DC Reactor, High TRV Circuit Breaker for High Voltage DC application, Optical Current Transformer etc
38	84 or any other Chapter	Parts of wind operated electricity generators including special bearings, gear box, yaw components, wind turbine controllers etc. and parts thereof and parts of blades, raw materials of blades etc
39	84 or any other Chapter	Permanent magnets for manufacture of PM synchronous generators above 500KW for use in wind operated electricity generators
40	84 or any other Chapter	Parts and raw materials for manufacture of goods to be supplied in connection with the purposes of off- shore oil exploration or exploitation
41	84 or any other Chapter	All types of Refinery Process Units, All types of Hydrogen Generation, Recovery and Purification Plants, All types of Process Subsystems, All types of Effluent Solids/Liquids/Gaseous Processing etc
42	85 or any other Chapter	Goods specified in List 28 of the Notification
43	85 or any other Chapter	The wireless apparatus, accessories and parts specified in List 29 of the Notification, imported by a licensed amateur radio operator
44	8507	Batteries for electrically operated vehicles, including two and three wheeled electric motor vehicles. Explanation: For the purposes of this entry, "electrically operated vehicles" means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include electric motor assisted cycle rickshaw driven by rechargeable solar batteries, also known as 'soleckshaw'.
45	8504	Active Energy Controller (AEC) for use in manufacture of Renewable Power System (RPS) inverters

SI No	CTH	Particulars
46	85 or any other Chapter	(a) Parts, components and accessories for use in manufacture of reception apparatus for television but not designed to incorporate a video display falling under tariff item 8528 71 00, other than the following items, namely: - (i) populated printed circuit boards (ii) charger or power adapter (b) Sub-parts for use in manufacture of items covered in (a) above
47	85 or any other Chapter	(a) Parts, components and accessories for manufacture of CCTV Camera/IP camera falling under 8525 81 to 8525 89, other than the following items, namely: - (i) populated printed circuit boards (ii) charger or power adapter (b) sub-parts for use in manufacture of items mentioned at (a) above
48	85 or any other Chapter	(a) Parts, components and accessories except Lithium-ion cell and Printed Circuit Board Assembly (PCBA), for use in manufacture of Lithium-ion battery and battery pack; (b) Sub-parts for use in manufacture of items mentioned at (a) above
49	Any Chapter	Inputs, parts or sub-parts for use in the manufacturing of Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90) of Lithium-ion battery and battery pack
50	8529	The following goods for use in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels of heading 8524, namely:- (ii) Plate diffuser (iii) Film diffuser (iv) Reflector sheet (v) Film, top (vi) Film, middle (vii) Film, bottom (viii) BAR, LED (ix) Bezzal (x) Back cover sheet (xi) Black Light Unit Module
51	88 or any other Chapter	Parts of gliders or simulators of aircrafts (excluding rubber tyres and tubes of gliders)
52	88 or any Other Chapter	Raw materials – (a) for manufacture of aircraft falling under heading 8802 or 8806 (except Unmanned Aircraft used as Television camera, digital camera or video camera recorder) (b) for manufacture of parts of aircraft at (a)
53	Any Chapter	Components or parts, including engines, of aircraft of heading 8802 or 8806 (except Unmanned Aircraft used as Television camera, digital camera or video camera recorder) – (a) for manufacture of aircraft falling under heading 8802 (b) for manufacture of parts of aircraft at (a), imported by Public Sector Units under the Ministry of Defence

SI No	CTH	Particulars
54	88 or any other Chapter	Parts, testing equipment, tools and tool-kits for maintenance, repair, and overhauling of (i) aircraft falling under heading 8802 or 8806 (except Unmanned Aircraft used as Television camera, digital camera or video camera recorder) or (ii) components or parts, including engine, of aircrafts of heading 8802 by the units engaged in such activities.
55	8807	Components or parts, including engines, of aircraft of heading 8802
56	8802 (except 8802 60 00)	All goods
57	8802 (except 8802 60 00)	All goods
58	8802 (except 8802 60 00)	All goods
59	Any Chapter	Parts (other than rubber tubes), of aircraft of heading 8802
60	Any Chapter	Parts (other than rubber tubes), of aircraft of heading 8802
61	89 or any other Chapter	Capital goods and spares thereof, raw materials, parts, material handling equipment and consumables, for repairs of ocean-going vessels by a ship repair unit. Explanation: For the purpose of this entry, "Ocean going vessels" includes- (a) liners; cargo-vessel of various kinds including refrigerator vessels for the transport of meat, fruit or the like, vessels specified for the transport of particular goods (grain, coal, ores or the like); tankers (petrol, wine or the like); yachts and other sailing vessels; cable ships; ice-breakers; floating factories of all kinds (for processing whales, preserving fish or the like) whale catchers; trawlers and other fishing vessels; life boats, scientific research vessels; weather ships; vessels for the transportation or mooring of buoys; pilot-boats; hopper barges for the disposal of dredged material or the like (b) war ships of all kinds including submarines (c) tugs, dredgers, fire-floats and salvage ships (d) oil rigs, drilling ships and jack-up rigs
62	89 or any Chapter	Spare parts and consumables for repairs of ocean going vessels registered in India
63	90 or any other Chapter	Hospital Equipment (equipment, apparatus and appliances, including spare parts and accessories thereof, but excluding consumable items) for use in specified hospitals
64	90 or any other Chapter	Lifesaving medical equipment including accessories or spare parts or both of such equipment for personal use
65	Any Chapter	Raw materials, parts or accessories for the manufacture of Cochlear Implants

- Concessional rate of BCD for specified products falling under Notification No 50/2017- Customs to be discontinued with effect from April 1, 2024. List of such key products are outlined below:

SI No	CTH	Particulars
1	3902	Capacitor grades polypropylene granules or resins for the manufacture of capacitor grade plastic film

2	47	Pulp of wood or of other fibrous cellulosic material (excluding rayon grade wood pulp) when used for the manufacture of the following, namely :- (i) newsprint (ii) paper and paperboard (iii) adult diapers (iv) all goods falling under chapter heading 9619, other than adult diapers.
3	4707	(i) All goods imported for use in, or supply to, a unit for manufacture of paper or paperboard other than newsprint (ii) All goods, imported for use in, or supply to, a unit for manufacture of news print
4	48	The following goods used in the printing of newspapers, namely: - (i) newsprint (ii) other uncoated paper conforming to the specifications of newsprint (other than its surface roughness)
5	71	Gold dore bar, having gold content not exceeding 95%
6	71	Silver dore bar having silver content not exceeding 95%
7	71or 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
8	71 or 98	Silver, in any form including ornaments, but excluding ornaments studded with stones or pearls, imported by the eligible passenger
9	84, 85 or 90	Machinery, electrical equipment, other instruments and their parts except populated Printed Circuit Boards for use in fabrication of semiconductor wafer and Liquid Crystal Display (LCD)
10	84, 85 or 90	Machinery, electrical equipment, other instruments and their parts except populated Printed Circuit Boards for use in assembly, testing, marking and packaging of semiconductor chips
11	8431	Parts and components for manufacture of tunnel boring machines
12	8419	Evacuated tubes with three layers of solar selective coating for use in the manufacture of solar water heater and system
13	9503	Parts of electronic toys for manufacture of electronic toys.

Key Changes in other duties of customs, surcharge and cesses

- Exemption from SWS is withdrawn for certain specified textile products, whose composite tariff is replaced with ad-valorem tariff.
- SWS exemption is extended to certain goods such as pine nuts, olive oils, etc.
- The effective rate of Health Cess on needles for suture, falling under HSN 9018 32 10, is reduced from 5% to Nil.
- To comply with International Agreements, exemption of cesses has been provided with respect to import under below notifications:

Sr. No.	Notification no.	AIDC Exemption	Health Cess Exemption	RIC Exemption
1	Notification No. 104/2010-Customs dated October 1, 2010 – Exemption on import of specified goods from Nepal	✓		
2	Notification No. 38/96-Customs dated July 23, 1996 – Exemption on import of goods from Bhutan and Nepal	✓	✓	✓
3	Notification No. 40/2017 – Customs dated June 30, 2017 - Exemption on import of goods from Bhutan, Bangladesh and China	✓	✓	✓
4	Notification No. 60/2011-Customs dated July 14, 2011 – Exemption on import of specified goods imported from Bangladesh	✓		
5	Notification No. 148/94-Customs dated July 13, 1994 – Exemption to specified free gifts, donations, relief and rehabilitation material imported by charitable organizations Red Cross Society and CARE and Government of India	✓	✓	✓

EXCISE TARIFF CHANGES

- Fourth schedule to the Central Excise Act, 1944 is proposed to be amended with effect from the date on which Finance Bill 2022, receives assent of the President

Sr. No.	Tariff Item	Description of Goods	Unit.	Rate of duty
1	2710 12 39	---- Solvent 145/205	Kg.	---
		--- Motor Gasoline conforming to standard IS 2796, IS 17021, IS 17586 or IS 17076:		
2	2710 12 41	----Motor Gasoline conforming to standard IS 2796	Kg.	14% + INR 15 per litre
3	2710 12 42	---- E 20 Fuel conforming to standard IS 17021	Kg.	14% + INR 15 per litre
4	2710 12 43	---- E 12 Fuel conforming to standard IS 17586	Kg.	14% + INR 15 per litre
5	2710 12 44	---- E 15 Fuel conforming to standard IS 17586	Kg.	14% + INR 15 per litre
6	2710 12 49	---- M 15 Fuel conforming to standard IS 17076	Kg.	14% + INR 15 per litre

- Notification No. 1/ 2022- Central Excise dated February 1, 2022 has been issued to amend Notification No. 11/2017 – Central Excise dated June 30, 2017 which would be effective from October 1, 2022:

Sl. No.	Tariff Item	Description of Goods	Rate of duty
2A	2710	Motor spirit commonly known as petrol which is intended for retail sale, not so blended with ethanol or methanol as conforming to Bureau of Indian Standards specifications from time to time for blended motor spirit- (i) without a brand name; (ii) with a brand name.	INR 3.40 per litre INR 4.60 per litre
3A	2710 1930	High speed diesel (HSD) intended for retail sale, not so blended with alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels as conforming to Bureau of Indian Standards specifications from time to time for blended diesel – (i) without a brand name; (ii) with a brand name.	INR 3.80 per litre INR 6.20 per litre

- Amendment to Schedule VII of Finance Act, 2001 (NCCD Schedule) – effective from the date on which Finance Bill 2022, receives assent of the President
For tariff item 2709 20 00 and the entries relating thereto, the following tariff item and entries relating thereto are proposed to be substituted:

Tariff item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2709 00 10	Petroleum crude	kg	Rs. 50 per tonne

INTERNATIONAL TRADE

CHANGE IN TARIFF RATES OF GOODS AND TRADE IMPLICATIONS

Sr. No.	Name of the Product	Change in the Basic Customs Duty rate	Other Trade Measures and Implications
1	Acetic Acid	7.5% to 5%	The basic customs duties on Acetic Acid have been reduced with the aim of eliminating / reducing tariffs on feedstock / intermediate products to enhance the domestic value addition. However, Acetic Acid is subject to other non-tariff barriers, namely mandatory registration before the Bureau of Indian Standards (BIS). Pursuant to the Acetic Acid (Quality Control), 2019, dated August 5, 2019, the exporter is mandatorily required to have a valid certificate from the BIS in order to export the product into India. The said quality control order is set to come into force from August 3, 2022.
2	Methyl alcohol (methanol)	5% to 2.5%	The basic customs duties on Acetic Acid have been reduced with the aim of eliminating / reducing tariffs on feedstock / intermediate products to enhance the domestic value addition. However, Methanol is subject to other non-tariff barriers, namely mandatory registration before the BIS. Pursuant to the Methanol (Quality Control), 2019, dated August 5, 2019, the exporter is mandatorily required to have a valid certificate from the BIS in order to export the product into India. The said quality control order is set to come into force from August 3, 2022.
3	Solar Cells (other than those exclusively used with ITA-1 items) <i>(Effective BCD rate on these goods would continue to be 'Nil' till 31.03.2022.)</i>	Nil to 25%	An Anti-dumping Duty investigation is currently underway on imports of Solar Cells and Modules from China, Thailand and Vietnam before the DGTR. The outcome of the anti-dumping investigation is yet to be finalized. The increase in the tariffs and the additional anti-dumping duties (if any) would likely substantially increase the cost of solar power developers unless the Ministry of Finance weighs upon the public interest.
4	Solar Modules (other than those exclusively used with ITA-1 items) <i>(Effective BCD rate on these goods would continue to be 'Nil' till 31.03.2022.)</i>	Nil to 40%	

ELP COMMENTS:

The user industry is likely to benefit from the reduction and/or rationalization of tariff concessions. However, with the increase in import volumes coupled with unfair prices could invite trade remedial actions being taken by the Indian industry. It is important to note that several of the products are presently or in the past been subjected to trade remedial actions, such as anti-dumping and countervailing duties.

Reduction of the customs tariffs on MFN basis and extending the concessions on imports of the products may effectively narrow the benefits of concessional duties provided under trade agreements, specifically with countries such as ASEAN countries, Japan, Korea in so far they are covered within the concessional list.

REVOCATION OF AD AND CVD DUTY ON STEEL PRODUCTS

AD Duty on the following products of steel is being revoked with effect from February 01, 2022:

Sr. No.	CTH	Description of Goods	Exporting/Originating Country
1.	7228	Straight Length Bars and Rods of Alloy Steel	China PR
2.	7210, 7212, 7225 and 7226	Flat Rolled Products of Steel (Aluminum or Zinc Coated)	China PR, Vietnam, and Korea PR
3.	7228 10 10 or 7228 10 90	High-Speed Steel of Non-Cobalt Grade	China PR, Brazil, and Germany

CVD Duty on the following products of steel is being revoked with effect from February 01, 2022:

Sr. No.	CTH	Description of Goods	Exporting/Originating Country
1.	7219 or 7220	Hot rolled and cold rolled stainless steel flat products	China PR

ELP COMMENTS:

The AD and CVD duties imposed on the products for steel have been revoked in consideration of the larger public interest and the high prices prevailing in the metals sector. This is in line with the MoF's approach in recent trade remedial cases, wherein it has decided not to levy any duty in various other investigations concerning steel products despite a duty being recommended by the DGTR, presumably on the grounds of the public interest.

Many of these recent non-levies have been in the steel and chemicals sector, a theme consistent with the above revocations. The revocation now leaves only a handful of steel products that still have anti-dumping or countervailing duties levied on them, such as Flat Base Steel Wheels, Welded Stainless Steel Pipes and Tubes etc.

CORPORATE LAWS

EASE OF DOING BUSINESS

Next phase of ease of doing business

Government proposes to launch 'Ease of Doing Business 2.0' and 'Ease of Living' in next phase of 'Ease of Doing Business'. As per the proposal, new phase would be guided by the active involvement of the States, digitization of manual processes and interventions, integration of the central and state-level systems through IT bridges, single-point access for all citizen-centric services. Emphasis towards standardization and removal of overlapping compliances, crowdsourcing of suggestions and ground-level assessment of the impact with the active involvement of citizens and businesses would also be encouraged.

ELP COMMENTS: In line with its vision to lay the foundation and give a blueprint to steer the economy over the 'AmritKaal', the Government, combined with its strong commitment and philosophy of minimum *intervention vis-à-vis* governance initiatives, looks at the next phase of ease of doing business through the launch of 'Ease of Doing Business 2.0' and 'Ease of Living' to improve productive efficiency of capital and human resources.

In the context of corporate compliances, the MCA, in late 2016 and again in early 2020, took up a radical new initiative in ease of doing business, such as decriminalization, fresh start schemes, launch of SPICE portal for incorporation of companies, launch of new MCA portal. In furtherance of this, the MCA has on February 1, 2022 announced that it will be launching a new way of e-filing for LLP on MCA portal, and all LLP filings going forward will be web based. The said application is proposed to be launched on March 6, 2022 at 12:00 AM. This shows the commitment of the Government to enhance digital processing of documents and ease of compliances.

The Government's proposal appears to be another positive and significant step towards transforming the way business is conducted in India and encouraging business friendly environment.

Accelerate corporate exits

The Government proposes to accelerate corporate exits by reducing the timeline to 6 months from the current 2 years with the establishment of C-PACE with process re-engineering.

ELP COMMENTS:

Currently, the winding-up/liquidation of companies take considerable amount of time, and which is not aligned with the speedy incorporation process of companies. To provide relief to entities seeking voluntary winding-up of business, the Government aims at driving accelerated corporate exits through the establishment of C-PACE. Such reduction in timelines is a welcome move and thereby will boost India's position as an attractive destination for investments. With the introduction of an IT based system in this regard, companies and shareholders may see and benefit from significantly reduced timelines and costs associated with winding-up.

Removal of regulatory hurdles faced by PE/VC Funds

The Government proposes to set up an expert committee to evaluate the private equity/venture capital ecosystem and to holistically examine the pertinent regulatory aspects and other frictions and suggest appropriate measures to scale up investment.

ELP COMMENTS:

Looking to ride on the momentum following a record breaking high of 2021 with investments by private equity and venture capital in Indian entities, the Government contemplates forming an expert panel to encourage and scale venture capital and private equity investments. The Government, recognizing the lucrative potential of this fast-growing ecosystem, appears to address the regulatory hurdles and other friction faced by the fund industry.

Expansion of green clearances through 'parivesh'

In 2018, a single window portal, PARIVESH, was launched by the Government for all green clearances. The Government proposes to expand the scope of PARIVESH, to unify all four green clearances - environment, forest, wildlife and CRZ clearances - into one single form and enabling the tracking of the process of such applications through Centralized Processing Centre-Green.

ELP COMMENTS:

'PARIVESH' is a web-based, role-based workflow app developed for online submission and monitoring of proposals submitted by the proponents for seeking environment, forest, wildlife and coastal regulation zone clearances from central, state and district-level authorities.

It automates the entire tracking of proposals which includes online submission of a new proposal, editing/updating the details of proposals and displaying status of proposal at each stage of the workflow.

This proposed initiative will certainly help companies in reducing the timelines *vis-à-vis* green clearances to projects, thus accelerating the growth of industries in India.

BOOST TO START-UP ECOSYSTEM**Startups to enhance farm produce value chain**

The Government has proposed that a fund with blended capital raised under co-investment model will be facilitated through NABARD to finance startups for agriculture and rural enterprise relevant to farm produce value chain. The activities for these startups will *inter alia* include support for FPOs, machinery for farmers on rental basis at farm level, and technology including IT-based support.

ELP COMMENTS:

In an important boost to India's growing start-up ecosystem, the Hon'ble Prime Minister, Mr. Narendra Modi, on January 15, 2022 had declared January 16 as National Start-up Day. The Prime Minister also mentioned that start-ups are going to be the backbone of new India.

Agriculture is one of the most important industries in the Indian economy, and the aforementioned proposal will give a push to agriculture start-ups and will therefore attract capital in the rural sector and ensure scientific upgrades in the farm produce value chain.

Facilitating Startups to promote "drone shakti"

It is proposed that startups will be promoted to facilitate "Drone Shakti" through varied applications and for DrAAS. Further, the Government stated that in select ITIs, in all states, the required courses for skilling, will be started.

ELP COMMENTS:

The Government is significantly strengthening the drone industry by first liberalizing the Drone Rule, 2021 and now announcing the “Drone Shakti” scheme. Recently, 1,000 ‘Make in India’ drones graced the sky on annual Beating Retreat ceremony, showcasing India’s attention towards utilising drones as a tool in efficient ways. The “Drone Shakti” scheme will help increase domestic manufacturing and create employment.

Defence R&D to be opened up for startups

The Government has proposed that 68% of the capital procurement budget will be earmarked for domestic industry in 2022-23, up from 58% in 2021-22. Further, the defense research and development will be opened up for startups, industry and academia with 25% of defense research and development budget. Along with this, private industry will be encouraged to take up the design and development of military platforms and equipment in collaboration with DRDO and other organizations through SPV model. Further, an independent nodal umbrella body will be set up for meeting wide ranging testing and certification requirements.

ELP COMMENTS:

The aforementioned proposal is a big push for defense manufacturing and defence R&D in India. This will ensure that investments are sustained, and that new capacity is created. The establishment of a nodal entity for establishing testing and certification requirements for defence systems and platforms will benefit domestic industry by allowing for more efficient processes and cost efficiency.

ESG RELATED PROPOSALS**ESG Ecosystem: Proposals to accelerate sustainable development in India**

In the context of ESG factors, the Government has proposed the following:

- **Green Bonds:** Issuance of sovereign green bonds for mobilizing resources for green infrastructure, the proceeds of which will be deployed in public sector projects which help in reducing the carbon intensity of the economy.
- **Sunrise opportunities:** Development of sectors like artificial intelligence, geospatial systems and drones, semiconductor and its eco-system, space economy, genomics and pharmaceuticals, green energy, and clean mobility systems which have abundant potential to assist sustainable development of India at a large scale and provide employment opportunities. Supportive policies, light-touch regulations, facilitative actions to build domestic capacities, and promotion of research & development will guide the Government’s approach. For R&D in these sunrise opportunities, in addition to efforts of collaboration among academia, industry and public institutions, Government contribution will be provided. For encouraging important sunrise sectors such as Climate Action, Deep-Tech, Digital Economy, Pharma and Agri-Tech, the Government will promote thematic funds for blended finance with the Government share being limited to 20% and the funds being managed by private fund managers.
- **Energy transition and low carbon development strategy:** Several near-term and long-term actions for the development of low carbon strategy to combat the risks of climate change and reflect the Government’s commitment towards sustainable development.
- **Transition to a carbon neutral economy:** Certain measures to be taken towards a carbon neutral economy:
 - 5-7% biomass pellets will be co-fired in thermal power plants resulting in carbon dioxide savings. This will also provide extra income to farmers and job opportunities to locals and help avoid stubble burning in agriculture fields;
 - Energy Service Company business model for large commercial buildings to facilitate capacity building and awareness for energy audits, performance contracts, and common measurement & verification protocol;

- Four pilot projects for coal gasification and conversion of coal into chemicals required for the industry will be set-up to evolve technical and financial viability;
- Policies and required legislative changes to promote agro forestry and private forestry will be brought in. In addition, financial support will be provided to farmers belonging to Scheduled Castes and Scheduled Tribes, who want to take up agro-forestry.
- **Additional allocation to the solar power sector:** An additional allocation of INR 1,95,000 million for the manufacture of high efficiency modules to facilitate domestic manufacturing for the goal of 280 GW of installed solar capacity by 2030.
- **Transition to a Circular Economy:** In the process of transitioning to a circular economy, the Government has already published action plans for sectors like electronic waste, end-of-life vehicles, used oil waste, and toxic & hazardous industrial waste. Now, the focus will be on addressing issues of infrastructure, reverse logistics, technology upgradation and integration with informal sector, supported by active public policies covering regulations, extended producers' responsibilities framework and innovation facilitation.
- **Clean tech:** Use of public transport in urban areas will be promoted. This will be complemented by clean tech and governance solutions, special mobility zones with zero fossil-fuel policy, and EV vehicles.
- **Battery swapping:** A battery swapping policy will be brought out and inter-operability standards will be formulated. The private sector will be encouraged to develop sustainable and innovative business models for 'Battery or Energy as a Service'. This will improve efficiency in the EV eco-system.

ELP COMMENTS:

The past decade has seen a rising significance of ESG factors in the decision making process of investors. In 2011, MCA had released the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, which articulated nine core principles for companies to practice their businesses in a more sustainable fashion.

Further, SEBI, prescribed a BRSR format for reporting on inter alia ESG parameters by certain listed entities, to meet the increasing demand of investors and stakeholders to look beyond financials of the listed entity and towards the social and environmental impacts.

Recently, SEBI issued a consultation paper dated January 24, 2022, inviting public comments on recommendations on the need for regulations of ESG Rating Providers to decode the reliability, comparability and interpretability of the ESG Ratings and other related products.

Investors have been becoming increasingly aware of the financial implications of sustainability related risks and have started factoring in such risks in their investment decisions. This has led to increased investor interest and demand for ESG reporting, ESG ratings and ESG related products.

In this context, the Government's proposed initiatives towards a sustainable India will assist companies in their transition towards complying with ESG parameters and moving towards environmentally, socially and economically sustainable business activities, which will increase investments, domestic as well as foreign, thus boosting the Indian economy.

Further, the Government's proposal to promote thematic funds (in sectors such as climate action, deep-tech, digital economy, pharma and agri-tech) for blended finance with the Government share being limited to 20% and the funds being managed by private fund managers, will boost fund managers to utilize these opportunities and work together with Government to boost these sunrise sectors.

BANKING & FINANCE

EXTENSION OF ECLGS

The ECLGS was introduced by the Government of India in May, 2020 following the outbreak of the Covid-19 to provide relief to MSMEs. As per the scheme, 100% guarantee coverage is to be provided by NCGTC in relation to additional facilities granted by MLIs to eligible MSMEs and Business Enterprises. FM has now proposed to extend ECLGS till March, 2023 and further proposed to increase the cover of the scheme to INR 500,000 crores which will now include additional INR 50,000 crores for hospitality and related enterprises.

ELP COMMENTS:

Extension of ECLGS scheme and additional earmarked amounts for hospitality and related enterprises shall support in revival of the hospitality sector by providing additional liquidity by way of debt with zero risk weightage risks for MLIs. This is a welcome step and will support the hospitality sector which is one of the sectors which was hit hardest by the Covid-19 pandemic. Incentivizing MLIs to provide additional credit facility will help in growth of business and will make MSME and business enterprises more resilient.

ANYTIME-ANYWHERE POST OFFICE SAVINGS

In 2022, 100% of 150,000 post offices will come on the core banking system enabling financial inclusion and access to accounts through net banking, mobile banking, ATMs, and also provide online transfer of funds between post office accounts and bank accounts. This will be helpful, especially for farmers and senior citizens in rural areas, enabling interoperability and financial inclusion.

ELP COMMENTS:

There is still dearth of sufficient banking infrastructure and bank branches in rural areas, however, post offices have better penetration in rural areas. Bringing post office within the purview of core banking system will surely help rural population (especially farmers and senior citizens) in their day-to-day banking transactions and reduce dependency on cash payments and shall enable financial inclusion of larger population.

DIGITAL BANKING

It is proposed to set up 75 Digital Banking Units in 75 districts of the country by Scheduled Commercial Banks.

ELP COMMENTS:

This will strengthen the digital banking infrastructure and will consequently boost the government's move and endeavour towards digital economy. Further, this will reduce cost of branch as digital banking units require less staff as compared to normal branches but at the same time will help banks to mobilize more customers and deposits.

SURETY BOND AS A SUBSTITUTE FOR BANK GUARANTEE

To reduce indirect cost for suppliers and work-contractors, the use of surety bonds as a substitute for bank guarantee will be made acceptable in government procurements. Business such as gold imports may also find this useful. IRDAI has given the framework for issue of surety bonds by insurance companies vide the IRDAI (Surety Insurance Contracts) Guidelines, 2022 on January 03, 2022.

ELP COMMENTS:

Banks issue bank guarantee by setting up non-fund based limit against the customers. Such non-fund based limit are generally secured by cash margin (fixed deposit) created by borrower entity with the lender bank. At the same time, banks charge commission for issuance and renewal of bank guarantees - This significantly affects the liquidity of the customer/borrower entity. Further, bank guarantees have fixed tenor/validity period (generally 12 month) and are required to be renewed from time to time to match the tenor of the project, leading to operational difficulties. Insurance bonds will not require cash margin or collateral but only a premium will be charged for issuance of such bonds.

REVAMPING CGTMSE SCHEME

FM proposed to revamp the CGTMSE scheme by allocation of fresh funds. The revamping of the CGTMSE scheme will facilitate additional credit of INR 200,000 crore for MSME.

ELP COMMENTS:

Availability of additional funds under the CGTMSE sector will catalyse the flow of institutional credit to MSME sector and will provide much-needed boost to the MSME sector and encourage entrepreneurial culture in the country. This move coupled with other existing schemes such as the ZED certification scheme will further support the make in India movement and in upliftment of not so large businesses and enterprises in India which comprises major percentage of Indian economy.

DIGITAL MODES OF PAYMENT

For providing further encouragement and boost to digital transactions, FM has announced continuance of the financial support earmarked under previous budget towards schemes providing financial incentive to promote digital modes of payment.

ELP COMMENTS:

Encouraging digital payments will bring about a lot of opportunities for growth and innovation of fintech. It's a positive move towards enhancing ease of doing business in India. Further, digital payments are secure and provide a systematic and convenient mode of transactions and also support the Government in keeping a track of the transactions for keeping tax evasions in check thereby providing support to the economy.

CENTRAL BANK DIGITAL CURRENCY

With an intent to reduce the cost of currency management and provide boost to digital economy, FM announced the introduction of CBDC, which will be introduced by RBI as Digital Rupee, using blockchain and other technologies.

ELP COMMENTS:

Banks had earlier raised concerns on the introduction of CBDC, especially in the retail sector. Since CBDCs would be stored by RBI in digital format, like other digital currencies, it may lead to removal of banks as intermediaries between RBI and the depositors thereby having following impacts on the banking industry for a long term: 1. reduction in banks deposits, 2. disruption in debt market, 3. impact on lending rates, 4. reduction in credit creation, and 5. stress on interest margins of banks if CBDC impacts quantum of low-value transaction deposits.

Keeping these in mind, it will be interesting to note the process of launch and implementation of CBDC by RBI. Since it was being contemplated by RBI to launch specific purpose CBDCs in both wholesale and retail segments, one way may be to launch the wholesale CBDCs at the initial stage and ensure build-up of the requisite infrastructure for CBDCs in banks. Keeping the impact it may have on the Banks, RBI may also choose to keep pre-funded wallets with banks for storage of and dealing of CBDCs. It will be interesting to see how CBDCs are implemented in India, especially in retail segment.

In any case, it will definitely provide boost to fintech platforms and also improve tracking of money and transactions in long term. Further, it may be safe to say that the value of such regulated digital currency would be much stable as compared to other existing cryptocurrencies in international market.

Further, introduction of CBDCs coupled with taxation of 30% on the income from virtual digital asset and introduction of 1% TDS may be a signal from the Government that they are serious about promotion of CBDCs over the other digital or crypto currencies.

STRESSED ASSET RESOLUTION

AMENDMENT TO INSOLVENCY AND BANKRUPTCY CODE

Necessary amendments in the IBC will be carried out to enhance the efficacy of the resolution process and facilitate cross border insolvency resolution.

ACCELERATED CORPORATE EXIT

The Centre for Processing Accelerated Corporate Exit (**C-PACE**) with process re-engineering, will be established to facilitate and speed up the voluntary winding-up of these companies from the currently required 2 years to less than 6 months.

ELP COMMENTS:

The IBC is yet again likely to undergo other amendments as the same has been proposed in the budget for the year 2022-23. Some of the likely amendments are as follows:

- Cross border insolvency framework UNCITRAL Model Law on cross border insolvency resolution.
- Mandating banks and other financial institutions to rely on records that are available only with information utilities that are registered with the Insolvency and Bankruptcy Board of India to demonstrate the default of a Corporate Debtor, it is proposed that the information that is obtained from such information utilities shall be considered sufficient by the Adjudicating Authority for the commencement of the Corporate Resolution Insolvency Process.
- Streamlining the provisions relating to improper trading and avoidable transactions, by explicitly providing that proceedings against improper trading and avoidable transactions can continue even after approval of a resolution plan, by making changes to the look-back period, and by correcting various drafting discrepancies in the IBC.
- Providing a fixed time-period of thirty days to the Adjudicating Authority for approval or rejection of resolution plans, and
- Allowing for an out-of-court closure of a voluntary liquidation process prior to dissolution, in the same manner in which a voluntary liquidation process is commenced.

The proposed amendments have been considered in order meet the delays that have occurred in completion of the insolvency resolution process due to various external reasons. The amendments seem to have been proposed in the spirit of speedy resolution of the Companies declared insolvent as opposed to what is presently being followed under provisions of the IBC. Further, introduction of cross border insolvency on the lines of UNCITRAL Model Law on cross border insolvency resolution would certainly aid in dealing with the cross-border insolvency issues which were recently highlighted in the case of Jet Airways. This would also open up new avenues for co-operating and co-ordination between Indian stakeholders and their foreign counterparts, especially with the availability of an efficient framework. This would, however, solely be reliant on the Government taking into consideration all the issues that are likely to occur while conducting the cross-border insolvency process. Further, providing a fixed timeline of thirty days for the Adjudicating Authority to approve the resolution plan is definitely a relief for the speedy completion of the insolvency resolution process.

With respect to the proposal to facilitate and speed up the voluntary winding-up of companies is concerned, presently voluntary winding up (or as referred to voluntary liquidation under the IBC) is carried out under Section 59 of the IBC. However, the Government's proposal to reduce the timeline to less than 6 months would certainly prove to be a great relief to companies looking for a speedy voluntary winding-up. This can also boost the economy and quick incorporation and speedy exit will attract more investments and ease of doing business.

INFRASTRUCTURE

INTRODUCTION

- Infrastructure formed one of the central themes of this year's Union Budget.
- The Gati Shakti NMP stood out as one of the top four priorities outlined by the FM. The focus of the Gati Shakti NMP has been on providing an impetus for growth and ensuring sustainable development.
- While this Union Budget did not specifically focus on augmenting infrastructure investments, announcements were made regarding issuance of sovereign green bonds and proposed measures for enhancing financial viability of projects.
- Against the backdrop of the Prime Minister's commitments at the COP26 summit in Glasgow, several measures have also been announced to bolster India's measures towards energy transition and climate action.
- The FM also proposed changes to the Government's procurement policies, with the shift from bank guarantees to surety bonds being paramount.

PM GATISHAKTI NATIONAL MASTER PLAN

Background

In her speech, the FM emphasized on the importance of Gati Shakti NMP as a mode of transformative approach for economic growth and sustainable development.

- On October 21, 2021, the Cabinet Committee on Economic Affairs approved the Gati Shakti NMP.
- The approach is driven by seven engines, namely, roads, railways, airports, ports, mass transport, waterways, and logistics infrastructure.
- These engines are supported by the complementary roles of energy transmission, IT communication, bulk water & sewerage, and social infrastructure.
- The focus of Gati Shakti NMP will be on planning, financing including through innovative ways, use of technology, and speedier implementation.
- The projects pertaining to the seven engines in the National Infrastructure Pipeline will be aligned with Gati Shakti NMP framework.
- The touchstone of the Gati Shakti NMP will be world-class modern infrastructure and logistics synergy among different modes of movement – both of people and goods – and location of projects.
- It envisions integration of modes of connectivity with logistics infrastructure and industrial corridors.
- It incorporates several existing schemes such as Sagarmala, Bharatmala, inland waterways and UDAN.
- It aims to facilitate the last mile connectivity of infrastructure and reduce travel time for people. This will help raise productivity and accelerate economic growth and development.

Road Transport

- Gati Shakti NMP will be formulated for expressways in FY 2022-23.
- The aim of Gati Shakti NMP for expressways will be to facilitate faster movement of goods and people.
- The national highways network will be expanded by 25,000 km in FY 2022-23 and allocated an amount of INR 20,000 crore which will be mobilized through innovative ways of financing to complement the public resources.

Seamless Multimodal Movement of Goods and People

- The data exchange among all mode operators would be brought under a unified logistics interface platform, designed for application programming interface.
- The aforesaid platform will efficiently move goods through different modes, reduce logistics cost and time, assist just-in-time inventory management, and will eliminate tedious documentation.
- The platform would also aim to provide real time information to all stakeholders as well as improve international competitiveness and facilitate open-source mobility stack, in order to organize seamless travel of passengers.

Multimodal Logistics Parks

- Contracts for implementation of multimodal logistics parks at 4 locations through PPP mode are proposed to be awarded in FY 2022-23.

Railways

- The railways would develop new products and efficient logistics services for small farmers and SMEs along with taking the lead in integration of postal and railways networks to provide seamless solutions for movement of parcels.
- The concept 'One Station-One Product' will be popularized to help local businesses and supply chains.
- A 2,000 km network will be brought under Kavach, in FY 2022-23 as part of Atmanirbhar Bharat.
- 400 new-generation Vande Bharat Trains with better energy efficiency and passenger riding experience will be developed and manufactured as well as 100 PM Gati Shakti Cargo Terminals for multimodal logistics facilities will be developed.

Mass Urban Transport including Connectivity to Railways

- Innovative ways of financing and faster implementation would be encouraged for building metro systems of appropriate type at scale.
- Multimodal connectivity between mass urban transport and railway stations would be prioritized.
- Design of metro systems will be re-oriented and standardized as per Indian conditions and needs.

Parvatmala: National Ropeways Development Programme

- The National Ropeways Development Programme will be taken up on PPP as alternative to conventional roads in difficult hilly areas.
- Contracts for 8 ropeway projects for a length of 60 km are proposed to be awarded in FY 2022-23.
- The aim of the aforesaid programme is to improve connectivity and convenience for commuters, besides promoting tourism and also cover congested urban areas, where conventional mass transit system is not feasible.

Capacity Building for Infrastructure Projects

- The capacity building commission would provide technical support to central ministries, state Governments, and their infra-agencies to enable their skills to be upgraded.
- The aforesaid commission would assist in ramping up capacity in planning, design, financing (including innovative ways), and implementation management of the Gati Shakti NMP for all the infrastructure projects.

SEZ

- The FM announced that the Special Economic Zones Act, 2005 will be replaced with a new legislation that will enable the states to become partners in 'Development of Enterprise and Service Hubs'.

- The aforesaid move is intended to enable all large existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports.
- The announcement follows the recommendations of the SEZ Policy Review Committee which was chaired by Baba Kalyani. The committee submitted its report in December 2018 and recommended the setting up of Employment and Economic Growth Enclaves in place of SEZs.
- It remains to be seen how the new legislation will overcome the hurdles that plagued SEZs such as land acquisition, site selection, connectivity and lack of support from the state Government.

River-Linking Projects

- The FM announced an outlay of INR 4,46,050 million for the ambitious Ken-Betwa river linking project.
- The FM also stated that Central Government would provide support for 5 other river-linking projects, once consensus is reached among the beneficiary states.

Miscellaneous

- In order to promote development of North-East, the FM announced that a new scheme i.e., Prime Minister's Development Initiative for North-East will be implemented through the North-Eastern Council. The council which will fund infrastructure, in the spirit of Gati Shakti NMP, and social development projects based on the needs of the North-East.
- The FM also allocated a record sum of additional INR 1 lakh crore in form of interest free loan for a period of 50 years to assist the states in catalyzing overall investments in the economy. The said allocation shall be used for Gati Shakti NMP related and other productive capital investment of the states.

Win-Win for Stakeholders

- The Gati Shakti NMP signals a paradigm shift in the Government approach to development planning.
- If implemented effectively, the Gati Shakti NMP would be a game-changer in inter-ministerial and inter departmental cooperation in infrastructure planning and ensure maximum utilization of resources and capacities.
- Gati Shakti NMP can be a win-win for all the stakeholders and assist in the overall economic growth of India.
- However, currently there is no legislation providing a framework for inter-governmental cooperation under the PM Gati Shakti NMP.

FINANCING OF INVESTMENTS IN INFRASTRUCTURE SECTOR

Green Bonds

- The FM announced that sovereign Green Bonds will be issued for mobilizing resources for green infrastructure in FY 2022-23.
- The announcement re-enforces the Government's commitment towards achieving the country's climate targets.
- Sovereign Green Bonds are essentially debt securities issued by the Government.
- The proceeds of the bonds would be used to fund public sector projects that have a positive impact on the environment by helping reduce the carbon intensity of the economy.

Infrastructure status

- The FM indicated that data centres and energy storage systems (including dense charging infrastructure and grid-scale battery systems) would be granted infrastructure status by inclusion in the harmonized list of infrastructure.
- This announcement is to boost credit availability to data centres and energy storage systems in the country.

- Once a sector is granted the infrastructure status, it would be entitled to several concessions, including the ability to avail credit at competitive rates and with enhanced limits for a longer duration of time.

Financial Viability of Infrastructure Projects

- The FM announced that various steps will be undertaken by the Government to enhance financial viability of infrastructure projects.
- Such measures would include PPP, availing technical and knowledge assistance from multi-lateral agencies and adopting global best practices, innovative ways of financing, and balanced risk allocation.
- Financial viability of infrastructure projects has been a long-drawn concern and it would be important to ascertain the steps undertaken by the Government in this regard.

ENERGY CONSERVATION AND CLIMATE CHANGE

Economic Survey

- The Economic Survey 2021-22 notes that India has witnessed the fastest rate of growth in renewable energy capacity addition among all large economies, during the last 7.5 years with renewable energy capacity growing by 2.9 times and solar energy expanding by over 18 times.
- The budget speech had significant announcements pertaining to energy conservation and climate change.

Environmental Clearances

- A single window portal, PARIVESH (Pro-Active and Responsive facilitation by Interactive, Virtuous and Environmental Single-window Hub), for all green clearances was launched in 2018.
- PARIVESH was instrumental in reducing the time required for environmental approvals.
- The FM announced that the scope of PARIVESH will now be expanded to provide information to the applicants.
- Based on location of units, information about specific approvals will be provided.
- This would enable application for all four approvals (Environment, Forest, Wildlife and Coastal Regulation Zone Clearances) through a single form, and tracking of the process through 'Centralized Processing Centre-Green.'
- It is expected that the modified PARIVESH portal will be able to provide environmental clearances in a more streamlined manner.

Electric Vehicles

- Given the constraint of space in urban areas for setting up of EV charging stations at scale, the FM announced that an EV battery swapping policy will be brought out and inter-operability standards will be formulated.
- However, there was no mention of an EV battery recycling policy. The absence of such a framework could lead to environmental degradation if EV batteries are disposed of without care.

Solar Manufacturing

- To facilitate domestic manufacturing for the ambitious goal of 280 GW of installed solar capacity by 2030, the FM announced an additional allocation of INR 1,95,000 million for PLI for manufacture of high efficiency modules, with priority given to fully integrated manufacturing units from polysilicon to solar PV modules.

Circular Economy

- The FM stated that the circular economy transition is expected to help in productivity enhancement as well as creating large opportunities for new businesses and jobs.

- The FM also stated that action plans for 10 sectors such as electronic waste, end-of-life vehicles, used oil waste, and toxic and hazardous industrial waste are ready.
- The aforesaid transition would be supported by active public policies covering regulations, extended producers' responsibilities framework and innovation facilitation.
- As of last year, the Government had already begun taking steps in this regard. A case for instance would be the notification of the Motor Vehicles (Registration and Functions of Vehicle Scrapping Facility) Rules, 2021 by the Ministry of Road Transport and Highways on September 23, 2021.

Thermal Power Plants

- The FM announced that 5%-7% biomass pellets will be co-fired in thermal power plants resulting in CO₂ savings of 38 MMT annually.
- The aforesaid announcement is intended to provide extra income to farmers and job opportunities to locals and help avoid stubble burning in agriculture fields.
- This announcement follows the 'Revised Policy for Biomass Utilization for Power Generation through co-firing in coal based power plants' issued by the Ministry of Power on October 8, 2021.
 - Under the aforesaid policy, thermal power plants had until 1 year to mandatorily use 5% blend of biomass pellets.
 - The obligation would increase to 7% with effect from two years from the date of the issuance of the aforesaid policy and continue thereafter.
 - The policy also stated that the minimum contract period for procurement of biomass pellets is required to be 7 years.

Energy Saving

- The FM announced the setting up of ESCO to promote energy efficiency and savings measures in large commercial buildings.
- The ESCO would facilitate capacity building and awareness for energy audits, performance contracts, and common measurement and verification protocol.
- The exact role that the ESCO will perform in light of the Energy Conservation Act, 2001 remains to be seen. The Energy Conservation (Amendment) Bill, 2022 is expected to be tabled in the present session of the Parliament.
- The FM also stated that policies and required legislative changes to promote agro forestry and private forestry will be brought in. This may entail changes in the Compensatory Afforestation Fund Act, 2016.

Tariff Measures for Blending of Fuel

- The FM reiterated that the blending of fuel is a priority of the Government. To encourage the efforts for blending of fuel, the FM announced that unblended fuel shall attract an additional differential excise duty of INR 2 per litre from the 1st day of October 2022.

CHANGES TO GOVERNMENT PROCUREMENT POLICIES

Replacement of Bank Guarantees with Surety Bonds

- The FM announced that the use of surety bonds in lieu of bank guarantees would be made acceptable in relation to Government procurements. The FM indicated that this move is intended to reduce indirect costs for suppliers and work-contractors.
- In September 2020, the IRDAI had published a "Report of the Working Group on suitability of offering of Surety Bond by Indian Insurance Industry", which included representations from relevant stakeholders for replacement of bank guarantees with surety bonds.

- In the aforesaid report, IRDAI noted that the large number of representations were received in this regard as bank guarantees were becoming very problematic.
- Banks had increased two components i.e., margin money as well as the commission. Hence, the need for an alternative option arose.
- The report also acknowledged that as the banking sector bears the load of issuing guarantees to provide surety services to contractors. As the sector has been undergoing challenges, the cost of bank guarantees has increased.
- Earlier this year, the IRDAI released the IRDAI Guidelines which are stated to come into effect from April 1, 2022. The IRDAI Guidelines permit insurers registered under the Insurance Act, 1938 to issue surety bonds.
- Replacement of bank guarantees with surety bonds should certainly offer comfort to developers, contractors and suppliers. With the Government making this an acceptable form of security for Government tenders, private players may follow suit.
- It may be noted that security bonds being insurance contracts will be governed by the rules relating to insurance and there may be increased disclosure and good faith obligations placed on contractors obtaining such security.

Modernization of Rules for Procurement

- The FM announced that Government rules for procurement have been modernized pursuant to inputs from various stakeholders. Such rules allow use of transparent quality criteria besides cost in evaluation of complex tenders.
- With a view to address the financial issues in a project, the Department of Expenditure vide its office memorandum dated October 29, 2021, on “General Instructions on Procurement and Project Management” has made provisions for payment of 75% of running bills, mandatorily within 10 days.
- The modernized rules for procurement are intended to encourage settlement of disputes through conciliation.
 - While conciliation is already recognized as a dispute resolution mechanism under model concession agreements in different infrastructure sectors such as roads and ports, its efficacy has been a point of discussion.
 - The conciliation proceeding may just delay the dispute resolution process as very often the disputes ultimately go through the entire process of arbitration and litigation.

E-Bill System

- As a further step to enhance transparency and to reduce delays in payments, a completely paperless, end-to-end online e-Bill System will be launched for use by all central ministries for their procurements.
 - The system will enable the suppliers and contractors to submit their digitally signed bills and claims online and track their status from anywhere.
 - The online e-Bill System may help simplify the billing and payment procedure.

ELP COMMENTS:

This Union Budget has reiterated the importance of the infrastructure sector in the overall growth of India. The Government has adopted a holistic approach for different infrastructure sectors through the Gati Shakti NMP. The issuance of sovereign green bonds and grant of infrastructure status to data centres and energy storage systems should grant a fillip to India’s climate change targets. The measures announced in relation to PLI incentives for solar modules and EVs should also aid India’s low carbon development strategy. The introduction of surety bonds as a substitute for bank guarantee will help improve the financial viability of suppliers and contractors by decreasing indirect costs. The key themes for the infrastructure announcements appear to be synergy and increased private participation to fuel ambitious growth plans and targets.

REAL ESTATE

HOUSING FOR ALL

The Government has always been a proponent for 'Housing for All' and affordable housing. Keeping in line with the same, FM announced allocation of INR 48,000 crore for completion of 80 lakh rural and urban houses under PMAY in 2022-23. The FM also mentioned about reducing the timeline for land and construction related approvals by co-operation of central and state government.

ELP COMMENTS:

This move, in addition to supporting the PMAY scheme will also boost the construction and real estate sectors in India. Reduced timelines in approvals will have a direct impact on the cost of construction of real estate projects thereby positively impacting the residential flats/units especially in urban areas.

SUPPORT FOR URBAN PLANNING AND GREEN CLEARANCES

Migration to urban areas is an unavoidable phenomenon and therefore the infrastructure development and effective town planning in the urban areas is a priority for the Government. With this background, FM announced that for urban capacity building, support will be provided to States by modernization of building byelaws, TPS and TOD. This will facilitate reforms for people to live and work closer to mass transit systems. FM also mentioned that the Central Government's financial support for mass transit projects and AMRUT scheme will be leveraged for formulation of action plans and their implementation for facilitating TOD and TPS by the states.

The FM further mentioned that in order to inter-alia facilitate fast procurement of approvals, the scope of single window portal, PARIVESH, for all green clearances, which was launched in 2018, will now be expanded.

ELP COMMENTS:

Aforesaid will ensure that urban areas are able to better manage the migration of people from rural areas in a more efficient manner. This will also help boost the infrastructure thereby having a positive impact on the construction and real estate sector.

Further, expansion of scope of a single window portal, PARIVESH, for all green clearances, will inter-alia result in better transparency as more information will be available to applicants and will also result in application for approvals being processed faster.

LAND RECORDS MANAGEMENT AND CENTRALISED REGISTRATION

Government has always stressed on the fact that efficient use of land resources is a strong imperative and maintaining land records in an effective and transparent manner would certainly instil confidence in general public and reduce disputes. With this intent FM mentioned that States will be encouraged to adopt Unique Land Parcel Identification Number to facilitate IT-based management of records. The facility for transliteration of land records across any of the Schedule VIII languages will also be rolled out.

The FM further mentioned that adoption or linkage with NGDRS with the 'One-Nation One-Registration Software' will be promoted as an option for uniform process for registration and 'anywhere registration' of deeds & documents.

ELP COMMENTS:

This step has numerous advantages. The IT-based management of land records will bring in efficiency and transparency in land records management. The data and documents will be easily accessible and be understood

by larger public. While the FM has announced transliteration in Schedule VIII languages only, it would be further helpful if these are done for English Language also. IT based management and better land records will also instil better confidence in insurance and re-insurance companies for promoting title insurance products (as is also targeted by Real Estate (Regulation and Development) Act, 2016) at better rates in the country. Boost to title insurance would lead to reduction of timelines in due diligences for financing of real estate projects and further boost confidence in the buyers/end-users of such projects. Aforesaid will also help Indian land record management system attain parity with that of developed countries and will also help in attracting further investments for infrastructure and construction sectors. This move may also further drive ease of doing business in India.

'One-Nation One-Registration Software' move will bring in uniformity in registration process of documents. It will also be better for estate planning. It will be interesting to note if stamp duty payment for registrable documents would also be centralised in future.

GLOSSARY OF TERMS

Abbreviation	Meaning
AIDC	Agriculture and Infrastructure Development Cess
AIF	Alternative Investment Fund
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
AY	Assessment Year
Bill/ Finance Bill	Finance Bill 2022
CBDC	Central Bank Digital Currency
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CGST Act	Central Goods and Services Tax Act, 2017
CGTMSE	Credit Guarantee Fund Trust for Micro and Small Enterprises
CO2	Carbon Dioxide
CRZ	Coastal Regulation Zones
CTA	Customs Tariff Act, 1975
CVD	Countervailing Duty
CVD Rules	Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995
DDT	Dividend Distribution Tax
DFI	Development Financial Institution
DGTR	Directorate General of Trade Remedies
DISCOMs	Power Distribution Companies
DPIIT	Department of Promotion for Industry and Internal Trade
DRI	Directorate of Revenue Intelligence
DRDO	Defence Research and Development Organisation
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement entered into by India
EC	European Commission
ECB	External Commercial Borrowings
ECLGS	Emergency Credit Line Guarantee Scheme
ESCO	Energy Service Company
ESG	Environmental, Social, and Governance
EV	Electric Vehicle
FAME	Faster Adoption and Manufacture of Hybrid and Electric Vehicles
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FTS	Fee for Technical Services
FII	Foreign Institutional Investors
FM	Finance Minister
FMV	Fair market value
FPI	Foreign Portfolio Investors
FTA	Free Trade Agreement
FTP	Foreign Trade Policy
FY	Financial Year

G2B	Government to Business
Gati Shakti NMP	PM Gati Shakti National Master Plan
GDP	Gross Domestic Product
GIFT	Gujarat International Finance Tech-city
GOI	Government of India
G-Sec	Government securities
GST	Goods and Services Tax
GW	GigaWatt
HFC	Housing Finance Company
HNI	High net worth individual
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IDBI	Industrial Development Bank of India
IDFs	Infrastructure Debt Funds
IFSC	International Financial Services Centre
IFSCA	The International Financial Services Centres Authority Act, 2019
IGCR Rules	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules)
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
IIFCL	India Infrastructure Finance Company Limited
ITSC	Income Tax Settlement Commission
IIM	Indian Institute of Management
Ind AS	Indian Accounting Standards
INN	International Non proprietary Names
INR	Indian Rupees
InvITs	Infrastructure Investment Trusts
IPO	Initial Public Offering
IRDAI	Insurance Regulatory and Development Authority of India
IRDAI Guidelines	IRDAI (Surety Insurance Contracts) Guidelines 2022
IREDA	Indian Renewable Energy Development Agency
IT Act	The Income-tax Act, 1961
ITAT	Income-tax Appellate Tribunal
ITC	Input Tax Credit
KYC	Know Your Customers
LIC	Life Insurance Corporation
LIC Act	Life Insurance Corporation Act, 1956
LLP	Limited Liability Partnership
LLP Act	Limited Liability Partnership Act, 2008
LRS	Liberalised Remittance Scheme
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MLI	Member Lending Institutions
MMT	Million Metric Ton
MoF	Ministry of Finance
MoC	Ministry of Commerce
MSME	Micro Small and Medium Enterprises
NABARD	National Bank for Agriculture and Rural Development
NBFC	Non-Banking Finance Company

NCCD	National Calamity Contingent duty
NCGTC	National Credit Guarantee Trustee Company
NCLT	National Company Law Tribunal
NEFT	National Electronic Funds Transfer
NELP	New Exploration Licensing Policy
NFT	Non-fungible Token
NGDRS	National Generic Document Registration System
NHAI	National Highways Authority of India
NHB	National Housing Bank
NIIF	National Investment and Infrastructure Fund
NIP	National Infrastructure Pipeline
NPA	Non-performing assets
OPC	One Person Company
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PARIVESH	Pro-Active and Responsive facilitation by Interactive, Virtuous and Environmental Single-window Hub
PE	Permanent Establishment
PIB	Press Information Bureau
PGCIL	Power Grid Corporation of India Limited
PLI	Production-Linked Incentive
PMAY	Pradhan Mantri Awas Yojana
PPP	Public Private Partnership
PSB	Public sector banks
PSU	Public sector undertaking
PTA	Purified Terephthalic Acid
QFIs	Qualified Foreign Investors
RBI	Reserve Bank of India
RDDBFI	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993
RBI Act	Reserve Bank of India, Act, 1934
RDB	Rupee Denominated Bond
REITs	Real Estate Investment Trusts
RIC	Road and Infrastructure Cess
ROO	Rules of Origin
RTGS	Real Time Gross Settlement
SAD	Special Additional Duty
Safeguard Duty Rules	Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997
SAED	Special Additional Excise Duty
SARFAESI	The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
SCN	Show Cause Notice
SCRA	Securities Contracts (Regulation) Act, 1956
SDGs	Sustainable Development Goals
SEBI	Securities and Exchange Board of India
SEBI Act	Securities Exchange Board of India Act, 1992
SECI	Solar Energy Corporation of India
SEZ	Special Economic Zones

SMEs	Small and Medium Enterprises
Smugglers Act	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
SFT	Statement of financial transaction
SPV	Special Purpose Vehicle
SWS	Social Welfare Surcharge
TCS	Tax Collected at Source
TOD	Transit Oriented Development
TOT	Toll Operate Toll
TDS	Taxes Deducted at Source
TPO	Transfer Pricing Officer
TPS	Town Planning Scheme
TRQ	Tariff Rate Quota
UTGST	Union Territory Goods and Services Tax
UDAN	Ude Desh ka Aam Naagrik
UDAY	Ujjwal DISCOM Assurance Yojana
UK	United Kingdom
ULIP	Unit Linked Insurance Policy
UNCITRAL	The United Nations Commission on International Trade Law
USA	United States of America
VC	Video Conference
WTO	World Trade Organisation
ZED	Zero Defect & Zero Effect



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