ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

UNION BUDGET 2024-25

AN ANALYSIS

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PREFACE

Dear Reader

The FM presented her seventh consecutive budget today – which is the most of any Finance Minister in the history of India. By contrast this is ELP's twenty third consecutive budget publication!

For ELP this booklet is business as usual: deep dive, vigorous analysis and succinct presentation for our readers. What however changed for the FM is that this is her first budget as the leader of a true coalition government and that is very apparent given the large allocations to the coalition partners in Bihar and Andhra Pradesh.

Another two aspects that are highlighted in this budget is the governments laser focus on jobs and rural India. Perhaps for the first time the government is directly contributing towards the hiring of new recruits in the private sector. Second, the focus on the rural economy ranging from new technology impetus, digital mapping of land and focus on self-reliance in oil seeds are all well directed towards the largest employment generator in the country - agriculture.

Tax reform also remains in focus. As a prelude to the proposed new tax codes in India, the reforms continue to role. Re-aligning of the direct tax slabs, indirect tax reforms and friendlier policies towards the taxpayer all find a part in this budget. Notably is the reduction in rates for foreign companies in India, where the rates have been brought down by five percent, though the policy is still biased for foreign companies to incorporate in India.

The rate for long term capital gains tax has effectively been increased by 25%. STT has almost doubled for the Futures and Options segment. The buyback advantage over dividend has now been plugged too. This will cause a hiccup in the stock market, but as history has proved, this will soon pass and the markets will continue to grow and thrive.

Some notable headlines:

- The fiscal deficit to GDP is projected to reduce from 5.6% to 4.9% in the next fiscal year. With this the fiscal deficit target of 4.5% of GDP by FY26 is well within reach and this will have a positive long term effect for the country.
- There is healthy provision for government capex which has more than doubled over five years to 3.4% of GDP and 1.5 trillion of long-term interest free loan for capex by state governments.
- Technology will drive IBC proceedings through an Integrated Technology Platform to ensure consistency, transparency, timely processing and better oversight for all investors.
- Variable Capital Companies are now permitted which will now enable AIFs to have different pools of capital for diverse investments in the same company.
- Angel Tax has been abolished.

One missed opportunity in this budget is that it does not put more discretionary funding in the hands of the consumer. While there is some monies available through the increase in standard deduction from Rs 50,000 to Rs 75,000 for individual taxpayers the effective increase of INR 17,500 to salaried taxpayers is not sufficient to boost consumption and to drive private investment in capex. Do re-call the impact of consumer spending during covid – of course that was driven by generous covid grants in developed economies, but it proved that consumer confidence is an important driver of the economy as a whole. Its absence may dampen the full impact of the budget.

As always, we do hope you enjoy this booklet, and you will continue to give us your candid feedback. We look forward to your participation and our interaction as we continue to unravel this budget over the coming days and weeks.

Suhail Nathani, Managing Partner - On behalf of Team ELP

BUDGET HIGHLIGHTS

DIRECT TAXES

- Overhaul of capital gains tax regime: LTCG increased to 12.5% and STCG to 20% on listed shares; Period of holding for capital gain to qualify as LTCG restricted to 12 months and 24 months category, 36 months category subsumed into 24 months category
- Abolition of Angel tax i.e. Section 56(2)(viib) of the Act for all categories of investors
- Indexation benefit not available on long term capital gains on sale of immovable property albeit with lower rate of tax of 12.5% instead of 20%
- Buy back tax abolished - proceeds now taxable in the hands of shareholders as deemed dividend; cost of acquisition to be available as capital loss and the same available to be set off against capital gains
- Foreign Company's tax rate reduced to 35% from 40%
- Abolition of Equalization Levy of 2%; 6% category of Equalization Levy to continue
- Indication on adoption of Pillar 1 and Pillar 2 of BEPS
- Introduction of another dispute settlement scheme i.e. Vivad se Vishwas 2024
- Provisions relating to search & seizure and re-assessment are revamped
- Comprehensive review of Income-tax Act in next 6 months
- Standard deduction to salaried employees under new tax regime increased from INR 50,000 to INR 75,000
- Security Transactions Tax on futures and options of securities increased to 0.02% and 0.1%, respectively
- Two tax exemption regimes for charities to be merged into one
- Benefit upto INR 17,500 to taxpayer opting for new tax regime
- Sunset clause not extended for new manufacturing units

CUSTOMS

- Customs Tariff changes aligned to facilitate 'Make in India' vision
- A comprehensive review of the customs duty rate structure to be undertaken soon
- Provisions for acceptance of different types of proof of origin provided in trade agreements

GST

- Enacting provisions to regularize GST position emanating from established trade practice
- FY 2024-25 onwards, new Section 74A of CGST to replace Section 73 & 74
- Rationalization of appeal pre-deposit
- Relief on limitation period for availment of ITC for period up to March 2021
- No restriction on ITC of tax paid in demand/seizure/confiscation/detention proceedings post Financial Year 2023-24
- Amnesty Scheme for GST matters not involving fraud, collusion, misdeclaration or similar
- Enabling availment of the transitional ISD credit
- Proposal for sunset clause on anti-profiteering laws

DIRECT TAX

INCOME TAX RATES

Individual, HUF, AOP, BOI and AJP

Tax rate under default tax regime (New Regime as per Section 115BAC of the IT Act)

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

Proposed tax rate (AY 2025-26)	
Income (INR)	**Tax rates**
Up to 300,000	Nil
300,001 - 700,000	5
700,001 - 1000,000	10
1,000,001 - 1,200,000	15
1,200,001 - 1,500,000	20
Above 1,500,000	30

Tax rate under optional tax regime (old scheme)

Income (INR)	Existing and Proposed Rates (%)		
	Individuals (other than senior and super senior citizens)	**Resident senior Citizens (60 years or more at any time during previous year)**	**Resident super Senior Citizens (80 years or more at any time during previous year)**
0 – 250,000	NIL	NIL	NIL
250,001 – 300,000	5	NIL	NIL
300,001 – 500,000	5	5	NIL
500,001 – 1,000,000	20	20	20
1,000,001 and above	30	30	30

Rebate, Surcharge & Cess

Sr. No.	Particulars	Existing and Proposed
1	Rebate under section 87A (applicable to resident individuals)	**Default tax regime** INR 25,000 - If total income does not exceed INR 700,000 **Optional tax regime** INR 12,500 - If total income does not exceed INR 500,000
2	Surcharge on income of specified fund (Section 10(4D) taxable under Section 115AD(1)(a) of the IT Act	▪ Nil
3	Surcharge for dividend, income covered under Section 111A, 112, 112A, 115AD(1)(b) of the IT Act, income of AOPs comprising of companies as its members	▪ 10% - If total income > INR 5 million but ≤ INR 10 million ▪ 15% - If total income > INR 10 million

4	Surcharge (for income other than those specifically covered above)	**Default tax regime** ▪ 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 **Optional tax regime** ▪ 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
5	Cess - Health and Education cess	▪ Surcharge on income of specified fund (Section 10(4D) taxable under Section 115AD(1)(a) of the IT Act – Nil ▪ Other cases - 4%
6	AMT for Individuals, HUFs, AOPs, BOIs and AJP (Including surcharge and cess)	**Default tax regime** Not applicable **Optional tax regime** ▪ 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

Co-operative Societies

Normal Tax Rates

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

Special Tax Rates under optional tax regime

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

Surcharge & Cess for Co-operative Society

Sr. No.	Particulars	Existing and proposed
1	Surcharge on income of co-operative society	**Normal tax rates** ▪ NIL - If total income ≤ INR 10 million ▪ 7% - If total income > INR 10 million, but ≤ INR 100 million ▪ 12% - If total income > INR 100 million **If opted for special tax rates under section 115BAD or Section 115BAE** ▪ 10% irrespective of total income
2	Cess - Health and Education cess	4%
3	AMT for co-operative societies **(Including surcharge and cess)**	**Normal tax rates** ▪ 15.6% - If total income ≤ INR 10 million ▪ 16.69% - If total income > INR 10 million, but ≤ INR 100 million ▪ 17.47% - If total income > INR 100 million **If opted for special tax rates (Section 115BAD and Section 115BAE)** ▪ Not applicable

Companies & Partnership Firms (including LLP)

Effective tax rates

Sr. No.	Description	Existing rates (Including surcharge & Cess)			Proposed rates (Including surcharge & Cess)		
(A)	**Domestic 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	Turnover or gross receipts in previous year 2022-23 ≤ INR 4 billion (Basic rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
2	Covered under Section 115BA of the IT Act (Basic rate – 25%)	26.00	27.82	29.12	26.00	27.82	29.12
3	Covered under Section 115BAA of the IT Act (Basic rate – 22%)	25.17			25.17		

4	Covered under Section 115BAB of the IT Act (Basic rate – 15%)	17.16			17.16		
5	Any other Company having turnover or gross receipts in previous year 2022-23 > INR 4 billion (Basic 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 – basic rate 15%)	15.60	16.69	17.47	15.60	16.69	17.47
7	BBT under Section 115QA of the IT Act (Basic rate -20%)	23.296%			• 23.296% - Buy back undertaken upto September 30, 2024 • Not applicable – On buyback undertaken on or after October 1, 2024		
(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	Effective tax rate (Basic rate – 40% / 35%)	41.60	42.43	43.68	36.40	37.13	38.22
(C)	**Firms (including LLP)**	**Net income ≤ INR 10 million**		**Net income > INR 10 million**	**Net income ≤ INR 10 million**		**Net income > INR 10 million**
1	Effective tax rate (Basic rate – 30%)	31.2		34.94	31.2		34.94
2	AMT (Base rate – 18.5%)	19.24		21.55	19.24		21.55

Surcharge and Cess

Particulars	Existing rates	Proposed rates
For Domestic companies covered under Section 115BAA and Section 115BAB of the IT Act	10% - Irrespective of the amount of total income	
Income of specified fund (Section 10(4D) being a domestic company taxable under Section 115AD(1)(a) of the IT Act	▪ 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	Nil (Refer note 1 below)
Other domestic companies	▪ NIL - If total income ≤ INR 10 million ▪ 7% - If total income > INR 10 million, but ≤ INR 100 million ▪ 12% - If total income > INR 100 million	
For Foreign companies	▪ NIL - If total income ≤ INR 10 million ▪ 2% - If total income > INR 10 million, but ≤ INR 100 million ▪ 5% - If total income > INR 100 million	
For Firms (including LLP)	▪ 12% - If total income > INR 10 million	
Cess - Health and Education cess	4%	

Note 1 -Memorandum to Finance Bill 2024 provides for removal of surcharge on income taxable under Section 115 AD (1)(a) of the IT Act of a specified fund constituted as domestic company. However, the Finance Bill does not provide for any such proposal. We hope such antithesis is addressed before the bill is passed by Loksabha.

ELP COMMENTS:

Tweak to individual tax rates:

The Finance Bill 2024 seeks to amend the slab rates, keeping the baseline exemption of INR 300,000. Further, The Finance Bill 2024 proposes an increase in standard deduction applicable to salaried taxpayers from INR 50,000 to INR 75,000. The combined effect of above amendments would provide minimal tax benefit to the salaried individuals. Previously, the Supreme Court's Janhit Abhiyan case upheld the 103rd Constitutional Amendment, granting 10% reservation for Economically Weaker Sections (EWS) with an annual family income below INR 800,000. In view of aforementioned judicial observation coupled with global economic crisis, the taxpayers expected increase in tax slabs to match the rising inflation. While the proposed amendments to tax rates do not meet the high expectations of the taxpayers for increasing the basic exemption limit to INR 800,000, it does provide some respite with a hope for favorable amendments in the next budget.

Abolition of buyback tax:

With the incidence of tax being shifted to the shareholders, distribution on buy-back would now be taxable at the rate of tax applicable to shareholders as deemed dividend. For non-resident shareholders, there may be scope to claim tax treaty benefits as well as foreign tax credit of the tax paid on dividend income in India. While this change could lower the tax burden for certain shareholders such as those who do not opt for the buy-back, have effective tax rates below 23.296%, or are non-residents, it may result in higher taxes for other set of shareholders who are subject to higher tax rates. Post such amendment, while the tax burden on buy-back stands shifted to the shareholders, the companies would be responsible for undertaking withholding tax compliance under Section 194 and Section 195 of the IT Act.

Reduction of tax rate for foreign companies:

This step is expected to reduce tax on business income and other income (not covered in any specific provision of IT Act and treaty) of foreign companies, arising on account of business connection/ permanent establishment in India.

Parity for Specified Fund constituted as a corporate entity:

Section 115AD (1) (a) of the IT Act provides that income from securities (dividend and interest income) received by a specified fund is taxable at concessional tax rate of 10% under Section 115 AD (1)(a) of the ITA. Finance Act 2023 provided that no surcharge and cess shall be levied on such income of the specified fund, provided such specified fund is constituted as a non-corporate entity (i.e., association of persons (AOP) or trust). Finance Act 2023 did not cover the specified fund constituted as a corporate entity (Company or LLP) under this provision. This disparity created unintended arbitrage in the application of surcharges between corporate and non-corporate entities.

It is worth noting that while the proposed amendment removes disparity on surcharge applicable in case of specified fund is a domestic company, disparity still exists w.r.t. applicability of cess to corporate Specified fund (both company and LLP) and surcharge for Specified Fund constituted as LLP.

TRANSFER PRICING

Amendment to Section 92CA of the IT Act

- Section 92CA of the IT Act provides that the AO may refer the matter of determination of ALP in respect of an international transaction or SDT to the TPO.
- As per subsection 2A and 2B of Section 92CA of the IT Act, international transaction which comes to the notice of TPO, which are not referred by AO and/ or not reported in the TP audit report, may be deemed to be the transactions referred by AO for determination of ALP.
- It is proposed that in addition to international transactions, specified domestic transactions which are not referred by AO and/ or not reported in the TP audit report may also be considered by TPO for determination of ALP.
- This amendment is proposed to come into effect from April 1, 2025 and will accordingly apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

The aforesaid amendment empowers TPO to determine ALP in case of specified domestic transactions which are not reported by the taxpayer in its TP audit report.

Amendment to Section 94B of the IT Act

- Section 94B of the IT Act i.e. provisions of thin capitalisation restrict deductions of interest expense in respect of any debt borrowed from a non-resident, being an associated enterprise of the borrower and applies to an Indian company, or a permanent establishment of a foreign company in India.
- Currently, the said Section does not apply to Indian companies or permanent establishments of foreign companies which are engaged in the business of banking or insurance or such class of non-banking financial companies as may be notified by the Central Government.
- It is now proposed to amend Section 94B of the IT Act to exclude finance companies located in IFSC from the ambit of the said Section.

ELP COMMENTS:

The aforesaid amendment is a welcome step and will enable raising of funds by finance company in IFSC from its foreign holding or group company using debt.

INCOME NOT FORMING PART OF TOTAL INCOME

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

- Section 10(4D) provides for exemption of income accrued or received by a specified fund from the transfer of capital assets or securities in IFSC. In order to further incentivize operations in IFSC, item (c)(i)(I) of Explanation to Section 10 (4D) of the IT Act is proposed to be amended to include retail funds and ETFs in IFSCs to the definition of "specified funds".
- Further, specified funds now include trusts, companies, limited liability partnerships, or other corporate bodies established in India, provided that the funds hold a certificate as a retail scheme or an ETF, comply with the IFSCA (Fund Management) Regulations, 2022, and satisfy any prescribed conditions. This proposed amendment will take effect from April 1, 2025.

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

- Section 10 (23EE) of the IT Act provides for exemption of specified income to Core Settlement Guarantee Funds. The proposed amendment is to exempt income from Core Settlement Guarantee Funds established by recognized clearing corporations in IFSCs by amending the definitions of "recognised clearing corporation" and "regulations" in the Explanation to clause (23EE) of Section 10 of the IT Act.
- The amended definition of "recognised clearing corporation" will include those corporations defined under Regulation 2(1)(n) of the IFSCA (Market Infrastructure Institutions) Regulations, 2021. Additionally, the definition of "regulations" shall include the IFSCA (Market Infrastructure Institutions) Regulations, 2021. This proposed amendment will take effect from April 1, 2025.

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

- Section 10 (23FB) provides exemption of any income to venture capital company or fund by way of investment in a venture capital undertaking. The said section of the IT Act is proposed to be amended to include VCFs which are regulated by the IFSCA. The relaxation in place for VCC and VCFs registered with SEBI is now proposed to be extended to VCC and VCFs regulated by the IFSCA.
- The Finance Act, 2023 amended Section 68 to require that the source of any credited sum be explained in the creditor's hands, except for funds from well-regulated entities like Venture Capital Funds or Companies registered with SEBI. This change aligns with definitions in the Explanation to clause (23FB) of Section 10.

Amendment to Section 10(23C), Section 12A and Section 13 of the IT Act

- Section 10(23C) of the IT Act provides exemptions on income for certain categories of trusts, funds, organizations and institutions. The IT Act establishes two main regimes for trusts, funds, or institutions to claim exemption. The first regime falls under sub-clauses (iv), (v), (vi), or (via) of clause (23C) of Section 10 of the IT Act. The second regime is governed by Sections 11 to 13 of the IT Act. These regimes outline the procedure for applying for approval or registration, specify the conditions under which such approval or registration may be granted or withdrawn etc.
- Since both regimes intend to grant similar benefits, the procedure and conditions across the two regimes have been aligned, over the last few years, vide successive Finance Acts. To simplify procedures and reduce administrative burden, it is suggested to phase out the first regime gradually. This transition aims to move trusts, funds, or institutions to the second regime over time.
- Therefore, Sections 10 (23A), 12A and 13 of the IT Act are proposed to be amended to provide, with effect from October 1, 2024 that:
  - Applications for approval or provisional approval under sub-clauses (iv), (v), (vi), or (via) of clause (23C) of Section 10 of the IT Act, filed on or after October 1, 2024, shall not be considered.
  - Pending applications filed before October 1, 2024, would be considered and proceeded under the first regime.
  - Pre-approved trusts, funds or institutions continue to get benefits under the exemption till the validity of the approval.
  - These trusts, funds or institutions are eligible for registration under the second regime in light of the amendments proposed in Section 12A of the IT Act.
  - Certain eligible modes of investment specified in clause (b) of the third proviso to clause (23C) of Section 10 of the IT Act will be safeguarded under the second regime *vide* an amendment in Section 13 of the IT Act.

Insertion of Section 12AC in the IT Act - Merger of charitable trusts or institutions in certain cases

- As per the provisions of Chapter XII-EB, conversion in any form which is not eligible for grant of registration under Section 12AA or Section 12AB would attract tax on accreted income at MMR. In case of a trust or institution registered under the first or second regime merges with another trust or institution under either regime, it may attract the provisions of Chapter XII-EB, relating to tax on accreted income in certain circumstances.
- Section 12AC of the IT Act is proposed to be inserted to clarify the conditions under which the provisions of Chapter XII-EB would not apply. Specifically, it will ensure that the provisions do not apply if the trust or institution has similar objectives, holds a registration under Section 12AA/12AB, and meets other prescribed conditions. This proposed amendment aims to provide greater clarity and certainty to taxpayers and will come into effect from April 1, 2025.

Amendment to Section 11 of the IT Act

- Sub-section (7) of Section 11 of the IT Act states that if a trust or institution is approved or notified under clause (23C), (23EC), (46), or (46A) of Section 10 of the IT Act, its registration under Section 12AB of the IT Act becomes inoperative; however, it will have an one-time option to make the registration operative. This allows the trust or institution to select the provisions under which it wishes to seek tax exemption.
- Section of 11 (7) of the IT Act is proposed to be amended to include references to clause (23EA), clause (23ED), and clause (46B) of Section 10 of the IT Act. This change will enable trusts under the second regime to claim exemption under these specific clauses of Section 10 of the IT Act. These proposed amendments will take effect from April 1, 2025.

Amendment to Section 12AB of the IT Act

- Section 12AB of the IT Act lays down procedures and timelines for order of fresh registration under Section 12A. The said Section is proposed to be amended to enable trusts and institutions to timely file applications for registration by enabling Principal Commissioner/ Commissioner to condone the delay, subject to reasonable cause, in filing application and treat such application as filed within time. This has been proposed, considering that trusts/ institutions may become liable to tax on accreted income under Chapter XII-EB of the IT Act or a permanent exit of trust or institution from the exemption regime may also arise. These amendments will take effect from October 1, 2024.
- As per the existing provisions, registration applications under Section 12AB(1)(b)(ii) of the IT Act are to be processed within a period of six months from the end of the month in which application was received.
- Further, for provisionally registered trusts or funds or institutions who apply for registration/approval or where registered/approved trusts or funds or institutions apply for further registration/approval under Section 12AB of the IT Act, the order granting registration/ rejecting application shall be passed before expiry of the period of six months from the end of the quarter in which the application was received.

Amendment to Section 10 (34A) of the IT Act

- Section 10(34A) of the IT Act provides exemption to any income arising on account of buy-back of shares by a company as referred to in Section 115QA of the IT Act.
- To widen and deepen the tax base, Section 10 (34A) of the IT Act has been proposed to be amended by inserting a proviso to Section 10 (34A) of the IT Act. The said clause shall not apply to any buy back of shares by a company on or after October 1, 2024. Any sum paid by a domestic company for purchase of its own shares shall be treated as dividend in the hands of shareholders, who received payment from such buy-back of shares and shall be charged to income-tax at applicable rates. This amendment will take effect from October 1, 2024.

Amendment to Section 10(50) of the IT Act

- Under Section 10(50) of the IT Act, any service which was liable to equalization levy was exempt, subject to certain conditions. Vide the Finance Bill, 2024, category of 2% equalization levy is proposed to be made inapplicable. Consequently, Section 10(50) of the IT Act is proposed to be amended to provide that income arising from e-commerce supply or services made or provided or facilitated on or after 1 April, 2020 but before 1 August, 2024 only, shall fall within the ambit of clause (50) of Section 10 of the IT Act with effect from August 1, 2024.

ELP COMMENTS:

The EL at the rate of 2% is levied on the amount of consideration received/ receivable by an e-commerce operator from e-commerce supply or services, where the consideration is paid to a non-resident by a resident carrying on business/ profession or a non-resident constituting a PE in India. An exception has been carved out to state that EL is not applicable where the e-commerce operator has a permanent establishment (PE) in India, and the e-commerce supplies or services are effectively connected with such PE. In such cases, the taxability of the PE would be governed by the IT Act and the applicable DTAA.

The issue of levy of EL vis-à-vis establishing of PE has been in litigation in the case of MasterCard Asia Pacific Pte. Ltd. W. P. (C) No. 10944 of 2018. The case arises out of an AAR ruling (AAR No. 1573 of 2014), wherein the AAR ruled that the assessee constitutes a PE in India. The ruling has been challenged by the assessee in the aforementioned writ petition. In the proceedings, Mastercard sought stay on the applicability of EL on the basis that the levy of income tax in relation to PE and EL would result in double taxation. The Hon'ble Delhi HC had held that no EL is payable by Mastercard as it is bound by AAR order which specifically held that Mastercard has a PE in India and the subject income is effectively connected to this PE. Further, it had also stated that in case Mastercard succeeds in the writ petition and it is held that assessee has no PE in India, it would be eligible to receive income-tax refund along with statutory interest but at the same time, it would be liable to pay EL with statutory interest. The main writ petition is pending for disposal.

With the withdrawal of EL, the tax position on taxation of such services will revert to the original position. In this case, at the time of payment, the payer of consideration would be required to determine whether the service provider constitutes a PE in India and also evaluate the nature of services provided.

There were certain expectations that this Budget would possibly give a roadmap for implementation of OECD's Two Pillar framework by India. On this path of adoption of Two Pillar solution, withdrawal of EL would have been a preparatory step. However, there is no mention of Pillar 2 rules in the budget documents. The indicated rationale for withdrawal of EL is not the alignment to the Two Pillar solution, but rather on account of ambiguity on the scope of the levy and compliance burden. It appears that India continues its wait and watch approach as regards the Two Pillar Solution.

INCREASE IN STANDARD DEDUCTION FOR SALARIED CLASS

Amendment to Section 16 of the IT Act

- The standard deduction for salaried class has been increased from INR 50,000 to INR 75,000 with effect from April 1, 2025 and would apply to AY 2025-26 and thereafter.
- The proposed amendment is applicable for salaried individuals opting for the new tax regime under Section 115BAC(1A) of the IT Act.

PROFITS AND GAINS OF BUSINESS OR PROFESSION

Amendment to Section 28 of the IT Act

- Section 28 of the IT Act is proposed to be amended by inserting Explanation 3 in order to clarify that any income from letting out of a residential house or a part of the house by the owner shall not be chargeable under the head "Profits and gains of business or profession" but rather under the head "Income from house property".
- This amendment is proposed to come into effect from April 1, 2025 and accordingly, would apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

The Hon'ble Supreme Court in Chennai Properties & Investments Ltd. [2015] 56 taxmann.com 456 and Rayala Corporation (P.) Ltd. [2016] 72 taxmann.com 149 had settled the fact that the determining factor of treatment of a rental income under appropriate head of income tax, whether "Profits and Gains of Business or profession" or "Income from House Property" would depend on the real intent and main object of the business/ nature of trading operations of the taxpayer. In both these cases, it was held that since the real intent of the taxpayer was leasing out its house properties to earn rent, income so earned as rent should be treated as "business income".

Several high courts and tribunals have distinguished the aforesaid decisions of the Hon'ble Supreme Court on facts and held that if the primary business of the assessee was not letting out of properties, income from letting out was to be taxed as income from house property.

Finance Bill, 2024 has settled this issue to establish that any income from letting out of a residential house or a part of the house shall be chargeable to tax as income from house property. It is pertinent to note that the explanation is limited to the taxability of letting out of a "residential house" and does not speak of a property in general. The IT Act does not specify any definition of 'residential house'. However, various judicial precedents provide guidance on what can be considered as a "residential house"

Developers letting out residential house properties and assessees letting out their house on rent on online platforms should be mindful of the aforesaid proposition. In case the let-out unit is classified as a "residential house", any income from such let out property should be taxed as "Income from house property".

Amendment to Section 36(i)(iva) of the IT Act

- Section 36(i)(iva) of the IT Act which provides for deduction with respect to the sum paid by an employer by way of contribution towards a pension scheme (as referred in Section 80CCD of the IT Act) on account of an employee is proposed to be capped at 14% of the salary of the employee in the previous year, as against the earlier 10%. Salary in this regard means basic salary and dearness allowance, if provided.
- This amendment is proposed to come into effect from April 1, 2025 and accordingly, would apply in relation to AY 2025-26 and thereafter.

Amendment to Section 37(1) of the IT Act

- Section 37(1) of the IT Act provides for allowability of expenditure incurred wholly and exclusively for the purpose of business or profession. Further, Explanation 1 of Section 37(1) provides that any expenditure incurred by an assessee which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business/profession and accordingly, no deduction/allowance shall be made in respect of the same.

- Explanation 3 of Section 37(1) clarifies the scope of the term "expenditure incurred by an assessee for any purpose which is an offence, or which is prohibited by law" used in Explanation 1 of Section 37(1) of the IT Act. An additional clause (iv) is proposed to be inserted in Explanation 3 to include any expenditure incurred by an assessee to settle proceedings initiated in relation to contravention under any law as notified by the Central Government within the ambit of the aforesaid term.
- This amendment is proposed to come into effect from April 1, 2025 and accordingly, would apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

In Desiccant Rotors International Pvt. Ltd 201 Taxman 144 (Delhi) (HC), the assessee claimed a deduction under Section 37 for settling a patent infringement dispute with a customer. It was held that the payment was compensatory and not a penalty, as it arose from a settlement to compensate for losses incurred by the customer due to patent infringement, and hence was allowable.

Similarly, courts have held that the decision to settle the dispute is based on commercial expediency and business interests. It is to ensure that the assessee is able to carry out its business operations without interruption. Thus, any amount paid to settle a dispute was allowed as a business expenditure under Section 37(1) of the IT Act.

However, with the insertion of the clause (iv) to Explanation 3 to Section 37(1), no deduction shall be allowed for expenditure incurred to settle proceedings.

Amendment to Section 40(b)(v) of the IT Act

- Section 40(b)(v) of the IT Act is proposed to be amended as regards the limit of allowable remuneration to working partners in a partnership firm to be allowed as a deduction. The same is tabulated below:

Sr. No	Earlier allowable deduction		Proposed amendment	
(a)	On the first INR 3,00,000 of the book profit or in case of loss	INR 1,50,000 or 90% of the book-profit, whichever is more	On the first INR 6,00,000 of the book profit or in case of loss	INR 3,00,000 or 90% of the book-profit, whichever is more
(b)	On the balance of the book-profit	At the rate of 60%	On the balance of the book-profit	At the rate of 60%

- This amendment is proposed to come into effect from April 1, 2025 and accordingly, would apply in relation to AY 2025-26 and thereafter.

Amendment to Section 43D of the IT Act

- Section 43D of the IT Act which deals with special provision in case of public financial institutions and public companies is proposed to be amended to exclude public companies from the scope of applicability of Section 43D of the IT Act and its related references i.e. by omitting clause (b) of Section 43D of the IT Act and clause (a) and (b) of Explanation to Section 43D of the IT Act.

ELP COMMENTS:

As per the prevalent Section 43D, public companies were able to defer the payment of taxes until the interest income was received. This facilitated better cash flow management. With the removal of the public company from the ambit of Section 43D, the tax liability on interest income shall arise on accrual basis, which may lead to financial burden and blockage of working capital.

Presumptive taxation scheme for non-resident engaged in the business of operation of cruise ships - Insertion of Section 44BBC and amendment to Section 44B to the IT Act

- It is proposed to introduce a new provision (Section 44BBC) to provide for a presumptive taxation scheme for non-residents engaged in the business of operation of cruise ships, subject to conditions as may be prescribed.
- The income of such assessees shall be the aggregate of amount paid or payable to the assessee and the amount received or deemed to be received by the assessee on account of carriage of passengers. The rate of tax on such income shall be 20%.
- Consequently, Section 44B of the IT Act that provides for presumptive taxation scheme for non-residents engaged in the business of shipping is proposed to be amended to exclude non-residents engaged in the business of cruise shipping.
- This amendment is proposed to come into effect from April 1, 2025 and will accordingly apply in relation to AY 2025-26 and thereafter.

Exemption of lease rentals of foreign company from leasing cruise ships - Insertion of new clause (15B) to the Section 10 of the IT Act

- Section 10(15B) of the IT Act is inserted to provide exemption of lease rentals received by foreign companies from leasing cruise ships to specified companies i.e., companies opting for presumptive taxation under Section 44BBC.
- The foreign companies shall be eligible for exemption under Section 10(15B) provided both the foreign company and the specified company are subsidiaries of the same holding company. The sunset for such exemption is March 31, 2030.
- This amendment is proposed to come into effect from April 1, 2025 and will accordingly apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

India's potential in cruise tourism is bolstered by its extensive coastal and riverine infrastructure. Furthermore, the burgeoning tourism within the country in places such as Lakshadweep and other islands is also expected to significantly boost cruise tourism. Going forward, foreign cruise shipping companies shall be eligible to opt for tax at 20%.

It is pertinent to note that erstwhile, non-residents engaged in the business of shipping including cruise shipping were eligible to opt for a presumptive tax rate of 7.5% on their total income.

CAPITAL GAINS TAX REGIME

The Finance Bill 2024 has proposed an amendment to Capital gains taxation for transactions undertaken under on or after July 23, 2024. The changes proposed to the capital gains tax regime will have significant impacts on all categories of investors. A snapshot of the new capital gains tax regime as compared to the old regime is set out hereunder:

Sr No	Category of investment	Period of holding for qualifying as long-term capital assets		Tax rate on short-term capital gains		Tax rate on long-term capital gains	
		Old provision	New provision	Old provision	New provision	Old provision	New provision
1.	Listed security being shares and equity-oriented mutual funds	1 year	1 year	If STT paid – 15% If STT not paid - At normal tax rate	If STT paid – 20% If STT not paid - At normal tax rate	If STT paid – 10% (without indexation) IF STT not paid – 20% (with indexation) or 10% (without indexation)	12.5%[1] (without indexation)
2.	Listed security unit of business trust (REIT and Invit)	3 years	2 years	If STT paid – 15% If STT not paid - At normal tax rate	If STT paid – 20% If STT not paid - At normal tax rate	If STT paid – 10% (without indexation) IF STT not paid – 20% (with indexation) or 10% (without indexation)	12.5%[1] (without indexation)
3.	Listed debentures and bonds (other than zero coupon bonds)	3 years	1 year	At normal tax rate	At normal tax rate	10% (without indexation)	12.5% (without indexation)
4.	Market linked debentures and specified mutual funds[2]	Deemed to be short term	Deemed to be short term	At normal tax rate	At normal tax rate	N.A.	N.A.
5.	Other listed security	3 years	1 year	At normal tax rate	At normal tax rate	20% (with indexation benefit) or 10% (without indexation)	12.5% (without indexation)
6.	Zero coupon bonds	1 year	1 year	At normal tax rate	At normal tax rate	10% (without indexation)	12.5% (without indexation)

[1] The exemption on long term capital gains on listed shares on which STT is paid is increased from INR 100,000 to INR 125,000

[2] Specified mutual funds include a mutual fund which invests 65% or more of the proceeds in debt and money market instruments. Further, the funds which invests 65% or more of the proceeds in above funds will also be classified as specified mutual funds.

Sr No	Category of investment	Period of holding for qualifying as long-term capital assets		Tax rate on short-term capital gains		Tax rate on long-term capital gains	
		Old provision	New provision	Old provision	New provision	Old provision	New provision
7.	Unlisted bond or debentures	3 years	Deemed to be short term	At normal tax rate	At normal tax rate	20% (without indexation)	N.A.
8.	Unlisted shares	2 years	2 years	At normal tax rate	At normal tax rate	Resident - 20% (with indexation) Non-resident – 10% (without indexation)	12.5% (without indexation)
9.	Land and building	2 years	2 years	At normal tax rate	At normal tax rate	20% (with indexation)	12.5% (without indexation)
10.	Other assets	3 years	2 years	At normal tax rate	At normal tax rate	20% (with indexation)	12.5% (without indexation)

ELP COMMENTS

- **Higher Tax Outflow on Listed Shares and Securities** - The increase in tax rate for long-term capital gains on listed shares and securities from 10% to 12.5% and for short-term gains from 15% to 20% will result in higher tax liabilities for investors and directly reduces the net returns from these investments. For example, if an investor had taxable long-term capital gains of INR 100,000 from listed shares, the tax liability would increase from INR 10,000 to INR 12,500. For short-term gains of INR 100,000 from listed shares, the tax would rise from INR 15,000 to INR 20,000.
- **Reduced Tax Rate on Other Long-Term Assets but Removal of Indexation Benefit** - The tax rate on other long-term assets has been reduced from 20% to 12.5%. While this seems to be beneficial at first glance, the removal of the indexation benefit can significantly impact the taxpayers. Indexation adjusts the purchase price of an asset to account for inflation, thereby reducing the taxable capital gain. Without indexation, the entire gain becomes taxable, which can be a substantial burden, especially in a case where the return on investment is less than 2.6 times the inflation rate.
- **Increased Tax on Long-Term Unlisted Shares for Non-Residents** - The tax rate on long-term unlisted shares for non-residents has increased from 10% to 12.5% which raises the tax burden on non-resident investors. This change could impact the post-tax return on investment made in Indian unlisted shares by foreign investors, especially where such capital gain is not taxable in the home jurisdiction (on account of participation exemption or otherwise).

Summary of the proposed amendments is as under:

Amendment to Section 48 of the IT Act

- Taxpayers are eligible to claim indexation benefits on long-term capital gains in certain situations.
- Such indexation benefit is done away with the proposed amendment in Section 48 of the IT Act.
- This amendment is proposed to be effective from July 23, 2024. Accordingly, taxpayers would not be able to claim indexation on transfers undertaken on or after July 23, 2024.

ELP COMMENTS:

This is a big move by the FM and will impact many individuals proposing to sell their properties as indexation benefit (especially for ancestral and long-term properties) was yielding a considerable relief in terms of adjusting the cost of acquisition and thereby rationalizing the tax outgo. A reduction of tax rate from 20% to 12.5% would anyways provide some marginal relief to such taxpayers.

Amendment to Section 47 of the IT Act

- Transfer of capital assets under gift, will or irrevocable trust is now restricted to individuals and HUFs.
- Corporate gifting is carved from Section 47 of the IT Act.
- This amendment is proposed to come into effect from April 1, 2025, and accordingly would apply in relation to AY 2025-26 and onwards.

ELP COMMENTS:

The availability of benefits under Section 47 of the IT Act on transactions relating to gifting by unnatural persons (i.e., transfer of shares by corporates for nil consideration) has historically been the subject matter of contention and litigation. This issue has been deliberated in detail by the Hon'ble Madras High Court in the case of Redington (India) Ltd. [2020] 122 taxmann.com 136 (Madras) wherein, on the question of whether a company would be entitled to execute a gift agreement, it was held that a company is a living person in terms of Section 5 of the Transfer of Property Act, 1882, and hence would be eligible to gift an asset to another company. It is pertinent to note that earlier, the Hon'ble Gujarat High Court in Prakriya Pharmacem [2016] 66 taxmann.com 149 (Gujarat) held that the gift of shares by a company to its sister company would not be chargeable to capital gain as it is specifically exempted under Section 47(iii) of the IT Act.

The proposed amendment to Section 47(iii) of the IT Act is applicable prospectively. Given the above, it would be interesting to evaluate the impact on the transactions of gifting by unnatural persons undertaken prior to such provisions being effective, specifically in light of the aforementioned judgments.

Amendment to Section 50AA of the IT Act

- Sale of unlisted bonds or unlisted debentures are proposed to be regarded as short-term capital asset irrespective of their period of holding similar to money market mutual funds.

- Further, it is proposed to amend the definition of "Specified Mutual Funds" effective from AY 2026-27 to clarify that "Specified Mutual Funds" means (a) mutual funds which invest more than 65% in debt and money market instruments or (b) funds which invests more than 65% in units of fund referred in (a).
- This amendment is proposed to be effective from July 23, 2024.

ELP COMMENTS:

Unlisted debentures and unlisted bonds are proposed to be brought to tax at applicable rates by including them under provisions of section 50AA of the IT Act. Accordingly, benefit of lower rate of tax for long term capital gains is not applicable on such instruments.

Further, the amended definition of "Specified Mutual Funds" would avoid the unintended adverse impact on Exchange Traded Funds (ETFs), Gold Mutual Funds and Gold ETFs and remove the ambiguity on coverage of Fund of Funds.

Amendment to Section 55 of the IT Act

- When capital gains tax was re-introduced for listed securities on January 31, 2018, inter-alia, benefit of FMV of such listed securities was provided for, such that only the incremental gains from February 1, 2018 be subjected to tax.
- However, the provisions did not cover instances where the securities were unlisted as on February 1, 2018, but are listed subsequently to transfer of such securities as part of 'offer for sale' under an IPO.
- Clarity is now provided for determining cost of acquisition qua such shares offered under Offer for Sale. The same will be determined based on indexed cost of acquisition as per CII for FY 2017-18.
- This amendment is proposed to be retrospective i.e., from April 1, 2018.

ELP COMMENTS:

There were various methodologies which taxpayers resorted to earlier to compute the cost of acquisition while offering their shares under an OFS. This ranged from – original cost, to indexed cost, to FMV based on valuers report, to an aggressive position that the transaction would not be subject to tax on account of failure of computation mechanism. The proposed amendment would put to this issue to rest. Also, given that this is a retrospective amendment, taxpayers who have taken aggressive positions earlier, would have to revisit their position and revise the returns, if possible.

Tax on short term capital gains in certain cases

- The tax rate under Section 111A of the IT Act on short-term capital gains arising on the transfer of STT-paid equity shares, units of equity-oriented mutual fund, and unit of a business trust is proposed to be increased to 20% from the present rate of 15%.
- This amendment is proposed to be effective from July 23, 2024.

ELP COMMENTS:

The present rate of tax of 15% was considered to be very low and largely benefitted the High-net-worth individuals.

Tax on long-term capital gains

- Section 112 of the IT Act is proposed to be amended to provide a tax rate of 12.5% on long-term capital gains arising to all taxpayers, instead of the existing tax rate (20% for resident taxpayers and 10% in case of non-resident tax payers).
- Further, the tax rate applicable on long-term capital gains arising on the transfer of listed securities off-market or zero-coupon bonds which are presently taxed at 10%, are proposed to be taxed at 12.5%.
- Section 112A of the IT Act is proposed to be amended to provide that the tax rate on long-term capital gains arising on the transfer of STT-paid equity shares, units of an equity-oriented mutual fund, and units of a business trust would be taxed at 12.5% for all taxpayers, instead of an existing tax rate of 10%.
- Further, it is proposed to increase the threshold for non-applicability of tax under Section 112A of the IT Act from INR 100,000 to INR 125,000. The aforementioned increase is to be applied on an aggregate basis for FY 2024-25.
- This amendment is proposed to be effective from July 23, 2024.

ELP COMMENTS:

Long-term capital gains tax rates are proposed to be revamped. The tax rate on long-term capital gains is proposed to be 12.5% in respect of all categories of assets. The earlier rate was 10% for STT paid listed equity shares, units of equity-oriented fund and business trust under section 112A and 20% for other assets (with indexation benefit) under section 112 of the IT Act.

The proposed change brings listed and unlisted shares at par in terms of tax rates. This could prove to be a major change in the private equity space where companies look at IPOs, inter-alia, for availing a lower rate of tax of 10%. On the other hand, for the promoters this measure would discourage the need to plan taxes through externalization structures.

Change in Tax rates proposed on long-term capital gains for non-residents in certain cases

- The following class of long-term capital assets would be taxed at 12.5% instead of 10%

Section proposed to be amended	Class of asset
Section 112(1)(c)(iii)	Sale of unlisted shares by non-resident
Section 115AB	Units purchased in foreign currency by the taxpayer being an overseas financial organization (referred to an offshore Fund)
Section 115AC	Specified bonds, Global Depository receipt purchased in foreign currency
Section 115ACA	Specified Global Depository receipt purchased in foreign currency
Section 115AD	Transfer of securities as per section 112A on income of foreign institutional investors or of specified fund
Section 115E	Long-term capital assets held by non-resident Indians (NRIs)

- Further, Section 115AD of the IT Act is proposed to be amended to provide that the tax rate on transfer of short-term capital assets being securities held by foreign institutional investors or of the specified fund, would be taxed at 20% instead of 15%.
- The above amendments are proposed to be effective from July 23, 2024.

ELP COMMENTS:

A higher outgo towards tax on capital gains would lead to a lesser ROI thereby taking away a bit of sweetener from the soaring Indian stock market. That said, this certainly rationalizes the tax rate on LTCG which was at disparity earlier wherein residents were taxed at a higher rate vis-à-vis non-residents.

ABOLITION OF ANGEL TAX

Amendment to Section 56 of the IT Act

- Angel tax was introduced to curb value shifting primarily between resident tax-payers initially. The ambit of this section was expanded subsequently to cover non-residents as well.
- It created a lot of concerns within the industry as many genuine transactions would get covered within the ambit of section 56(2)(viib) of the IT Act, especially with the start-up industry where valuations are quiet fluctuating.
- It is now proposed to abolish the Angel tax completely.
- This amendment is proposed to be effective from April 1, 2025.

ELP COMMENTS:

The proposed abolition of the Angel tax marks a significant milestone for domestic companies, which have faced both legal and practical challenges under these contentious provisions. Historically, the Angel tax sparked disputes over valuation methodologies, treatment of estimated figures, scrutiny of funding sources, and taxation on equity conversions. Originally intended to curb black money, it became a tool for taxing shares issued above fair market value, leading to extensive litigation and concerns, particularly for non-resident investors navigating conflicting regulations w.r.t. determination of valuation (Exchange control regulations vis a vis the IT Act) from FY 2023-24.

The FM's decision to abolish Angel tax (Section 56(2)(viib) of ITA) across all shareholder classes is a step towards enhancing tax certainty, reducing litigation and supporting startup ecosystem. This move is expected to reduce burdens on investors and streamline deal negotiations and documentation processes. It also underscores the government's commitment to fostering growth and innovation in these crucial areas, promoting their resilience and productivity in the evolving economic landscape.

CHAPTER VI – A DEDUCTIONS

Amendment to Section 80CCD of the IT Act

- The existing provisions of subsection (2) of Section 80CCD of the IT Act provides that when any amount is paid or deposited by central or state government employer on account of pension scheme, a deduction shall be allowed in the computation of income of the individual employee amounting to whole of the amount contributed by his

employer to the extent of 14% of his salary in case of employer is central or state government and 10% in case of other employers.

- It is proposed to amend subsection (2) of 80CCD of the IT Act to provide that the deduction on account of contribution from other employers will be increased from 10% to 14% where the individual employee has opted for new tax regime under Section 115BAC of the IT Act.
- This amendment is proposed to come into effect from April 1, 2025 and accordingly would apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

The aforesaid amendment to provide enhanced deduction for individual taxpayers under new tax regime provides further impetus to new tax regime. This also brings parity with deduction allowed @ 14% to central/state government employees.

Amendment to Section 80G of the IT Act

- Section 80G of the IT Act grants approval to certain funds and institutions for receiving donations and deduction is available for donations to approved funds or institutions, in the hands of the taxpayer making such donations.
- First proviso to sub-section 5 of the said Section provides that such institution or funds shall make an application to Principal Commissioner or Commissioner for grant of approval.
- In order to simplify the process of application, it is proposed to amend first proviso to sub-section (5) of Section 80G of the IT Act to provide that where the institution or fund has been provisionally approved, application of grant for approval shall be made at least 6 months prior to expiry of provisional approval or within 6 months of commencement of its activities, whichever is earlier or where activities of the institution or fund have not commenced, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said approval is sought; or commenced, at any time after the commencement of such activities shall make an application for grant of approval.
- It is further proposed to amend Section 80G of the IT Act to provide that the order granting registration / rejecting application shall be passed before expiry of the period of 6 months from the end of the quarter in which the application was received.

PROVISIONS RELATING TO TAX DEDUCTED / COLLECTED AT SOURCE

TCS credit to be considered for computing tax deductible on salary payments

- Currently, Section 192(2B) of the IT Act *inter alia* allows the salaried employee to share the details of income taxable under any other head along with tax deducted thereon for the purpose of deduction of TDS by the employer on salary income.
- The Finance Bill proposes to allow the salaried employees to share the details of TCS collected from the employee and the tax shall be deducted on the net tax payable after reducing amount of TCS collected from employee. This will reduce the cash outflow in the hands of salaried employees at the time of receipt of salary.
- This proposed amendment will come into effect from October 1, 2024.

ELP COMMENTS:

In recent years, TCS provision was extended to LRS payments, purchase of vehicles, foreign travel etc. which increased cash outflow in the hands of salaried employees. Refund for TCS could be claimed by employees only in their respective ITR.

The proposed amendment will increase cash flow in the hands of salaried employee where TCS is collected from employees.

TDS on interest on Floating Rate Savings (Taxable) Bonds (FRSB), 2020

- As per clause (iv) of the proviso to Section 193 of IT Act, tax is not required to be deducted on interest payable on any securities issued by Central and State Governments. Further, as per proviso to above clause, the exemption to withhold tax shall not be applicable to interest in excess of INR 10,000 payable on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018.
- In addition to above, it is proposed to exclude (FRSB), 2020 and any other notified security of the Government. Thus, TDS shall be applicable on interest payable in excess of INR 10,000 on (FRSB), 2020.
- This proposed amendment will come into effect from October 1, 2024.

ELP COMMENTS:

The proposed amendment expands the scope of Section 193 of the IT Act to include interest payable against Floating Rate Savings Bonds (FRSB) 2020 and any other security issued by Government as may be notified.

TDS under section 194C

- Section 194C of the IT Act is applicable on payments made to contractors and provides for TDS rates of 1% or 2% depending on the nature of the assessee. Section 194J on the other hand is applicable on fees for professional or technical services wherein the applicable TDS rates are 2% or 10% depending on the nature of payment being made.
- Any professional or technical service falling under Section 194J may also fall within Section 194C. However, TDS on professional or technical service is deductible under 194J rather than Section 194C. This is in terms of settled law that TDS should be deducted basis the more specific rather than the general provision.
- With a view to give more clarity and thrust on this position, it is proposed to explicitly provide that any sum referred to in sub-section (1) of Section 194J does not constitute "work" for the purposes of TDS under Section 194C.
- Further, it is clarified that provision of Section 194C shall not apply to manufacturing or supplying a product according to requirement of customer where material is purchased from a person other than customer or its associates.
- This proposed amendment will come into effect from October 1, 2024.

ELP COMMENTS:

The proposed amendment provides clarity on non-applicability of section 194C on (i) transactions where TDS is deductible under section 194J of the Act or (ii) manufacturing/ process is undertaken based on specification provided by customer where material used for manufacturing/ process is not provided by such customer or its associates.

Rationalization of TDS Rates

- To simplify and rationalize the TDS rates with different thresholds and multiple rates ranging from 0.1% to 30% and above, the TDS rates have been reduced to improve ease of doing business and better compliance by taxpayers.
- However, no changes have been made in TDS applicable on salary, virtual digital assets, winnings from lottery etc. / race horses, transfer of immovable property and payment to non-residents, contracts etc.
- Tabulated below are the proposed revisions in TDS rate:

Section	Particulars	Present TDS rate	Proposed TDS rate	With effect from
194DA	Payment in respect of life insurance policy	5%	2%	01-10-2024
194G	Commission etc. on sale of lottery tickets	5%	2%	01-10-2024
194H	Payment of commission or brokerage	5%	2%	01-10-2024
194-IB	Payment of rent by certain individuals or HUF	5%	2%	01-10-2024
194-M	Payment of certain sums by certain individuals or Hindu undivided family responsible for paying any sum to any resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract	5%	2%	01-10-2024
194O	Payment of certain sums by e-commerce operator to e-commerce participant	1%	0.1%	01-10-2024
194F	Payments on account of repurchase of units by Mutual Fund or Unit Trust of India	20%	Proposed to be omitted	01-10-2024

ELP COMMENTS:

The proposed amendments aim to rationalise the TDS rates by reducing the TDS rates on various provisions which will reduce cash flow impact. This aims to improve ease of doing business and improve compliance.

Clarification on TDS applicable on sale of immovable property

- Section 194-IA provides for TDS on payment of consideration for transfer of certain immovable property other than agricultural land. The said provision is not applicable where the consideration for transfer of an immovable property and the stamp duty value are both less than INR 50 lakhs.
- In case of sale of a property by multiple transferors or purchase by multiple transferees, 'consideration' has in the past been interpreted to refer to each individual buyer's/seller's payment/receipt, rather than the total consideration for the immovable property.
- Accordingly, it has been clarified that where there is more than one transferor or transferee in respect of an immovable property, then such consideration shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for transfer of such immovable property.
- The proposed amendments will come into effect from October 1, 2024.

ELP COMMENTS:

The proposed amendments clarifies that in case of joint ownership, for the purpose of determining applicability of section 194IA, aggregate consideration payable/ receivable by all joint owners shall be considered.

TDS on remuneration to partners of firms

- With effect from April 1, 2025, a new Section 194T is proposed to be introduced whereby TDS of 10% will be required to be deducted on any sum in the nature of salary, remuneration, commission, bonus or interest paid by a firm to a partner of the firm.
- No deduction would be applicable where the sum or the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed INR 20,000 during the financial year.

ELP COMMENTS:

The proposed amendments will reduce the cash flow in the hands of partners of firm. The tax shall be deductible irrespective of whether such payment is allowable as deduction to the firm or not.

Option to avail lower rate of TDS/ TCS extended to Section 194Q / Section 206C(1H)

- Section 197/ Section 206C(9) of the IT Act allows an assessee to apply to the concerned officer for a certificate of lower rate of TDS/ TCS under specified sections. This provision effectively allows the assessee to have TDS deducted/ TCS collected at a rate closer to his estimated tax liability, to facilitate lesser working capital accumulation.
- It has been proposed to extend this benefit to Section 194Q/ 206C(1H) wherein TDS/ TCS is deducted/ collected on purchase/ sale of goods.
- The proposed amendment will be effective from October 1, 2024.

ELP COMMENTS:

This is a welcome amendment which will benefit assesses having tax losses or nominal taxable income.

Inclusion of income tax paid outside India to compute taxable income

- Section 198 of the IT Act provides that all sums deducted in accordance with the provisions of Chapter XVII-B shall be deemed to be income received for the purpose of computing the income of an assessee in India.
- It was noted by the Government that some assessees were not including taxes withheld outside India for the purposes of calculating their total income, which was leading to under reporting of total income, as only their income net of taxes deducted outside India was being offered to tax, while taxes withheld outside India was claimed as foreign tax credit.
- In order to address this issue, it has been proposed to amend Section 198 to include income taxes paid outside India for the purpose of computing the income of the assessee liable to tax in India.
- The proposed amendment will be effective from April 1, 2025.

ELP COMMENTS:

This amendment clarifies that only the amount that is claimed as foreign tax credit shall be included as income of the assessee. Consequently, tax deducted in foreign country which are not allowed as foreign tax credit in India shall not be included in income of the assessee.

Introduction of time limit for rectifying TDS/ TCS return

- Presently, there is no time limit prescribed for rectification of TDS return/ TCS return.
- It has been proposed to insert a new proviso to Section 200 and Section 206C(3B) prescribing a time limit of 6 years from the end of the financial year in which such TDS/ TCS return was required to be filed.
- The proposed amendment will be effective from April 1, 2025.

Widening of Section 200A for processing of statements other than those filed by a deductor

- The existing provisions of Section 200A in the IT Act provides for the manner of processing of statements of TDS filed by deductors under Section 200(3).
- It is proposed to widen the scope of the provision by introducing sub-section 3, to empower the CBDT to make a scheme for the processing of statements filed by persons other than deductors, such as statements in Form No. 26QF filed by an Exchange operating a platform for transfer of virtual digital assets (as introduced vide Notification No. 73/2022 dated 30.06.2022).
- The proposed amendments will take effect from April 1, 2025.

Time limit to pass order for failure to deduct/ collect or pay TDS/ TCS

- The existing provision of Section 201(3) in the IT Act provided a time limit of 7 years for deeming a person to be an 'assessee in default' for failure to deduct tax from a resident, whereas no time limit was prescribed in case of failure to deduct from a non-resident.
- Further there are no limits specified for passing an order under section 206C of the IT Act.
- It is proposed to amend section 201(3) to amend the time limit to 6 years for issuance of order deeming a person to be an 'assessee in default', for failure to deduct part or whole of tax from any person, i.e., a resident and a non-resident.

- Further, it has been proposed to insert Section 206C(7A) providing that no order shall be made by deeming a person as an 'assessee in default' in case of failure to collect tax after expiry of six years from the end of the financial year in which tax was collectible or two years from the end of the financial year in which the correction statement is delivered under sub-section (3B), whichever is later.
- These proposed amendments will take effect from April 1, 2025.

Amendments to TCS provisions under Section 206C to promote ease of doing business

- As per the existing provisions under Section 206C(1F), any person (seller) receiving consideration for sale of motor vehicle of value exceeding INR 10 lakh shall collect TCS at 1% additionally from the buyer at the time of receipt of sale consideration. It has been proposed to expand the scope of this section to include any notified goods (which shall be in the nature of luxury goods) for proper tracking of such expenses. This proposed amendment will take effect from January 1, 2025.
- As per the existing provisions under Section 206C(4), TCS credit is allowed to the person from whom such TCS is collected and no other person. For instance, if funds are remitted abroad in the name of minor from whom TCS is collected then credit of such TCS amount so collected must logically be allowed to the parent since the income of minor is clubbed with that of the parent. Accordingly, Section 206C(4) has been modified to allow for credit of such TCS collected from the collectee to any person who is eligible for credit being the parent in the instant case. This proposed amendment will take effect from January 1, 2025.
- As per the existing provision of Section 206C(7), an assessee liable to collect TCS is liable to pay 1% interest in cases where: (i) he fails to collect applicable TCS from buyer, and (ii) where after collection of TCS, he fails to pay the said amount to the Government. To align the said interest rate with the TDS provisions under Section 201, it has been proposed to increase the interest rate from 1% to 1.5% in cases where the assessee fails to pay the said amount to the Government after collection. This proposed amendment will take effect from April 1, 2025.
- It has also been proposed insert Section 206C(12) to provide that no TCS shall be applicable or lower TCS shall be collected in respect of specified transaction, from such person or class of persons, including institution, association or body or class of institutions, associations or bodies, as may be notified by the Central Government in the Official Gazette, in this behalf. This amendment will benefit such notified assesses whose income is exempt in India and they are not required to file income tax return. This proposed amendment will take effect from October 1, 2024.

ELP COMMENTS:

The proposed amendments aim to improve compliance, ease of doing business and reduce unwanted litigation.

Tax clearance certificate required at the time of departure from India in case of liabilities under the Black Money Act as well

- As per the existing provisions under Section 230, no person domiciled in India can leave the country without obtaining a certificate from the income-tax authorities confirming that they have no outstanding tax liabilities or have made satisfactory arrangements to pay any such liabilities. This applies to taxes under the Income-tax Act, Wealth-tax Act, Gift-tax Act, and Expenditure-tax Act.
- It is now proposed to also include the liabilities under the Black Money Act within the scope of Section 230(1A), requiring a tax clearance certificate for such liabilities as well. This proposed amendment will take effect from October 1, 2024.

OTHERS

Adjustment of liability under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, against seized assets under the IT Act

- As per Section 132B of the IT Act, the amount recovered out of assets seized under Section 132 of the IT Act or requisitioned under Section 132A of the IT Act, may be applied towards certain liability. This *inter alia* includes existing liability under IT Act, Wealth Tax Act, 1957, Expenditure Tax Act, 1987, Gift Tax Act, 1958 and the Interest Tax Act, 1974.
- Majority of the liabilities arising under the laws administered by the CBDT have been covered in Section 132B of the IT Act, for the purpose of extinguishment of liability by recovery out of the seized assets, except the liabilities arising under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
- In view of the above, it is now proposed to insert the reference of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the Section 132B of the IT Act, so as to recover the existing liabilities under the said statute, out of seized assets.
- The above amendment is proposed to come into effect from October 01, 2024.

Discontinuation of the provisions allowing quoting of Aadhaar Enrolment ID in place of Aadhaar number

- Section 139AA of the IT Act mandates quoting either the Aadhaar number or Enrolment ID of Aadhaar application, in the PAN allotment application and return of income.
- Since the coverage of Aadhaar number has been increasing and now encompasses majority of the population in India, it is proposed to discontinue the option of quoting the Enrolment ID of Aadhaar application form, to obviate duplication and misuse of PAN.
- Thus, quoting of Aadhaar number is made mandatory at the time of making PAN allotment application or filing return of income. Further, every person who has been allotted PAN on the basis of Enrolment ID of Aadhaar application shall intimate the Aadhaar number, on or before a notified date.
- The above amendments are proposed to come into effect from October 01, 2024.

ASSESSMENT PROCEDURES

Rationalization of provisions related to time-limit for completion of assessment proceedings, reassessment and recomputation

- Section 139 of the IT Act which deals with the return of income, is proposed to be amended to provide that where any return of income is filed pursuant to an order under Section 119(2)(b) (i.e., general or special order issued to avoid genuine hardship), the provisions of Section 139 shall apply.
- Section 153 of the IT Act specifies the time limit for completion of assessment, reassessment and recomputation under various provisions of the IT Act. The following amendments are proposed under Section 153 of the IT Act:
  - Where a return of income is filed in consequence of an order issued under Section 119(2)(b) of the IT Act (general or special order issued to avoid genuine hardship), the order of assessment under Section 143 (regular

assessment) or Section 144 (best judgement assessment) of the IT Act may be made at any time before the expiry of 12 months from the end of the FY in which such return was furnished.

- Sub-section (3) currently prescribes the time limit for passing fresh assessment order in pursuance of an order passed under Section 254 (order of Appellate Tribunal) or Section 263 (revision of order prejudicial to revenue) or Section 264 (revision of other order) of the IT Act, setting aside or cancelling an assessment. The said sub-section is proposed to be amended to also include a reference to an order passed under Section 250 of the IT Act (order passed by Joint Commissioner (Appeals) or Commissioner (Appeals)). Consequently, fresh assessment order pursuant to an order passed under Section 250 of the IT Act should be made before the expiry of 9 months from the end of the FY, in which the order under Section 250 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- Section 153(8) provides that order of assessment or reassessment relating to any assessment year, which stands revived under sub-section (2) of section 153A, shall be made within a period of 1 year from the end of the month of such revival or within the period specified in the said Section or Sub-section (1) of Section 153B, whichever is later. In this regard, it is proposed to amend Section 153(8) to also include timeline for passing of an order in the case of revived assessment or re-assessment proceedings, as a consequence of annulment of block assessments under Chapter XIV-B of the IT Act.
- As per Explanation 1 to Section 153 of the IT Act, the period commencing from the date of initiation of search and ending on the date on which the books of accounts or documents or seized materials are handed over to the AO shall be excluded while computing the period of limitation (for making an order of assessment, reassessment or recomputation). A new proviso is proposed to be inserted to provide that if the date of limitation for making an order of assessment, reassessment or recomputation, ends before the end of the month, such period shall be extended to the end of such month.

- These amendments are proposed to come into effect from October 01, 2024.

Rationalization of provisions relating to assessment and reassessment under the IT Act

The Finance Act, 2021 brought significant amendments to the procedure governing assessment and reassessment of income under Section 147 of the IT Act, primarily by modifying Section 148 and Section 149 of the IT Act, and introducing a new Section 148A. Recognizing numerous concerns raised regarding extensive litigation across different forums due to varied interpretation of these provisions, and in response to representations advocating for a reduction in the time-limit for issuing notices, the aforementioned provisions are proposed to be substituted with new provisions to streamline the procedure relating to income escaping assessment.

- The key features of the proposed amendments are as follows:
  - Before making the assessment, reassessment or recomputation under Section 147 (i.e., income escaping assessment) and subject to the provisions of Section 148A, the Assessing Officer is required to issue a notice to the assessee, along with a copy of the order passed under Section 148A(3) (determining it to be a fit case), requiring assessee to furnish within such period as may be specified, not exceeding 3 months from the end of the month in which such notice is issued, a return of his income or the income of any other person in respect of whom assessee is assessable.
  - Further, it is proposed that notice under this Section shall not be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year.

- In case where the AO has received information under the scheme notified under Section 135A (i.e., faceless collection of information), notice under Section 148 shall not be issued, unless prior approval of the specified authority is obtained.
- Further, definition of 'information' is proposed to be amended to also include information emanating from survey conducted under Section 133A on or after September 01, 2024, excluding the provisions of Section 133A(2A)which deals with surveys conducted for verifying the tax deducted or collected at source.

- Section 148A of the IT Act, which provides the procedure to be followed by AO before issuing notice under Section 148, is proposed to be substituted so as to provide the following:
  - The AO shall, before issuing any notice under Section 148 of the IT Act, provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause as to why a notice under Section 148 should not be issued. The said notice shall be accompanied by the information which suggests that the income chargeable to tax has escaped assessment. The assessee may furnish the reply within the time specified in such notice.
  - Basis the material available on record and taking cognizance of the reply submitted by the assessee, the AO shall pass an order, with prior approval of the specified authority, determining whether or not it is a fit case to issue notice under Section 148 of the IT Act.
  - Notably, it is proposed that the provisions of Section 148A shall not apply to cases where the AO has received information under the scheme notified under Section 135A (i.e., faceless collection of information), pertaining to income chargeable to tax escaping assessment for such AY in his case.
- Section 149 of the IT Act is proposed to be amended to provide the following time limits for issuance of notice under Section 148 and Section 148A of the IT Act:

Sr. No.	Case	Time Limit*	
		Existing	Proposed
A	Section 148 of the IT Act		
1	Normal Cases	3 years	3 years and 3 months
2	Specific case where the AO has in his possession relevant books of accounts or other documents or evidence related to any asset or expenditure or transaction or entries which reveal that the income chargeable to tax which has escaped assessment, amounts or likely to amount to INR 5 million	10 years	5 years and 3 months
B	**Section 148A of the IT Act**		
1	Normal Cases	Not specified	3 years

Sr. No.	Case	Time Limit*	
		Existing	Proposed
2	Specific case where the income chargeable to tax which has escaped assessment, amounts or likely to amount to INR 5 million	Not specified	5 years

* *time limit shall be computed from the end of relevant AY*

ELP COMMENTS:

In the existing scheme, the time limit has been prescribed only for issuance of notice under Section 148. It is often seen that the notice under Section 148A of the IT Act are issued just before the expiry of time limit of Section 148 notices, giving short time for adjudication. With the proposed amendment, the Authorities would get atleast 3 months' time between issuance of show cause notice and reassessment notice.

- Section 151 of the IT Act is proposed to be amended to provide that the specified authority for the purpose of Section 148 (issue of notice where income has escaped assessment) and Section 148A (conducting inquiry, providing opportunity before issue of notice under Section 148) of the IT Act shall be the Additional Commissioner or the Additional Director or the Joint Commissioner or the Joint Director.

ELP COMMENTS:

Under the existing scheme, the specified authority for sanction of reassessment is the (a) Principal Commissioner or Principal Director or Commissioner or Director if 3 years or less have lapsed from the end of assessment and (b) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than 3 years have lapsed from the end of assessment year.

The assessees have challenged the re-assessment proceedings before the Writ Court where the time period of 3 years had lapsed but the sanction was not given by the Principal Chief Commissioner. In such cases, the Writ Courts have quashed the reassessment proceedings where the time period of 3 years had lapsed but the sanction was not given by the Principal Chief Commissioner [JM Financial & Investment Consultancy Services Pvt. Ltd. vs. ACIT [2023] 451 ITR 205 (Bom)].

With the proposed amendment, common authorities have been appointed as the specified authority in all cases to avoid any litigation.

- Section 152 of the IT Act is proposed to be amended to provide that:
  - Where a search has been initiated under section 132 or requisition is made under section 132A, or a survey is conducted under section 133A (excluding sub-section (2A) of the said section), during the period commencing from April 1, 2021, to September 1, 2024; or
  - Where a notice under section 148 has been issued or an order under Section 148A(d) (determining whether or not the case is fit for issuance of notice under Section 148 of IT Act) has been passed, prior to the September 1, 2024,

the provisions of Section 147 to Section 151 of the IT Act (i.e., the procedure for income escaping assessment), as they stood immediately before the commencement of the Finance (No. 2) Act, 2024, shall apply to the said cases.

- These amendments are proposed to come into effect from September 01, 2024.

ELP COMMENTS:

The search and seizure proceedings under Section 132 or requisition under Section 132A is proposed to be carved out from the revised reassessment scheme under Section 147 to 151A of the IT Act and separate scheme of block assessment for such cases has been proposed.

Introduction of block assessment provisions in cases of search under Section 132 and requisition made under Section 132A of the IT Act

- A special procedure for assessment of search cases was provided under Chapter XIV-B of the IT Act, effective up to May 31, 2003. Thereafter, series of amendments were carried out with respect to assessment of search and seizure proceedings under Section 132 and Section 132A of the IT Act. The absence of consolidated assessment of such cases, under the extant provisions, resulted in staggered approach whereby only time-barring year was re-opened in the case of searched assessee.
- To address these issues, a new Chapter XIV-B is introduced to govern the assessment of search proceedings in terms of Section 132 and Section 132A of the IT Act, with an added objective of enhancing efficiency, reduce litigation costs, and ensure coordinated investigations. Chapter XIV-B comprises of 11 Sections (i.e. Section 158B to 158BI of the IT Act).
- As per the proposed amendment, where a search is initiated under Section 132, or books of account, other documents or any assets are requisitioned under Section 132A, the AO shall proceed to assess or reassess the total income of such person in accordance with the provisions of Chapter XIV-B of the IT Act.

Block period

- Such assessment shall be undertaken for the block period. The block period shall consist of:
  - April 1 of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or date of such requisition; and
  - 6 AY(s) preceding the previous year in which the search was initiated.

Abatement of pending assessments

- Upon initiation of block assessment, regular assessments (including transfer pricing proceedings) for the block period which are pending on the date of initiation of search shall abate. Thus, one consolidated assessment for the block period will be undertaken and till the block assessment is complete, no further assessment/ reassessment proceeding shall take place in respect of the period covered in the block.

Filing of income tax return

- A notice under Section 158BC shall be issued after obtaining prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be. This notice shall require the assessee to furnish response within 60 days of issuance of notice and also furnish return of income for the block period.

- Failure to file return of income in response to above notice shall be punishable with imprisonment for 3 months to 3 years and with fine.

Assessment of income

- The AO shall assess the "total income" of the assessee which shall include following:

  (i) Income disclosed in the return furnished under section 158BC;

  (ii) Income assessed as per order passed under Section 143(3)/ 144/ 147/ 153A/ 153C prior to initiation of search;

  (iii) Income declared in return filed under Section 139/ 142(1);

  (iv) Income of the year of search as per entries/ transaction recorded in the books of account and other documents maintained in normal course of business;

  (v) Undisclosed income determined by the AO for block period on the basis of evidence found as a result of search or survey or requisition of books of account or other documents and such other material/ information available with AO or come to his notice during the course of search proceedings.

- The term "Undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be incorrect, in respect of the block period.

Computation of tax payable on assessed income

- The tax on total income computed by the AO excluding income referred in (ii), (iii) and (iv) above (i.e. undisclosed income as assessed by AO + Income offered in return filed under Section 158BC in addition to the income disclosed/ assessed earlier) shall be levied at rate of 60%, plus applicable surcharge under Section 113 of the IT Act. Currently no surcharge rate has been prescribed.

Interest and penalty

- Where return of income under Section 158BC of the IT Act is not furnished or is furnished after the time specified in the notice, interest @ 1.5% for every month or part of a month immediately following the expiry of the time specified in the notice and ending on the date of completion of assessment, shall be charged.

- Penalty on the undisclosed income of the block period as determined by the AO shall be levied at 50% of the tax payable on such income. The order for levying penalty may be passed by AO or CIT(A). No such penalty shall be levied if the assessee offers undisclosed income in the return furnished in pursuance of search, pays the tax along with the return and no appeal is filed against assessment of income disclosed in the return.

- Interest under Section 234A, 234B and 234C of the IT Act or penalty under Section 270A of the IT Act shall not be levied in respect of undisclosed income under block assessment.

Time limit for completion of block assessment

- The time limit for completion of block assessment in case of the searched assessee shall be 12 months from the end of the month in which the last of the authorisations for search under Section 132, or requisition under section 132A, was executed or made.

Where during course of search proceedings, reference is made to TPO, time limit for completion of assessment order shall be extended by 12 months.

Assessment in case where undisclosed income pertains to other person

- In case AO is satisfied that undisclosed income belongs to any other person, than the seized/ requisitioned details and documents shall be handed over to the AO having jurisdiction over such other person and such jurisdictional AO shall initiate proceedings u/s 158BC against such other person.

Appeal against order for block assessment

- Assessee can file appeal before CIT(A) against the block assessment order.
- An option to make reference to DRP under Section 144C of the IT Act shall not be available to the assessee in case of block assessment.
- In case of penalty order passed by CIT(A), assessee can file appeal against such order before ITAT.
- All the above amendments are proposed to come into effect from September 01, 2024.

ELP COMMENTS:

The proposed amendment revises the process of assessment in case of search proceedings. The assessment for search period shall no longer be undertaken under Section 147 to 151A of the IT Act. A special procedure of block assessments has been introduced to assess tax for search and seizure cases.

APPEALS AND REVISION

Amendment to Section 251 of the IT Act

- Section 251(1) of the IT Act outlines the powers of the Commissioner (Appeals). Section 251(1)(a) states that the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment in an appeal against an order of assessment. It is proposed to amend Section 251(1) to insert a proviso therein stating that, where an appeal is filed against an order of best judgment assessment made under section 144, the Commissioner (Appeals) may set aside the assessment and refer the case back to the AO for a fresh assessment. Consequential amendment is proposed in Section 153(3) of the IT Act to apply the time limit for completing assessments in respect of cases referred back by the Commissioner (Appeals).
- This amendment is proposed to come into effect from October 1, 2024, and accordingly would apply in relation to appellate orders passed by the Commissioner (Appeals) on or after October 1, 2024.

ELP COMMENTS:

This amendment aims to reduce the burden on the Commissioner (Appeals), particularly in cases where documents and information are not available on record, *inter alia* due to the non-responsiveness of taxpayers during the original best judgment assessment. This amendment will enable the Commissioner (Appeals) to set aside the assessment and remand the matter back to the AO for fresh adjudication.

A flurry of best judgment assessments were made at the time of introduction of online assessment as well as faceless assessments, largely due to technical reasons *viz.* assessee not receiving notices on email, etc. The setting aside of such best judgement assessment would provide another chance to the assesses to present their case before the assessing officer. Importantly, such powers have not been provided to Joint Commissioner (Appeals).

Amendment to Section 253 of the IT Act

- Section 253(3) of the IT Act specifies the time limit for filing an appeal before the ITAT, which is currently sixty days. It is proposed to amend this section to substitute "sixty days of the date on" with "two months from the end of the month in." Accordingly, the proposed amendment will allow an appeal to be filed with the ITAT within two months from the end of the month in which the order being appealed is communicated to the assessee or the Principal Commissioner or the Commissioner.
- These amendments are proposed to come into effect from October 1, 2024.

ELP COMMENTS:

The amendment of the time limit under Section 253(3) is proposed to streamline the process, making it easier for the Department to track the appeals to be filed before the ITAT.

Amendment to Section 245Q and 245R

- Section 245Q of the IT Act provides for filing of an application for advance ruling by an assessee and Section 245R of the IT Act provides for the procedure to be followed on receipt of such advance ruling application.
- *Vide* Finance Act, 2021, amendments were made to the provisions of Advance Rulings which stipulated that the AAR shall cease to operate with effect from such date, as may be notified, i.e. September 01, 2021.
- Post the cessation of AAR, the Central Government constituted a BAR.
- After AAR was made ineffective, certain applications which were filed before the erstwhile AAR, in which no order had been passed, were transferred to the newly constituted BAR.
- However, due to various reasons like change in constitution of BAR forum, non-binding nature of the ruling (as it is made appealable to High Court), substantial passage of time, and other commercial reasons, the applicants wished to withdraw their applications filed with erstwhile AAR, where no order is passed. In such cases, where the application for advance ruling was filed with AAR, and is now pending before the BAR, there is no provision facilitating withdrawal of applications.
- Accordingly, a proviso is proposed to be inserted in Section 245Q(4) of the IT Act to allow an applicant to request in writing to the BAR, that the application so transferred to BAR may not be proceeded with, where order under Section 245R(2) has not been passed. Such applications are to be filed on or before October 31, 2024.

- Further, a fourth proviso is proposed to be inserted in Section 245R(4) of the IT Act to provide that on receipt of an application under the proviso to Section 245Q(4), the BAR may, by an order, reject the application for advance ruling as withdrawn on or before the December 31, 2024.
- This amendment is proposed to come into effect from October 1, 2024.

ELP COMMENTS:

The aforesaid amendment is facilitative in nature for the assessee in cases where the assessee wishes to withdraw such an application. Further, the proposed amendment also reduces pendency of advance ruling applications before the BAR.

PENALTY & PROSECUTION

Amendment to Section 271FAA in relation to penalty for furnishing inaccurate statement of financial transaction or reportable account

- It is proposed to substitute sub section (1) of Section 271FAA wherein the prescribed income-tax authorities can levy penalty of INR 50,000/- in case of a person who is required to furnish a statement under section 285BA of the IT Act makes any of the following defaults:
  - provides inaccurate information in the statement or fails to furnish correct information within the period specified under sub-section (6) of the Section 285BA; or
  - fails to comply with the due diligence requirement prescribed under sub-section (7) of Section 285BA.
- This amendment is proposed to come into effect from October 1, 2024.

Reduction in Time limit for delivering or causing to be delivered the statements for non imposition of penalty under Section 271H

- Section 271H (1) provides for penalty for failure to deliver or cause to be delivered statements referred to in sub-section (3) of section 200 (relating to tax deducted at source) or proviso to sub-section (3) of section 206C (relating to tax collected at source) or furnishing of incorrect information in the statement.
- Sub section (3) of the Section 271H states that such penalty shall not be imposed if a person pursuant to payment of tax deducted or collected along with the fee and interest, has delivered or cause to be delivered the statement before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement. Such period of 1 year is proposed to be reduced to 1 month.
- This amendment is proposed to come into effect from April 1, 2025.

ELP COMMENTS:

Such amendment is a tax-payer friendly measure given the issues faced on account of late reporting of TDS / TCS on the Deductee, even when the amounts have been paid to the Government. The reduction of time-period for attraction of penal offences would provide an impetus to Deductors to ensure timely reporting of TDS / TCS.

Amendment in Section 275 relating to bar of limitation for imposing penalties

- Section 275 of the IT Act provides for the period of limitation for imposing penalties. Order imposing a penalty cannot be passed where the relevant assessment order or other order is the subject-matter of an appeal before the Appellate authority, after the expiry of the financial year in which the proceeding is completed or six months from the end of the month in which the order of the Appellate Authority is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whichever is later.
- It is proposed to amend sub-sections (1) and (1A) of the Section 275 so as to omit the reference of the Principal Chief Commissioner or Chief Commissioner from the said subsections.
- This amendment is proposed to come into effect from October 1, 2024.

ELP COMMENTS:

Lately, it has been observed that the Department is filing petitions despite enormous delay. In SPML Infra Limited SLP (C) No. 26799 of 2024, the Hon'ble Supreme Court came down heavily on the Department and stated that, "It appears that there is no immediate attention bestowed on the cases so as to seek urgent relief and possibly, despite enormous delay, the Special Leave Petitions have been filed only to seek an imprimatur of this Court in the cases. We do not appreciate this practice of the Department in doing so." The primary reason for such delays is the huge pendency of cases before the Department and the time consumed in processing of the orders from the office of one authority to the other.

Generally, it takes a long time for an order to be processed and by the time such an order is received by the office of the Principal Commissioner or the Commissioner, the timeline for initiating penalty proceedings may be lapsed. By withdrawing the role of the Principal Chief Commissioner and Chief Commissioner from this process, it is intended to reduce a layer of authority, thereby smoothening the process to initiate penalty proceedings timely.

Amendment in Section 276B of the IT Act to decriminalize late payment of TDS

- In terms of Section 276B of the IT Act, any person who fails to pay TDS, is punishable with rigorous imprisonment of 3 months to 7 years along with fine. A proviso is proposed to be inserted whereby, if the payment of such TDS has been made before or at the time of filing of the statement of TDS as required under Section 200 of the IT Act, then the said punishment would not be applicable.
- This amendment is proposed to come into effect from October 1, 2024.

ELP COMMENTS:

This amendment seeks to provide a distinguishment between mere failure to report and non-payment of TDS within the prescribed period, and seeks to decriminalise the former.

Amendments in relation to submission of statements by Non-Resident Taxpayers having a liaison office in India

- In terms of Section 285 of the IT Act, a non-resident having a liaison office in India, is required to prepare and deliver a statement in respect of its activities in a financial year to the Assessing Officer within 60 days from the end of such financial year. It is proposed that the time limit of 60 days prescribed under the section be henceforth prescribed via rules.

- Section 271GC is proposed to be inserted prescribing the following penalty on account of failure to furnish the statement under Section 285 of the IT Act:
  - INR 1,000/- *per* day if such a failure is less than 3 months or
  - INR 1,00,000/- in any other case.
- Section 273B is also proposed to be amended to ensure that penalty is not imposable in case of failure to submit the statement in the prescribed period if it is proved that such default is on account of "reasonable cause".
- This amendment is proposed to come into effect from April 1, 2025.

ELP COMMENTS:

These amendments are specifically in relation to reporting requirements for a Liaison office set up in India.

The fact that the time-limit will henceforth be provided through delegated legislature will assist in enabling the Executive to set out a time-line which can be palatable to the industry, as also, extend the same in cases of genuine difficulty without requiring an amendment in the Legislation. Insertion of a mandatory penalty clause for delays in filing the same will ensure greater compliance with the law, as also the carve-out provided for "reasonable cause" shall ensure that the same is not imposed in case of genuine difficulties

Amendment to the First Schedule of the IT Act

- The First Schedule of the IT Act provides the rules for the computation of profits and gains of any insurance business. Accordingly, Rule 2 of the said Schedule provides for the manner of computation of profits and gains of a life insurance business.
- A proviso to Rule 2 is proposed to be inserted wherein any expenditure which is not admissible under Section 37 of IT Act in computing the profits and gains of a business, shall be included back to the profits and gains of the life insurance business.
- This amendment is proposed to come into effect from April 1, 2025, and accordingly would apply in relation to AY 2025-26 and thereafter.

ABOLITION OF BUYBACK TAX

Amendment to Section 2(22), Section 10(34A), Section 46A, Section 115QA of the IT Act

- Following suit from dividend distribution tax ("DDT") regime where dividends were initially taxed in the hands of individuals, then moved to a regime where DDT was discharged by the Company paying such dividend, and then back to taxability in the hands of taxpayer of such dividend income, the Hon'ble Finance Minister has proposed to bring Buy-back in the same bucket as well i.e. taxability in the hands of recipient instead of additional tax in the hands of the Company undertaking the buy-back
- Under Section 115QA of the IT Act, the Company undertaking Buy-back of shares is required to pay additional tax of 23.30% on the distributed income. Such proceeds received in the hands of the shareholder is exempt from tax under section 10(34A) of the IT Act.
- Buyback tax now is now proposed to be abolished on or after October 1, 2024. Correspondingly, the exemption provided to the shareholders under section 10(34A) of the IT Act would no longer be applicable.

- The entire buy-back proceeds, in such cases, are proposed to be regarded as "dividend" income in the hands of the recipient under section 2(22)(f) of the IT Act. The cost of acquisition of such shares would be available as capital loss in the hands of the shareholders as the buy-back proceeds is proposed to be regarded as Nil under section 46A of the IT Act.
- Section 115QA of the IT Act deals with buy-back tax. Given that it is now proposed that the buy-back proceeds should be taxable in the hands of the recipient as 'dividend' income, a corresponding proposal is to do away with buy-back tax in the hands of the company.
- This amendment is proposed to be effective from October 1, 2024.

Amendment to Section 57 of the IT Act

- Expenses incurred in relation to income earned from dividend on buy-back proceeds would not be available as tax deduction. This amendment is proposed to be effective from October 1, 2024.
- Deduction in respect of family pension is proposed to be increased from INR 15,000 to INR 25,000 under the new tax regime. This amendment is proposed to be effective from April 1, 2025.

ELP COMMENTS:

Taxing buy-back in the hands of the company was prejudicial to the shareholders that did not tender their shares for buy-back, as the burden of BBT was borne by them as well. SEBI had issued a consultation paper on review of SEBI (Buyback of Securities) Regulations, 2018. SEBI proposed to the Government to shift the incidence of tax on buyback from the company to the hands of shareholders. In line with the proposal by SEBI and abolishment of DDT, abolishment of BBT aligns the position existing prior to 2013.

Shifting the tax incidence on buy-back to the shareholder makes the scheme equitable with dividend and serves the purpose of widening and deepening the tax base.

With the incidence of tax now being shifted to the shareholders, distribution on buy-back would now be taxable at the rate of tax applicable to shareholders. For non-resident shareholders, there may be scope to claim tax treaty benefits as well as foreign tax credit of the tax paid on dividend income in India. While this change could lower the tax burden for certain shareholders such as those who do not opt for the buy-back, have effective tax rates below 23.296%, or are non-residents, it may result in higher taxes for other set of shareholders who are subject to higher tax rates.

Post such amendment, while the tax burden on buy-back stands shifted to the shareholders, Companies would still be responsible to withhold appropriate taxes under Section 194 and Section 195 of the IT Act

Further, there could be some challenges where buy-back is taxable as dividend income and the cost qua shares offered for buy-back would lead to capital loss. In a normative case, where buy-back tax was paid by the Company, the effective tax rate would turn out to be 23.30%. Post abolition of buy-back tax, the effective tax rate on such buy-back could go upto 35.88% in the hands of the recipient shareholder.

Another pertinent issue which could crop up is set-off of Capital Loss against Dividend income. Given that Dividend income (via buy-back proceeds) will be taxed on a gross basis and the cost of shares under buy-back will be available as 'capital loss', there could be a mis-match in tax attributes leading to higher taxes.

THE DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024

Introduction

- The Vivad Se Vishwas Scheme, 2020 (the 2020 Scheme) was earlier launched for appeals pending as on 31.01.2020. The Direct tax Vivad Se Vishwas Scheme, 2024 (VSV Scheme) is proposed in the Finance (No. 2) Bill, 2024, being inspired by the success of the 2020 Scheme and also considering the mounting pendency of appeals.
- The date of commencement of the VSV Scheme and the "last date" (i.e, the date till which the VSV Scheme would be effective) will both be notified by the Central Government.

Applicability of the VSV Scheme:

- The Scheme is applicable to an 'appellant', which would include the following persons:
  - A person in whose case an appeal or a writ petition or special leave petition has been filed either by him or by the income-tax authority or by both, and such appeal or petition is pending as on 22nd July 2024.
  - A person who has filed his objections before the DRP under Section 144C of the Income-tax Act and the DRP has not issued any direction on or before 22nd July 2024.
  - A person in whose case the DRP has issued direction under Section 144C(5) of the Income-tax Act and the Assessing Officer has not given effect to such direction on or before 22nd July 2024.
  - A person who has filed an application for revision under Section 264 of the Income-tax Act and such application is pending as on 22nd July 2024.
- The aforesaid categories of persons are eligible to file a 'declaration' before a "designated authority" to claim reliefs under the VSV Scheme. Consequent upon making the declaration, the 'declarant' is to withdraw the cases pending before the High Court and/or the Supreme Court in respect of which he has availed the benefit of the VSV Scheme. The appeals pending before the ITAT and the CIT(A) would be deemed to be withdrawn.
- The withdrawn cases stand revived if the declarant violates any condition under the VSV Scheme or the declaration so made is found to be false at any stage. It is explicitly provided that making a declaration under the VSV Scheme does not amount to conceding the tax position of the declarant. Neither the authorities nor the declarant can contend that the declarant-appellant or the authorities, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.
- The declarant is further obligated to file an undertaking waiving his right, whether direct or indirect, to pursue any remedy or any claim in respect of the case for which he has availed the benefit of the VSV Scheme. Correspondingly, all appellate forums are restrained from proceeding to decide any issue in respect of which the declarant has availed the benefit of the VSV Scheme.

ELP COMMENTS:

The 2020 scheme explicitly covered the cases where an order has been passed by an appellate authority or court and the time for filing any appeal has not expired as on the date of making declaration. The VSV scheme is silent on this.

Further, the 2020 Scheme required a declarant who has initiated arbitration proceedings under any agreement entered into by India with any other country or territory outside India whether for protection of investment or otherwise, to withdraw the claims made in the arbitration proceedings. The VSV Scheme is silent on such requirements.

Reliefs provided under the 2024 Scheme:

- Where the declaration is filed by the declarant, he is eligible to the following reliefs:

(1)	(2)	(3)	(4)	(5)
Sl No.	**What the Tax Arrear relates to?**	**Who is the Declarant?**	**Amount payable by declarant on or before 31.12.2024**	**Total Amount payable by declarant**
1.	Disputed tax + interest chargeable or charged on such disputed tax + penalty leviable or levied on such disputed tax.	He must be an appellant during the period between 31.01.2020 and 22.07.2024.	100% of the disputed tax	110% of the disputed tax
2.	Disputed tax + interest chargeable or charged on such disputed tax + penalty leviable or levied on such disputed tax.	He must be an appellant on or before 31.01.2020 at the same appellate forum in respect of such tax arrears.	110% of the disputed tax	120% of the disputed tax
3.	Disputed interest or disputed penalty or disputed fee.	He must be an appellant during the period between 31.01.2020 and 22.07.2024.	25% of disputed interest or disputed penalty or disputed fee	30% of disputed interest or disputed penalty or disputed fee
4.	Disputed interest or disputed penalty or disputed fee	He must be an appellant on or before 31.01.2020 at the same appellate forum in respect of such tax arrears.	30% of disputed interest or disputed penalty or disputed fee	35% of disputed interest or disputed penalty or disputed fee.

- Where the tax department is in appeal, the amount payable by the declarant shall be one-half of the amounts specified in column (4) and (5) of the above table (as applicable). The method of computation in such cases will be prescribed by the Government.
- Further, in cases where the disputed issue has already been decided by in favour of the declarant by a higher appellate forum, namely ITAT, High Court or the Supreme Court and is not overturned, the amount payable shall be one-half of the amounts specified in column (4) and (5) of the above table above (as applicable). The method of computation in such cases will be prescribed by the Government.

ELP COMMENTS:

- **The VSV scheme seeks to give relief even in cases where the declarant is an appellant on or before 31.01.2020 at the same appellate forum in respect of such tax arrears. In other words, there is no exclusion of the cases which were earlier eligible for the 2020 scheme.**
- **Search cases have been wholly kept out of the scope of VSV Scheme unlike the 2020 Scheme making exception in cases with disputed tax of over INR 5 crores in a year.**

Timelines under the VSV Scheme

- The VSV Scheme requires the "designated authority" to determine, by order, the amount payable by the declarant within 15 days of filing the declaration. Thereafter, the declarant is to make payment and furnish proof thereof within 15 days thereafter.
- Every order of determination passed by the designated authority is stated to be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding.
- Other modalities of implementation are largely left to the delegated legislature.

ELP COMMENTS:

The stringent timelines would ensure that the declarations made by the Appellants would meet with a speedy disposal.

Exclusions from VSV Scheme

- The taxpayers with cases falling in the categories given below are excluded from the VSV Scheme and cannot file declaration under it:
  - If tax arrears relate to Search cases.
  - If tax arrears relate to an assessment year in respect of which prosecution is instituted before filing declaration.
  - If tax arrears relate to undisclosed foreign income and assets.
  - If tax arrears relate to cases where assessment has been made on the basis of information from foreign countries.
  - Prosecution cases filed by the Department for offences punishable under the Bharatiya Nyaya Sanhita, 2023 or for the purpose of enforcement of any civil liability under any law for the time being in force, on or before the filing of the declaration or such person has been convicted of any such offence consequent to the prosecution initiated by an Income tax authority.
  - Any person in respect of whom prosecution has been initiated under Narcotic Drugs and Psychotropic Substances Act, Special Courts Act, the Unlawful Activities (Prevention) Act 1967, the Prevention of Corruption Act, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, the Prevention of Money Laundering Act 2002, the Prohibition of Benami Property Transactions Act, 2016 on or before filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.

OTHERS

Amendment to Section 244A and 245 of the IT Act

- Section 245 of the IT Act empowers AO to adjust the refund (or a part of the refund) against any tax demand that is outstanding from the taxpayer. Section 245(2) of the IT Act enables the AO to withhold any refund payable to the assessee, where any assessment or reassessment proceedings are pending for adjudication, up to the date on which such assessment or reassessment is completed.

- Under Section 245(2) of the IT Act, the AO is required to fulfill two requirements. One is that he should form an "*opinion that the grant of refund is likely to adversely affect the revenue"* and the second is that he has to record the reasons in writing for withholding the refund. The second condition of recording of reasons takes care of the first condition as even if an opinion is formed, it has been expressed in terms of reasons recorded in writing. Thus, Section 245(2) of the IT Act is proposed to be amended to omit the phrase "*is of the opinion that the grant of refund is likely to adversely affect the revenue*".
- Further, the period of withholding the refund 'up to the date of assessment' is considered to be inadequate as the demand itself becomes due after thirty days from the date of assessment. Hence, as per the proposal under the Finance Bill 2024, the period of withholding of the refund is proposed to be extended up to 'sixty days' from the date on which such assessment or reassessment is made. Accordingly, under Section 245(2) of the IT Act, after the words 'withhold the refund up to', the words 'sixty days' are proposed to be inserted.
- Consequently, the proviso to Section 244A(1A) of the IT Act, which stipulates exclusion of time period for payment of additional interest on refunds in case where assessment or reassessment is pending, is proposed to be amended to allow non-payment of additional interest up to the date till which such refund is withheld under the provisions of sub-section (2) of Section 245 of the IT Act.
- Earlier, the computation of additional interest as prescribed under the proviso to Section 244A(1A) of the IT Act, excluded the period beginning from the date on which such refund is withheld till the date on which such assessment/reassessment was made.
- This amendment is proposed to come into effect from October 1, 2024, and accordingly would apply in relation to AY 2024-25 and thereafter.

ELP COMMENTS:

The proposed amendment to the provisions of Section 245 of the IT Act is brought in to settle the ambiguity of the time period up to which the refund can be withheld by the AO in cases where the assessment or reassessment proceedings are pending for an assessee. Further, consequent amendments are proposed under 244A of the IT Act for the purpose of determining the exclusion period to compute additional interest in such cases.

INDIRECT TAX

CENTRAL GOODS AND SERVICES TAX ACT, 2017

Unless stated otherwise, the changes under GST shall come into effect from a date to be notified.

Exclusion of un-denatured extra neutral alcohol from the ambit of GST

An amendment is proposed to Section 9 whereby "un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor for human consumption" shall be excluded from the purview of GST.

ELP COMMENTS:

The applicability of GST on undenatured Extra Neutral Alcohol (ENA) has been a contentious issue within the liquor industry since the advent of GST. The crux of the controversy lies in the fact that alcoholic beverages intended for human consumption have always been beyond GST's purview. However, due to the absence of explicit provisions, the taxability of its primary ingredient, undenatured ENA, has remained ambiguous. The argument centers around whether undenatured ENA, not directly consumed by humans, should influence its tax status. In litigation, the following had emerged thus far:

- **The Hon'ble Allahabad High Court, in Jain Distillery Pvt. Ltd. [Writ Tax No. 378/2021] held that post introduction of GST laws, the States lost legislative competence to levy tax on sale of ENA and GST was applicable on such supplies.**
- **The Hon'ble Madhya Pradesh High Court in United Spirits Ltd [2023 (76) G.S.T.L. 345 (M.P.)] thereafter passed an interim order directing the petitioner to continue to pay GST at 18% on ENA.**

While the proposed amendment brings a welcome resolution to this issue, it is proposed to have prospective application. The decision not to apply it retrospectively implies that disputes over past periods, where a significant portion of the industry has not paid this tax, remain unsettled and are currently under litigation in various Courts and forums. Along with the proposal to insert Section 11A (discussed below), it would be interesting to see if the Government goes on to retrospectively waive these demands under the new provision (though no such recommendation has yet been made by the GST Council).

Similar amendment is being proposed in IGST Act and UTGST Act.

Regularization of non-levy/ short-levy of GST on account of general practice prevalent in trade

Section 11A is proposed to be inserted, empowering the Government to effectively regularize the non-levy or short levy of GST on supply of goods or services, due to a general trade practice. The benefit under this provision shall be by way of issuance of a notification, on the recommendation of the GST Council, directing that the tax not-paid or short-paid on relevant supplies, shall not be required to be paid any further.

ELP COMMENTS:

This amendment is in line with the recommendation made in the 53rd GST Council meeting. On initial review, the proposal appears to mirror Section 11C of the Central Excise Act, 1944, and Section 28A of the Customs Act, which empower the Government to waive duties that were not levied or were underpaid due to industry practices.

However, unlike these provisions, which explicitly provide for refunds to taxpayers who have overpaid, the proposed GST amendment lacks such provisions.

It is pertinent to note that Courts have previously examined and upheld the constitutional validity of these provisions in Excise and Customs laws, stating that the Government possesses such discretionary powers. Judicial precedents have also established the principle that the Government must satisfy itself that there was a generally prevalent practice where duty or tax was not levied despite being payable (refer the Supreme Court's ruling in Mangalam Organics Limited vs. UOI, delivered on April 24, 2017, in Civil Appeal No. 1338 of 2017).

Interestingly, the GST Council had also previously recommended regularizing industry practices on account of genuine interpretational issues, which are implemented through circulars. The Council, in said instances, had allowed acceptance of an "as-is, where-is" approach adopted by taxpayers for relevant supplies. While the exact meaning of the expression "as-is, where-is" had not been defined/provided, it generally implies that taxpayers who did not pay or underpaid applicable tax would not owe any further payment. However, those who already paid conservatively would not receive refunds to align with industry players benefiting from relief or waivers. The approach aligns to non-existence of refund proposition even in the latest proposals.

Thus, while this will bring litigation on the subject of taxability to an end on account of industry practice, one hopes that new litigation, qua refund of taxes already paid does not commence.

Separately, there could also be situations where taxpayers may have made payments during investigations or demand proceedings, contrary to industry practice, but under protest. In absence of any explicit provisions, unlike Section 11C/28A of Excise and Customs respectively, refund of such under protest payments may be highly litigious (even though it can be argued that the under protest payments partakes the character of deposits with the government).

Similar provisions have been proposed to be inserted by way of Section 6A of IGST Act, Section 8A of UTGST Act and Section 8A of GST (Compensation to States) Act.

Time of Supply in case of reverse charge supplies where invoice is to be issued by the recipient

Amendments are proposed in sub-section (3) of Section 13 to provide for time of supply of services where the invoice is required to be issued by the recipient of services in cases of reverse charge supplies. By virtue of the proposed amendment, the time of supply in case for reverse charge supplies shall be earlier of the following dates:

- the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, **in cases where invoice is required to be issued by the supplier**; or
- **the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.**

ELP COMMENTS:

The proposed amendment is likely to codify the time of supply for reverse charge supplies from unregistered persons viz. transaction of import of services, unregistered Goods Transport Agency, etc. It stipulates that where a self-invoice is issued by the recipient, the time of supply shall be the earlier of the payment date or the self-invoice date.

The proposed amendment is in line with the recommendation of the 53rd GST Council meeting qua availment of ITC. In the Council's recommendations, it was clarified that in cases of supplies received from unregistered suppliers where recipient is required to issue the self-invoice and pay tax under reverse charge, the time limit for availment of ITC shall be computed from the date of self-invoice.

Therefore, the time of supply in relevant cases is proposed to be earlier of the date of payment or date of self-invoice and the time limit to avail ITC shall also be determined accordingly.

Relaxation in the time limit to avail ITC in certain cases

- The following amendments are proposed to be made retrospectively with effect from 01.07.2017:
  - Insertion of sub-section (5) under Section 16 is proposed to provide relaxation regarding the limitation period to avail ITC as stipulated under Section 16(4). With the said amendment, ITC pertaining to invoices or debit notes for supply of goods or services or both pertaining to FY 2017-18 to FY 2020-21 would be considered valid if availed in a return for tax period up to November 30, 2021. Alternatively, the limitation period for availment of ITC for relevant invoices or debit notes stands amended.
  - Insertion of sub-section (6) under Section 16 is proposed to permit the availment of ITC for an invoice or debit note, in Form GSTR-3B for the interim period between the date of cancellation of registration or the effective date of cancellation, until the date of the order revoking such cancellation. The proposed provision also stipulates that ITC should for said interim period should be availed within (i) a return filed up to November 30 following the financial year to which such invoice or debit note pertains; or (ii) a return filed within 30 days of revocation order, whichever is later. Further, the ITC to be availed should not have been barred by limitation period stipulated in Section 16(4) on the date of cancellation order.
- It has also been clarified that the above amendments will not be applicable where the tax has already been paid or the ITC has already been reversed i.e. no refund of the same shall be admissible.

ELP COMMENTS:

The proposed amendment provides a big relief for assessees who have availed ITC for FY 2017-18, 2018-19, 2019-20 and 2020-21 beyond the prescribed period of September of the following financial year but prior to 30.11.2021. The proposed amendment follows the recommendation of the 53rd GST Council meeting. This proposed amendment settles the ongoing dispute regarding the availment of ITC beyond the stipulated time period of September of the following Financial Year. The Hon'ble Patna High Court in the case of Gobinda Construction Vs. Union of India – [2023 (9) TMI 902] upheld the denial of ITC availed after the prescribed time limit of Section 16(4).

However, the clarification regarding the inadmissibility of refund is detrimental and discriminatory for the taxpayer who has already complied with the prevalent law.

Restriction on non-availability of ITC

- Section 17(5)(i) restricts eligibility of ITC in respect to the tax paid under Section 74, Section 129 and Section 130. Under the proposed amendment to this Section, ITC restriction on tax paid in accordance with Section 74 will be applicable only for tax paid for the period up to FY 2023-24. The existing ITC restriction in respect of tax paid after the detention and seizure of goods under Section 129 and tax paid following the confiscation of goods or conveyances under Section 130, will no longer be applicable.

ELP COMMENTS:

This is a welcome amendment wherein the restriction on availment of ITC has now been limited to tax paid under Section 74 and that too for tax paid for the period upto FY 2023-24.

Section 74 is proposed to be replaced by a new Section 74A for the FY 2024-25 onwards. In absence of any mention of Section 74A under the amended Section 17(5)(i), it appears that ITC restriction will not be applicable in respect of tax paid in accordance with Section 74A.

Stipulation of conditions and restrictions for revocation of cancellation of registration

- Second proviso has been proposed to be inserted under sub-section (2) of Section 30 of the CGST Act to prescribe that revocation of cancellation of registration shall be subject to such conditions and restrictions as may be prescribed.

ELP COMMENTS:

The proposed amendment introduces an enabling clause to prescribe conditions and restrictions subject to which cancellation of registration may be revoked.

Time limit for issuance of self-invoice

- Clause (f) of Section 31(3) has been proposed to be amended to prescribe the time limit for issuance of invoice by the recipient in case of reverse charge mechanism supplies.
- Further, an explanation has also been proposed to be inserted in clause (f) of Section 31(3) to provide that the expression "supplier who is not registered" shall include a supplier who is registered solely for the purposes of tax deduction at source under Section 51 of the CGST Act.

Mandatory requirement to furnish return for each month in case of tax deducted at source

- An amendment is proposed in Section 39(3) whereby the registered person required to deduct tax at source is mandated to furnish return for each month in such form and manner and within such time as may be prescribed, irrespective of whether or not any deductions have been made during the said month.

ELP COMMENTS:

The proposed amendment makes it explicit that returns are required to be filed for every month irrespective of whether or not any deductions have been made during the said month. The literal interpretation of existing provisions may suggest that returns are to be filed only for the month in which tax has been deducted at source. The amendment is in line with the recommendation of the 53rd GST Council meeting.

Amendment to the refund provisions under Section 54

- An amendment is proposed to Section 54, wherein second proviso to Section 54(3) has been omitted and Section 54(15) has now been proposed to be inserted to restrict refund of unutilised ITC or IGST in cases of zero-rated supply of goods where such goods are subjected to export duty.

ELP COMMENTS:

The proposed amendment seeks to restrict the refund under Section 54 both, in case of unutilized ITC (on input side) as well as IGST (paid on output side) in case of zero-rated supplies which are subjected to export duty. Earlier such restriction vide second proviso to Section 54(3) was limited to unutilized ITC.

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

Enabling provision for authorized representative to appear on behalf of the summoned person

- Section 70 of the CGST Act specifies the power of the proper officer to summon any person to give evidence or to produce documents or any thing in any inquiry. It is proposed to amend Section 70 of the CGST Act by inserting sub-section (1A) to state that the person summoned may appear either in person or through an authorized representative, as the proper officer may direct, in compliance with the summons.

ELP COMMENTS:

The proposed amendment is beneficial to taxpayers undergoing an inquiry as it would enable them to attend summons proceedings through an authorized representative as well. However, the proposed sub-section (1A) by employing the phrase "as such officer may direct" raises the question whether such an option will be available in all cases or whether the same will be subject to the discretion of the proper officer. It further raises a question as to whether the personal penalty if any would be qua, the "authorized representative" or the "summoned person".

Restriction of applicability of Section 73 and 74 of the CGST Act for determination of tax pertaining to the period up to FY 2023-24

- Section 73 of the CGST Act provides for determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for reasons other than fraud or willful-misstatement or suppression of facts. Section 74 of the CGST Act provides for determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or willful-misstatement or suppression of facts. The provisions were applicable for recovery of tax or ITC from the inception of GST.
- It is proposed to amend Section 73 and 74 of the CGST Act by inserting sub-section (12) to restrict the applicability of Section 73 and 74 of the CGST Act for determination of tax pertaining to the period up to FY 2023-24.

ELP COMMENTS:

The amendment is proposed in light of insertion of a new Section i.e., Section 74A of the CGST Act which governs recovery of tax or ITC for the period starting from FY 2024-25.

A new Section 74A is proposed to be inserted in the CGST Act:

- A new section is proposed to be introduced in the CGST Act comprising of provisions pertaining to determination of tax not paid, short paid, erroneous refund, wrong availment of ITC or utilization by reason of fraud or otherwise. The said provision will be applicable for F.Y. 2024-25 and onward
- As per the newly inserted section a common time limit of 42 months is proposed for issuance of notice to demand tax. The said period of 42 months is to be considered from the due date of filing the annual return or date of erroneous refund.
- The time limit for passing of the order is proposed to be revised to 12 months from date of issuance of demand notice. The said period may be extended by a further period of 6 months on obtaining authorization from Commissioner or any officer authorized the Commissioner
- In case the demand is on account of reason other than fraud, suppression or willful misstatement, the penalty is proposed to be INR 10,000 or 10% of tax dues whichever is higher
- In case the demand is on account of fraud, suppression or wilfull misstatement, the penalty is proposed to be equivalent to the tax dues.
- The new Section proposes to allow reduced penalty as summarized hereunder:

Scenario	Reduced penalty
Where the tax dues are demanded for reason other than fraud, suppression and willful misstatement:	
If the payment of tax dues along with interest is made before issuance of notice or within a period of 60 days of issuance of notice	No penalty shall be leviable and all proceedings shall be deemed to be concluded
Where the tax dues are demanded for reason of fraud, suppression and willful misstatement:	
If the payment of tax dues, interest and penalty equivalent to 15% of such tax is made before service of notice	Penalty shall be restricted to 15% of tax and the proper officeR shall not service demand notice
If the payment of tax dues, interest and penalty equivalent to 25% of such tax is made within a period of 60 days of issuance of notice	Penalty shall be restricted to 25% of the tax and all proceedings shall be deemed to be concluded
If the payment of tax dues, interest and penalty equivalent to 50% of such tax is made within a period of 60 days of communication of order	Penalty shall be reduced to 50% of the tax and all proceedings shall be deemed to be concluded
Note: Proceedings under Section 132 of the CGST Act shall not be deemed to be concluded. If the proceedings against the main person are concluded then proceedings against all other persons liable to pay penalty are also deemed to be concluded	

- Following Sections of the CGST Act have been amended to incorporate a reference to the proposed new Section 74A

Section No: 10, 21, 35, 49, 50, 51, 61,62, 63, 64, 65, 66, 75, 104, 107, 127

ELP COMMENTS:

The introduction of Section 74A is in line with the recommendations of the 53rd GST Council meeting. While the new provision aims at simplifying and streamlining GST assessments, it does not distinguish between the demands on account of bona-fide and inadvertent errors vis-à-vis demand on account of fraud, suppression etc. from a time limitation perspective.

The time limit under Section 73 of the CGST Act for issuance of the order is 3 years from the due date of filing annual return or grant of erroneous refund. The time limit under Section 74 for issuance of order is 5 years from the due date of filing annual return or grant of erroneous refund.

Comparison of time limit to issue notice and orders can be better understood using the following example:

Considering F.Y. 2024-25 and due date of filing annual return for the said period as December 31, 2025, the following is the comparative analysis of the time limits under Section 74A vis-à-vis Section 73 and Section 74 if the same would have been applicable for F.Y. 2024-25 and onwards:

Particulars	Demand of tax dues under Section 74A of CGST Act	Demand of tax dues under Section 73 of CGST Act	Demand of tax dues under Section 74 of CGST Act
Due date of issuing notice	30.06.2029	30.09.2028	30.06.2030
Due date of issuance of order	30.06.2030	30.12.2028	30.12.2030
Extended period for issuance of order with approval	31.12.2030	-	-

From the above it is observed that there is an increase in the overall time limit for issuance of the notice and order in case of demand for reason other than fraud (approximately 9 months for issuance of notice and 1.5 years for issuance of order). However, there is a reduction in the overall time limit of due date for issuance of notice in the case of demand on account of fraud (approximately 1 year).

While the new Section does not notify any change in the quantification of penalty (as compared to Section 73 and 74 of the CGST Act), however, it extends the period for availing the benefit of reduced penalty from 30 days to 60 days. This extended window provides the taxpayers with a more realistic timeframe to take an informed decision, potentially decreasing the financial strain and legal complications.

Reduction of amount of pre-deposit

- Section 107, 112 of the CGST Act and Section 20 of the IGST Act are proposed to be amended to reduce the amount of pre-deposit required for filing appeals under GST. The maximum pre-deposit amount for filing an appeal with the Appellate Authority under Section 107(6) is proposed to be reduced from INR 50 crores to INR 40 crores. Further, the pre-deposit amount for filing an appeal with the Appellate Tribunal under Section 112 is proposed to be reduced from 20% with a maximum amount of INR 100 crores to 10% with a maximum of INR 40 crores.

ELP COMMENTS:

The proposed amendment has been made pursuant to the recommendation of the 53rd GST Council meeting to ease cash flow and working capital blockage for the taxpayers.

Changes relating to GST Appellate Tribunal

- Section 109(5) of the CGST Act currently states that the Principal Bench and the State Bench of the Appellate Tribunal shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority. However, cases where the issue relates to the place of supply shall be heard only by the Principal Bench. Section 109(6) allows the President to distribute the business of the Appellate Tribunal among the Benches and transfer cases as needed.
- It is proposed to amend Section 109(5) to allow the Government, based on the recommendations of the Council, to specify cases or classes of cases that will be heard exclusively by the Principal Bench. Section 109(6) is proposed to be amended to ensure that the President's distribution of cases among the Benches is subject to the provisions of Section 109(5), i.e., cases where any issue relates to the place of supply shall be heard only by the Principal Bench
- Further, Section 112 of the CGST Act, is proposed to be amended to allow the three-month period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government.

ELP COMMENTS:

The proposed amendments aim to streamline the operations of the GST Appellate Tribunal and provide clarity on the filing of appeals.

The amendment allows the Government, on the recommendations of the GST Council, to designate certain cases or classes of cases to be heard exclusively by the Principal Bench. This is a welcome move as the issues having industry wide ramifications is likely to be now heard by the Principal Bench, in line with the recommendation of the Council and issuance of Notification by the Government.

Currently, appeals to the Appellate Tribunal must be filed within three months from the date the order is communicated to the appellant. The Removal of Difficulty Order No. 09/2019-Central Tax dated 03.12.2019 clarified that the start of the three-month period would be the later of the following dates: the date of communication of the order or the date on which the President or the State President of the Appellate Tribunal assumes office. With Justice (Retired) Sanjaya Kumar Mishra sworn in as the first President of the GST Appellate Tribunal on May 6, 2024, there was a need to address the issue of time limit of filing appeals. Hence, Section 112 is proposed to be amended to allow the three-month period for filing appeals to commence from a date to be notified by the Government.

Penal provisions applicable specifically to E-commerce required to collect tax at source under section 52 of the CGST Act

- Section 122 (1B) of the CGST Act inserted vide Finance Act, 2023 prescribes penal provisions applicable to any electronic commerce operator (E-commerce operator) with effect from October 01, 2023.
- The said sub-section is now proposed to be amended in order to restrict the applicability of the penal provisions to only those E-commerce operators who are required to collect tax at source under section 52 of the said Act. Such amendment shall be made effective from the date when the said sub-section came into force (i.e., October 01, 2023).

ELP COMMENTS:

E-commerce operators who are required to collect tax at source under Section 52 of the CGST Act are obligated to comply with the provisions prescribed under the CGST Act. Accordingly, the penalty provision under Section 122(1B) of the CGST Act is being amended to restrict its applicability to only to such registered E-commerce operators who are required to collect tax at source under Section 52 of CGST Act, and not in the case of other registered E-commerce operators.

Section 128A of the CGST Act

- Section 128A of the CGST Act is proposed to be inserted to provide waiver of interest or penalty or both against demands raised for the period July 2017 to March 2020 or part thereof under section 73 of the CGST Act.
- The benefit of the provision will be available to following persons who have received:
  - SCN under Section 73 of the CGST Act,
  - Order-in-Original under Section 73(9) of the CGST Act,
  - Order-in-Appeal under Section 107(11) of the CGST Act,
  - Revision Order under Section 108(1) of CGST Act and
  - In cases where the Appellate Authority/ Appellate Tribunal/ Court determined that fraud, suppression and misstatement are not applicable.
- However, the said benefit will not be available in the following cases:
  - Any amount payable on account of erroneous refund,
  - Cases where appeals are pending before the Appellate Authority or Appellate Tribunal or Court and the same has not been withdrawn before the date notified under this section,
  - Cases where Writ petitions have been filed before and the same are pending before and not withdrawn before the date notified under this section.
- If the Department has filed appeals, revisional proceedings or other proceedings and the amount of tax payable is increased, the conclusion of the proceeding under this Section will be subject to payment of the additional amount within three months from the date of the said Order.
- In the event the taxpayer makes full payment of tax on or before the date to be notified by the Government, interest and penalty arising out of such demand shall stand waived off and the proceedings shall be deemed to be concluded subject to fulfilment of prescribed conditions.

- Once the amount of tax has been paid and the proceedings are deemed to be concluded, no appeal can lie before the First Appellate Authority or Appellate Tribunal.
- Where interest and penalties have already been paid, no refund shall be granted to the taxpayer.

ELP COMMENTS:

The insertion of Section 128A in the CGST Act is in line with the recommendations made by the 53rd GST Council meeting dated June 22, 2024. The proposed amendment is a positive step towards addressing the teething issues experienced during the initial years of GST implementation and is in line with promoting ease of doing business and reducing tax litigation.

However, there appear to be certain issues which require clarification. For instance, in a case where the taxpayer is in receipt of a notice/order involving multiple issues, whether partial relief under this proposed Section can be granted and the taxpayer can opt for litigation route for the remaining issues. Similarly, in case where a taxpayer is in receipt of a notice/order involving multiple years, whether the demand raised against one particular year can be litigated and waiver can be claimed for the remaining years.

Additionally, it is noteworthy that the recommendations of the 53rd GST Council meeting provided waiver of interest and penalty subject to payment of disputed tax on or before March 31, 2025 and did not prescribe fulfilment of any other additional condition. However, the Finance Bill has neither prescribed the date until which the disputed tax is to be deposited nor any other conditions. Therefore, it will be important to wait until such conditions are brought into effect by way of notification/rules.

The validity of Amnesty Schemes has been challenged in the past on the ground that the same is detrimental to and against the interest of the honest taxpayer, vis-a-vis the assessees who have evaded payment of tax. The Supreme Court in the case of All India Federation of Tax Practitioners and Another vs. Union of India and Others [1998 (231) ITR (24)] had dismissed the said challenge.

Availment of transitional credit by ISD in respect of services received prior to 01.07.2017

- Section 140(1) of the CGST Act provides for the transitional provisions to carry forward closing balance of CENVAT credit to the GST regime. Further, sub-section (7) provides that ITC on account of services received prior to 01.07.2017 by an ISD shall be eligible for distribution as credit under GST **even if the invoices are received on or after 01.07.2017**.
- It is now proposed to amend Section 140(7) of the CGST Act to specify that ITC on account of services received prior to 01.07.2017 by an ISD shall be eligible for distribution as credit under GST **whether the invoices relating to such services are received prior to, on or after, 01.07.2017**.

ELP COMMENTS:

Several taxpayers have transitioned the closing balance of erstwhile ISD credit directly to the GST/ GST ISD registration. However, they could not distribute the said credit to the respective GST registrations as ISD return under GST did not allow distribution of transitional credit. According to the Department, the erstwhile ISD ought to have distributed the ISD credit to the respective service tax and central excise registrations and the said registrations ought to have transitioned the credit to the GST regime. The aforesaid issue resulted in multiple litigations currently pending before various High Courts. The taxpayers have inter alia relied on Section 140(7) of the CGST Act to justify transition of credit of erstwhile ISD to GST/ GST ISD as the said sub-section permits

distribution of ISD credit received prior to 01.07.2017 as credit under GST. However, Department was of the view that Section 140(7) covers the limited instances where services are received prior to 01.07.2017 and invoices are received post 01.07.2017.

Hon'ble Bombay High Court in Siemens Limited v. Union of India (W.P. 986/2019) vide its interim order dated 29.02.2024 observed that an appropriate examination of these issues by the GST Council shall assist the Court in taking an appropriate view of the matter. Accordingly, the GST Council in its 53rd Council Meeting recommended that an amendment be brought retrospectively w.e.f. 01.07.2017 in Section 140(7) of the CGST Act to include within its ambit ISD transitional credit in respect of services received prior to 01.07.2017 and even if the invoices are received prior to 01.07.2017.

The proposed amendment will provide huge relief to several taxpayers who have transitioned closing balance of erstwhile ISD directly to the GST registration which remained blocked till now. Since the proposed amendment is qua sub-section (7), its applicability to taxpayers who have transitioned under Section 140(1) needs to be examined. It may be argued that once a substantive right is available, mere procedural aspect of filing the TRAN-1 Form under sub-section (1) or sub-section (7) should not impact the said right.

Changes relating to anti-profiteering under GST

- Section 171 and 109 of the CGST Act are proposed to be amended to provide a sunset clause for anti-profiteering under GST and to assign the handling of pending anti-profiteering cases to the Principal Bench of the Appellate Tribunal.
- Section 171(2) of the CGST Act is proposed to be amended to empower the Government to issue Notification, based on the recommendations of the GST Council, to specify the date from which the Anti-Profiteering Authority will stop accepting new applications for compliance examination under the Section.
- Section 109(1) of the CGST Act is proposed to be amended to extend the functions of the Appellate Tribunal to include examination or adjudication of anti-profiteering cases under Section 171(2) as and when notified by the Government. Additionally, Section 109(5) is proposed to be amended to specify that only the Principal Bench of the Appellate Tribunal will handle anti-profiteering matters. Further, an Explanation is proposed to be inserted in Section 171 to include the Appellate Tribunal within the definition of the Anti-Profiteering Authority.

ELP COMMENTS:

Sections 171 and 109 of the CGST Act are proposed to be amended following the recommendations of the 53rd GST Council Meeting. These amendments aim to introduce a sunset date of 01.04.2025 for the receipt of new applications regarding anti-profiteering and to transfer the handling of pending anti-profiteering cases to the Principal Bench of the GST Appellate Tribunal.

The anti-profiteering provision, which mandates that any tax rate reduction or input tax credit benefit be passed on to recipients through price reductions, has created significant uncertainty for the industry, particularly concerning computation and pricing. The introduction of a sunset clause is a welcome move for taxpayers, offering them clarity and reducing compliance burdens. However, this change may limit consumers' avenues for ensuring fair pricing after the sunset date.

Amendment to Schedule III of the CGST Act

- Schedule III of the CGST Act is proposed to be amended and new paragraphs viz paragraph 9 and 10 will be inserted.
- As per the said amendment following activities will not be treated as supply of good or services:
  - Apportionment of co-insurance premium by the lead insurer to the co-insurer, pertaining to insurance services which are jointly supplied as per the coinsurance agreements, provided that the tax has been paid by the lead insurer on the entire amount of premium paid by the insured.
  - Services by the insurer to the re-insurer, for which the ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, provided that tax liability on the gross reinsurance premium inclusive of reinsurance commission or the ceding commission is paid by the reinsurer.

ELP COMMENTS:

The proposed amendments are a welcome move as the same would put to rest the challenges faced by the insurance industry. While the proposed amendments appears to be prospective, the 53rd Council meeting has recommended that the past cases may be "regularized on as is where is" basis.

The past cases may be regularized through notification under Section 11A of the CGST Act, however development on the same is awaited.

It is relevant to note that, the said issue was settled in Services Tax Regulations - Judicial precedence: National Insurance Co. Ltd, 2017 (47) S.T.R. 183 (Tri. - Kolkata) and Circular No. - 120(a)/2/2010-ST and Service Tax Instruction F No 150 1 94 CX 4 dated 02.05.1996.

Vide amendment of the Schedule III of the CGST Act, while the specified activities are neither treated as supply of goods nor services, it ideally should not entail further issues with respect to eligibility/reversal of ITC under Section 17(3) of the CGST Act.

INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Refund under Section 16 of the IGST Act to be in accordance with provisions of Section 54 of the CGST Act and Rules made thereunder

- Section 16(4) of the IGST Act states that the Government may, by notification, specify the following:
  - (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
  - (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid
- Section 16(4)(i) is proposed to be amended to specify that in case of persons making zero rated supply on payment of integrated tax; refund of the tax so paid shall be claimed **in accordance with the provisions of section 54 of the CGST Act or the Rules made thereunder.**

- Further to the above, Section 16(4)(ii) is proposed to be amended to notify class of goods or services or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, **in accordance with the provisions of section 54 of the CGST Act or the Rules made thereunder.**
- Section 16(5) is proposed to be inserted, notwithstanding sub-section to Section 16(3) and (4) to state that no refund of unutilized input tax credit or of integrated tax paid on account of zero-rated supply of goods shall be allowed where such zero-rated supply of goods is subjected to export duty.

ELP COMMENTS:

As per the proposed amendment, the refund of IGST on account of exports under Section 16 of the IGST Act will be subject to Section 54 of the CGST Act and the Rules made thereunder. Further, no refund of IGST and unutilized ITC shall be allowed where such zero-rated supply of goods is subject to export duty. With the proposed amendment, the Government will now have the authority to regulate the procedure of IGST refund through CGST Rules.

This amendment attempts to bring parity between Section 16 of the IGST Act and Section 54 of the CGST Act and avoid any interpretation issues such as whether restrictions under Rule 96(10) of the CGST Rules can be said to be ultra vires Section 16 of the IGST Act in cases of export on payment of IGST. While the amendment is prospective, interpretation issues of the past may continue.

CENTRAL EXCISE CHANGES

The Notification No. 12/2012-Central Excise dated 17.03.2012 issued under Section 5A of the Central Excise Act is proposed to be amended retrospectively, with effect from June 29, 2017 - to extend the time period for submission of the final Mega Power Project certificate from 120 months to 156 months.

ELP COMMENTS:

Mega Power Projects facing administrative challenges in obtaining the final certificate have now been provided with the time period relaxation, of 156 months, to comply with the requirement of submission of the final certificate.

The Notification No. 12/2017-Central Excise dated 30.06.2017 is proposed to be amended, with effect from June 30, 2017 so as to provide retrospective exemption of Clean Environment Cess, levied and collected as a duty of excise, on excisable goods lying in stock as on June 30, 2017. This is subject to payment of appropriate GST Compensation Cess on supply of such goods on or after July 1, 2017.

ELP COMMENTS:

The proposed amendment aims to put an end to the controversy of the double taxation issue raised before judicial fora and provides a much necessary relief relating to the payment of Clean Energy Cess as well as GST Compensation Cess in respect of coal.

The levy of clean energy cess was linked to the taxable event of manufacture and the levy of GST Compensation Cess is linked to the taxable event of supply. In absence of any credit mechanism of the Clean Energy Cess payable in respect of the stock as on 30.06.2017, a subsequent levy of GST Compensation Cess resulted in a double burden.

It was held by the Hon'ble Jharkhand High Court in the case of Central Coalfields Limited vs. UOI, [2024 (1) TMI 1158] that the concept of double taxation does not apply to "Cess" and the assessee would be liable to pay Clean Energy Cess on the coal lying on stock as on 30.06.2017 notwithstanding the fact that GST Compensation Cess has been paid on such supply of goods made w.e.f. 01.07.2017. The proposed amendment rectifies such an unintended anomaly.

In cases where payment of Clean Energy Cess has been made, the possibility of filing a refund application can be explored subject to the conditions and limitations as applicable to refund provisions.

Basis the Budget speech, the existing threshold of monetary limits for filing appeals by the Revenue Department in relation to Excise and Service tax laws has been proposed to be revised as under:

Sr. No.	Particulars	Existing Monetary Limit	Proposed Monetary Limit
1	Before CESTAT	▪ INR 50 lakhs	▪ INR 60 lakhs
2	Before High Court	▪ INR 1 crore	▪ INR 2 crores
3	Before Supreme Court	▪ INR 2 crores	▪ INR 5 crores

ELP COMMENTS:

The proposed amendment is a welcome move and is expected to significantly reduce the backlog of pending litigation. However, the criterion for exclusions of the above proposed limit in matters such as those relating to taxability, classification, valuation etc. would have to be seen, as and when such monetary limits are notified.

CUSTOMS - TARIFF CHANGES

The Finance Bill proposes to insert/substitute certain tariff entries in the First Schedule to the Customs Tariff Act from October 1, 2024. The key ones are as under:

Tariff Item	Description	Rate of Duty (%)
2710 19 33	Blended Aviation turbine fuel	5
2906 11 10	Natural Menthol	7.5
2906 11 90	Others	7.5
2924 29 80	Paracetamol	7.5
3920 10 93	Armour for ballistic protection	25
3921 90 27	Architectural membrane	25

	--- 100% polyamide tufted velour, cut pile or loop pile carpet mats :	
5703 29 21	---- With jute, rubber latex or PU foam backing	20% or INR 70 per sq. metre, whichever is higher
5703 29 22	----With ethylene vinyl acetate or vinyl acetate ethylene or latex coating and/or extruded polyvinyl chloride or thermoplastic polyolefin, with special finishes	20% or INR 70 per sq. metre, whichever is higher
5703 29 29	----Other	20% or INR 70 per sq. metre, whichever is higher
	---Tufted velour, cut pile or loop pile carpet mats with ethylene vinyl acetate or vinyl acetate ethylene or latex coating and/or extruded polyvinyl chloride or thermoplastic polyolefin, with special finishes	
5703 39 31	----Of 100% polypropylene	20% or INR 55 per sq. metre, whichever is higher
5703 39 32	----Of 100% polyester	20% or INR 55 per sq. metre, whichever is higher
5703 39 33	----Of 100% polyethylene	20% or INR 55 per sq. metre, whichever is higher
5703 39 39	----Other	20% or INR 55 per sq. metre, whichever is higher
7308 10	- Bridges and bridge-sections:	
7308 10 10	-- Portable bridge	15

7308 10 90	-- Other	15
	--- Parts of structures, not elsewhere specified:	
7610 90 21	---- Portable bridge	10
7610 90 29	---- Other	10
8412 29 20	Hydraulic systems for use in goods of Chapter 89 (Ships, boats and floating structures)	7.5
8430 69 8430 69 10 8430 69 90	Other: Mine plough machinery Other	 7.5 7.5
8443 99 51	Cartridges or toners, with print head assembly	10
8443 99 52	Cartridges or toners, without print head assembly	10
8479 89 80	Machinery for use in goods of Chapter 88 (Aircraft, spacecraft and parts thereof) or 89 (Ships, boats and floating structures)	7.5
8537 10 8537 10 10 8537 10 90	For a voltage not exceeding 1,000 V: For use in goods of Chapter 88 (Aircraft, spacecraft and parts thereof) or 89 (Ships, boats and floating structures) or 93 (Arms and ammunitions) Other	 15 15
8705 90 8705 90 10 8705 90 90	Other : Lorries (Trucks) fitted with bridging systems Other	 10 10
8711 60 80	E-bicycle or battery-operated pedal assisted vehicle	100
8807 30 8807 30 10 8807 30 20	Other parts of aeroplanes, helicopters or unmanned aircraft : Of aeroplanes, helicopters Of unmanned aircraft	 2.5 2.5
8906 90 8906 90 10 8906 90 90	Other : Patrol or surveillance boat, air-cushion vehicle, remote-operated vehicle Other	 10 10

Changes to Notes to Chapters

- In Chapter 27, in supplementary note, sub-note (l) is proposed to be inserted to define the term 'Blended Aviation turbine fuel'.
- In Chapter 29, supplementary note is proposed to be inserted to define the term 'Natural Menthol' for the purpose of CTH 2906 11 10.
- A supplementary note after Note 2 in Chapter 57 is proposed to be inserted to define for the purpose of certain tariff headings, the term "Special Finishes" as *"process of making the product with any one or more of the following properties such as fire resistant, fire retardant, chemical resistant anti-static, dust resistant, anti-stain, anti-microbial, anti-odor, UV stabilized, heat resistant, etc."*
- A supplementary note for the purposes of CTH 8711 60 80 is proposed to be inserted to define the term "E-bicycle or battery operated pedal assisted vehicle" to mean vehicle equipped with an auxiliary electric motor having a thirty minute power less than 0.25 kW and maximum speed not exceeding 25 km/h and conforming to the provisions of the Motor Vehicles Act, 1988 (59 of 1988) and the rules made thereunder.

CUSTOMS RATE CHANGES ON IMPORT OF GOODS

- Following are the key proposals involving change in effective rate of BCD from July 24, 2024; unless otherwise mentioned:

CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
1518	Algal Oil for manufacturing of aquatic feed	15	Nil (Refer Note 1)
39, 72, 81	Special grade stainless steel, Titanium alloys, Cobalt-chrome alloys, and All types of polyethylene for use in manufacture of other artificial parts of the body falling under sub-heading 9021 31 or 9021 39	As applicable	Nil
40, 70, 76	Specified goods (battery cover, main lens, GSM antenna etc.) for use in manufacture of cellular mobile phones	As applicable	10 (Refer Note 2)
6601 10 00	Garden Umbrella	20	20 or INR 60 per piece, whichever is higher (proposed to be w.e.f. October 01, 2024)
69, 74	Specified goods imported in respect of prescribed petroleum operations or coal bed methane operations	As applicable	Nil

7007	Solar glass for manufacture of solar cells or solar modules	Nil	10 (w.e.f. October 1, 2024)
71	Gold dore bar, having gold content not exceeding 95%	10	5
71	Silver dore bar having silver content not exceeding 95%	10	5
71 or 98	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 Gold in any form other than (i), including tola bars and ornaments, but excluding ornaments studded with stones or pearls	10	5
71 or 98	Silver, in any form including ornaments, but excluding ornaments studded with stones or pearls, imported by the eligible passenger	10	5
7108	All goods other than gold dore bars	10	5
7106	All goods other than silver dore bars	10	5
7112	Spent catalyst or ash containing precious metals	10	5
7107 00 00, 7109 00 00, 7110 11 10, 7110 11 20, 7110 19 00, 7110 21 00, 7110 29 00, 711041 00, 7110 4900, 7111 00 00, 7112, 7118	All goods	10	5
7113	Gold or silver findings	10	5
7202 60 00	Ferro-Nickel	2.5	Nil

7204	Ferrous waste and scrap; Remelting scrap ingots of iron and steel	Nil	Nil
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, for the manufacture of cold rolled grain oriented steel (CRGO) steel falling under tariff item 7225 11 00 or 7226 11 00	Nil	Nil
74	Tinned copper interconnect for manufacture of solar cells or solar modules	Nil	5 (w.e.f. October 1, 2024)
74	Oxygen Free Copper for use in manufacture of Resistors	5	Nil
7402 00 10	Blister Copper	5	Nil
8001	Unwrought Tin	5	Nil
8101 9400	Unwrought tungsten, including bars and rods obtained simply by sintering	5	Nil
8102 9400	Unwrought molybdenum, including bars and rods obtained simply by sintering	5	Nil
8103 20	Unwrought tantalum, including bars and rods obtained simply by sintering, powders	5	Nil
8105 20 20	Cobalt, unwrought	5	Nil
8106 10 10	Bismuth, unwrought	2.5	Nil
8109 21 00	Unwrought zirconium, powders, Containing less than 1 part hafnium to 500 parts zirconium by weight	10	Nil
8110 10 00	Unwrought antimony, powders	2.5	Nil
8112 12 00	Beryllium unwrought, powders	5	Nil

8112 31	Hafnium unwrought, waste and scrap, powders	10	Nil
8112 41 10	Rhenium unwrought	10	Nil
8112 69 10	Cadmium unwrought, powders	5	Nil
8112 69 20	Cadmium, wrought	5	Nil
8112 92 00	Unwrought; waste and scrap; powder of, - (i) Gallium (ii) Germanium (iii) Indium (iv) Niobium (v) Vanadium	5	Nil
84	Bushings made of platinum and rhodium alloy when imported in exchange of worn out or damaged bushings exported out of India	7.5	5
8517 13 00, 8517 14 00	Cellular mobile phone	20	15
8504 40	Charger/Adapter of cellular mobile phone	20	15
8517 79 10	Printed Circuit Board Assembly (PCBA) of cellular mobile phone	20	15
8517 79 10	Printed Circuit Board Assembly (PCBA) of specified telecom equipment	10	15
84, 85, or any other chapter	Specified capital goods for use in manufacture of solar cells or solar modules, and parts for manufacture of such capital goods	7.5	Nil
9022 30 00	X-ray tubes for use in manufacture of X-ray machines for medical, surgical, dental or veterinary use	15	5 (till March 31, 2025) 7.5 (April 1, 2025 to March 31, 2026) 10 (from April 1, 2026 onwards)
9022 90 90	Flat panel detectors (including scintillators) for use in manufacture of X-ray machines for medical surgical, dental or veterinary use	15	5 (till March 31, 2025) 7.5 (April 1, 2025 to March 31, 2026)

			10 (from April 1, 2026)
9802 00 00	Laboratory Chemicals	10	150

Notes:

- This is subject to the importer following the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.
- By virtue of amendment in Entry 6D of the Notification no. 57/2017 – Customs, the concessional rate of 10% BCD is now being extended to goods of Chapter 40, 70 and 76.

Review of Exemptions:

The Government has undertaken a comprehensive review in respect of 188 conditional exemptions/concessional rates (150 entries in Notification No. 50/2017-Customs dated June 30, 2017 and 38 exemptions/concessional rates in standalone Notifications). The summary of changes of the said 188 items are as below:

- 30 exemptions/concessional rates are being extended upto March 31, 2029, such as for goods supplied freely under warranty as replacement for defective ones in lieu of earlier imported goods, capital goods/ machinery used by IT/ Electronics industry, subject to actual user condition etc.
- 126 exemptions/concessional rates are being continued upto March 31, 2026, such as for moulds, tools and dyes for the manufacture of parts of electronic components or electronic equipment, lithium ion cell for use in manufacture of battery or battery pack of cellular mobile etc.
- 28 exemptions/concessional rates are being lapsed on their end dates of September 30, 2024, such as for batteries for electrically operated vehicles, including two and three wheeled electric motor vehicles, solar tempered glass for use in manufacture of solar cells/panels/modules etc.
- End dates are being removed in 4 exemptions as they are covered by the exclusion clause, such as exemption to special Additional Duty on specified goods of Fourth Schedule to Central Excise Act, 1944, effective rate of Additional duty for goods under Chapter 27 etc.

While continuing the exemptions/concessional rates, some entries have been pruned or modified.

Other tariff changes

- The rates of Agriculture Infrastructure and Development Cess (AIDC) on gold, silver and platinum products of Chapter 71 have been reduced effective from July 24, 2024.
- 55 minerals are exempted from the levy of Social Welfare Surcharge (SWS) (amended vide Notification No. 11/2018 – Customs dated 02.02.2018)

CHANGES TO EXEMPTION NOTIFICATION 27/2011- CUSTOMS DATED 01.03.2011 WITH RESPECT TO EXPORT OF GOODS

- Sr. Nos. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 38A, 38B, 39 and the entries relating thereto shall be omitted and following entries shall be inserted after S. No. 25 with effect from July 24, 2024:

Sr. No.	CTH	Description of Goods	Existing Rate (%)	Revised Rate (%)
25A	4101 20 10, 4101 20 90, 4101 50 10, 4101 50 90, 4101 90 10, 4101 90 90, 4102, or 4103	Raw hides and skins or Raw skins (excluding raw hides and skins of buffalo)	40	40
25B	4101 20 20, 4101 50 20, or 4101 90 20	Raw hides and skins of buffalo	30	30
25C to 25E	4104 to 4106	Tanned or crust hides and skins, whether or not split, but not further prepared	40	20
25F	4104 to 4106	E.I. tanned leather	Nil	Nil
25G	41	Finished leather as defined by DGFT finished leather norms	Nil	Nil
25H	4301	Raw fur skins	60/10	40
25I	4302	Tanned or dressed fur skins	60	20

CUSTOMS - LEGISLATIVE CHANGES

Acceptance of alternative "proof of origin" to claim preferential duty benefits

Section 28DA has been proposed to be amended to substitute the term "certificate of origin" with "proof of origin" in its relevant sub-sections. Further, in the explanation to Chapter V-AA, the definition of "certificate of origin" is proposed to be substituted with the term "proof of origin". The new term "proof of origin" aims to include a "declaration" confirming the fulfilment of country-of-origin criteria, in addition to the "certificate" presently covered. Moreover, the definition of the issuing authority is proposed to be substituted to mainly include a "person" designated for issuing proof of origin under a trade agreement.

ELP COMMENTS:

The proposed amendments to Section 28DA, which governs the procedure for claiming a preferential duty rate, aim to allow for the acceptance of different forms of proof of origin, beyond the traditional certificate of origin, as permitted under specific trade agreements. This is in line with the new trade agreements entered by the GOI that also lists self-certification/declaration by the exporters as one of the proofs of origin.

Government may specify exclusion for a specific class of goods from the MOOWR scheme

A new proviso is proposed to be inserted under Section 65, whereby the Central Government may notify certain class of goods for which manufacturing or other operations will not be permitted under the Manufacturing and Other Operations in a Warehouse (MOOWR) scheme.

ELP COMMENTS:

The proposed amendment is significant as it empowers the Central Government to restrict the applicability of the MOOWR Scheme for certain specified class of goods. The amendment seems to be prompted by the recent decision of the Hon'ble Delhi High Court in the case of *ACME Heergarh Powertech Private Limited [W.P. No. 10537 of 2022]*,

in which the CBIC's instruction restricting the applicability of the MOOWR Scheme to "solar power-generating plants" was struck down.

Trade facilitation measures extended to "other persons" in addition to importers and exporters

Section 143AA that empowers to the Board to take specific measures, prescribe procedures or documentation for a class of importers or exporters for the purposes of facilitation of trade, is proposed to be amended to extend the class to include "any other persons".

Further, Section 157(2) that *inter alia* empowers the Board to make regulations to prescribe specific measures, procedure or documentation for a class of importers or exporters, is also simultaneously proposed to be amended to extend the class to include "any other persons".

Retrospective Exemption of GST compensation cess on goods imported by SEZ

The Finance Bill proposes the retrospective application of Notification No. 27/2024-Customs dated July 12, 2024, which exempts all goods imported by a unit or developer in an SEZ for authorized operations from the GST Compensation Cess under Section 3(9) of the CTA. This exemption is proposed to be effective from July 01, 2017.

ELP COMMENTS:

This amendment brings much-needed clarity and certainty, following the Andhra Pradesh High Court's ruling in the case of *Maithan Alloys Ltd v. Union of India [2024 (1) TMI 305],* which denied the exemption of GST Compensation Cess on goods imported by SEZ units.

Retrospective Exemption of BCD and AIDC on import of Crude Soyabean Oil and Crude Sunflower Oil

The Finance Bill proposes the retrospective application of Notification No. 37/2023-Customs, dated May 10, 2023, to exempt BCD and AIDC on Crude Soybean Oil [Tariff 1507 10 00] and Crude Sunflower Seed Oil [Tariff 1512 11 10]. This exemption is proposed to be effective from April 1, 2023, to June 30, 2023 (inclusive), instead of the previously stated period of May 11, 2023, to June 30, 2023, subject to the additional conditions that:

- Duty and cess benefits are limited to the unused quota not claimed under Notification No. 30/2022-Customs (dated May 24, 2022) or Notification No. 37/2023-Customs from May 11, 2023, to June 30, 2023.
- The bill of lading for the import consignment must be issued on or before March 31, 2023.

The earlier existing conditions prescribed in Notification 37/2023-Customs, related to electronic issuance and utilization authorization, have been omitted. Additionally, a refund of the duty and cess paid before the proposed amendment will be granted as if the notification had been in force during the revised dates, in accordance with Section 27(2) of the Customs Act. Application for the refund is required to be made to the jurisdictional Assistant or Deputy Commissioner of Customs by March 31, 2025.

CUSTOMS – TARIFF CHANGES

Omission of Section 6 of the Customs Tariff Act, which provides for levy of protective duties

Section 6 of the CTA, that empowers the Central Government to levy "protective duties" for protection of interests of Indian industry on a recommendation by the Tariff Commission, is proposed to be omitted.

ELP COMMENTS:

The omission of Section 6 follows the dissolution of the Tariff Commission, effective June 1, 2022. The Tariff Commission was established in 1951 to protect domestic industry, however its relevance has declined in the liberalized regime, leading to its dissolution. Without the Commission's recommendation, no protective duties could be levied, making Section 6 redundant and hence proposed to be omitted.

INTERNATIONAL TRADE

AMENDMENT IN COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES RULES, 1995

The CVD Rules have been amended to insert Rule 23A which provides for conduct of a New Shipper Review.

The New Shipper Review provision allows the Designated Authority to determine individual dumping margins for exporters or producers who did not export the goods to India during the original trade remedial investigation period. The key features of Rule 23 are as follows:

- **Periodical Review for New Exporters/Producers:** The designated authority will periodically review and determine individual subsidy margins for exporters or producers who did not export the product to India during the original investigation period.
- **Condition for New Shippers:** New shippers must demonstrate they are not related to any exporters or producers in the exporting country who are already subject to countervailing duties on the product. This condition ensures that only genuine new exporters benefit from the review process.
- **No Immediate Levy of Duties**: During the review period, the Central Government will not impose countervailing duties on imports from these exporters or producers. However, provisional assessments may be conducted, and guarantees may be requested from the importer if recommended by the designated authority.
- **Retroactive Application of Duties:** If the review finds that a subsidy exists for the products or exporters under investigation, the duties may be applied retrospectively from the date the review was initiated.
- **Extension of Existing Duties:** Countervailing duties already imposed on cooperative but un-sampled exporters or producers can be extended to those exporters or producers who were not originally investigated.
- **Effective date:** Rule 23 A will come into force from July 24, 2024.

ELP COMMENTS:

While India's anti-dumping regime already included a provision for New Shipper Review, there was no such provision for countervailing duty investigations. The amendment incorporating New Shipper Reviews into the CVD Rules enhances fairness in India's trade remedial practices by allowing new exporters to request a review of their countervailing duties (a right they did not previously have under the law). This aims to ensure equitable treatment in the assessment of duties on subsidized imports.

Therefore, this amendment establishes harmony between Indian anti-dumping and countervailing duty regimes and aligns India with other major jurisdictions like the United States, the European Union, and Canada, which already have such a mechanism in place.

CLIMATE ACTION IN THE BUDGET: KEY HIGHLIGHTS

India has ratified the Paris Agreement in 2016, pledging to limit the global temperature rise to below 2°C. In 2022, India revised its NDCs, aiming for a 45% reduction in GHG emission intensity by 2030 from 2005 levels.

This commitment was further emphasized in the budget speech by the FM, which demonstrated a strong focus on energy transition and decarbonization, outlining several key initiatives to drive India's climate goals forward.

Carbon Credit Trading Scheme (CCTS)

The FM announced India's strategy for targeting the 'hard to abate' industries, such as steel, power, chemical, cement, and refining, which face substantial challenges in reducing greenhouse gas (GHG) emissions. To address this, the government plans to transition from the current 'Perform, Achieve and Trade' (PAT) mechanism to the newly notified CCTS.

Enhancing Climate Finance

To further bolster India's climate commitments, the government will develop a taxonomy for climate finance. This will enhance the availability of capital for climate adaptation and mitigation, supporting the country's green transition.

Policy on energy transition

Additionally, a policy document on appropriate energy transition pathways will be released. This document is expected to balance the imperatives of employment, growth, and environmental sustainability, providing a clear roadmap for India's energy future.

Focus on Critical Minerals

Minerals such as lithium, copper, cobalt, and rare earth elements are crucial for battery production and other renewable technologies. The government will set up a Critical Mineral Mission for domestic production, recycling of critical minerals, and overseas acquisition of critical mineral assets. The FM also proposed to fully exempt customs duties on 25 critical minerals and reduce duties Graphite, Silicon Quartz and Silicon Dioxide to 2.5 %.

Solar Energy

To support energy transition, the FM proposed to expand the list of exempted capital goods for use in the manufacture of solar cells and panels in the country.

Additionally, in line with the announcement in the interim budget, PM Surya Ghar Muft Bijli Yojana has been launched to install rooftop solar plants to enable 1 crore households to obtain free electricity up to 300 units every month.

Support for Traditional Micro and Small Industries

The FM highlighted the government's focus on traditional micro and small industries, which play a crucial role in the economy. An investment-grade energy audit will be conducted in 60 clusters, including brass and ceramic industries, to facilitate their transition to cleaner forms of energy and implement energy efficiency measures. Financial support will be provided to these industries, with plans to replicate the scheme in another 100 clusters in the next phase.

ELP COMMENTS:

India has historically opposed unilateral climate actions and advocated for the recognition of 'Common but Differentiated Responsibilities'. This principle acknowledges that while all countries are responsible for addressing climate change, developed countries should take the lead due to their greater historical contribution to global emissions.

However, with the recent proliferation of climate-related measures in global trade, India is increasingly facing the need to align its policies in line with global practices. The transition from energy efficiency to emission reductions appears strategically positioned to help Indian businesses adapt to such changes. For instance, the European Union's recent move towards introducing a "carbon price" on imports of highly carbon intensive products through the CBAM, could potentially impact India's exports. By adopting a robust carbon pricing strategy through the CCTS, India aims to mitigate these impacts, ensuring that its exports remain competitive in key export markets.

Similarly, initiatives on solar energy and critical minerals are aimed at supporting energy transition and bolstering domestic capacity. India's shift to green energy has encountered challenges owing to the heavy reliance on imports of critical minerals. Therefore, initiatives aimed at reducing foreign resource dependency, boosting energy security, and fostering sustainable economic growth are vital for a developing nation like India.

Historically, the lack of adequate climate finance has also been a significant hurdle, limiting the ability to invest in necessary infrastructure and technologies. The development of a climate finance taxonomy will play a crucial role in bridging the gap between current capabilities and India's ambitious targets set for reducing emissions.

Lastly, bringing MSMEs along in this transition is vital, as they are a significant part of the economy and need support to adopt cleaner technologies and sustainable practices.

SUPPORT FOR MARINE EXPORTS IN THE FORM OF FINANCING SCHEME FOR SHRIMP EXPORTS

The FM also announced the introduction of a financing scheme for shrimp farming, processing, and export. The scheme will be steered by the National Bank for Agriculture and Rural Development (NABARD) and will, among others, provide financial support for setting up a network of Nucleus Breeding Centres for shrimp broodstocks. However, the details of such financing are yet to be notified. The FM has also proposed reduction of basic customs duty on import of inputs such as certain broodstock, polychaete worms, shrimp and fish feed from 10 %, 30 % and 15 % respectively to 5 %. The budget also proposes to exemption of customs duty for certain inputs used to produce shrimp and fish feed.

Shrimp accounts for a significant portion of India's seafood exports, comprising over 40% of the total volume and 66.12% of the total value in USD. Its share in global markets has only increased in recent years.

In recent years, Indian shrimp exports have faced challenges in export markets. For instance, since 2019, the United States has banned all imports of Indian sea-caught shrimp, citing unsustainable fishing practices that result in protected sea turtles getting entangled in fishing nets. Furthermore, Indian frozen shrimp exports have been subject to trade remedial investigations.

ELP COMMENTS:

Considering the existing challenges faced by Indian shrimp exports in global markets, the Central Government's move to introduce a financing scheme focused on farmed shrimp aims to sustain the momentum of Indian seafood exports and foster increased productivity in the sector. This initiative also aligns with India's broader policy position, which emphasizes the importance of subsidies for developing countries to grow and diversify their fisheries sector.

However, it remains to be seen whether these initiatives will attract further trade remedial measures from international trading partners, which could potentially impact the overall effectiveness and competitiveness of Indian shrimp exports.

MISCELLANEOUS

SUPPORT FOR PROMOTION OF MSME'S

In the Interim Budget, the Hon'ble Finance Minister had mentioned that it is an important policy priority for the GOI to ensure timely and adequate finances, relevant technologies and appropriate training for MSMEs to grow and also compete globally. In this regard, the following measures have been announced in this Budget:

- **Ease of access to credit**: The GOI proposes to introduce the following changes to enable MSMEs to get access to credit:
  - Credit guarantee scheme for MSMEs in the manufacturing sector: A new credit guarantee scheme shall be set up to facilitate term loans to MSMEs for purchasing machinery and equipment without collateral or third-party guarantees. This scheme will pool the credit risks of MSMEs, and a self-financing guarantee fund will provide each applicant with a guarantee cover up to INR 1 billion. Borrowers will need to pay an upfront guarantee fee and an annual guarantee fee on the reducing loan balance.
  - New assessment model for MSME credit: Public sector banks will develop in-house capabilities to assess MSMEs for credit which will be based on the digital footprints of MSMEs, providing a more comprehensive evaluation beyond traditional asset or turnover criteria. This change will also help MSMEs without a formal accounting system.
  - Credit support to MSMEs during stress period: A new mechanism will facilitate the continuation of bank credit to MSMEs during their stress periods. When MSMEs are in the 'special mention account' (SMA) stage due to reasons beyond their control, they need credit to maintain operations to avoid slipping into the NPA stage. The bank credit provided to the MSME will be backed by a guarantee from a government-promoted fund.
  - MUDRA Loans: The limit for MUDRA loans will be enhanced to INR 2 million from the current INR 1 million for entrepreneurs who have availed and successfully repaid previous loans under the 'Tarun' category.
  - SIDBI branches in MSME clusters: SIDBI will open new branches in major MSME clusters over the next 3 (three) years, expanding service coverage and providing direct credit. The opening of 24 new branches this year will increase the service coverage to 168 out of 242 major clusters.
- **Increased liquidity by enhancing scope for mandatory onboarding on TReDS:** To help MSMEs unlock their working capital by converting trade receivables into cash, the turnover threshold for mandatory onboarding on the TReDS platform will be reduced from INR 5 billion to INR 2.5 billion. This will bring 22 more Central Public Sector Enterprises (CPSEs) and 7000 companies onto the TReDS platform, facilitating better liquidity for MSMEs.
- **MSME units for food irradiation, quality & safety testing:** Financial support will be provided for setting up 50 multi-product food irradiation units and 100 food quality and safety testing labs with NABL accreditation in the MSME sector.
- **E-commerce export hubs**: E-commerce export hubs will be established in PPP mode to enable MSMEs and traditional artisans to sell their products in international markets. These hubs will offer a seamless regulatory and logistical framework, facilitating trade and export-related services under one roof.

ELP COMMENTS:

These proposals aim to bolster the MSME sector by enhancing access to credit, improving credit assessment mechanisms and providing critical support during stress periods. The initiatives for credit guarantees and new assessment models will reduce the financial barriers faced by MSMEs, while the credit support mechanism will help sustain operations during challenging times, preventing defaults and NPAs. The enhanced scope for onboarding in TReDS, expansion of SIDBI branches and establishment of food irradiation and quality testing units will further support MSME growth and competitiveness. E-commerce export hubs will open new markets for MSME products, promoting their global reach.

The Budget proposals for the MSME sector are a commendable step towards strengthening the backbone of India's economy. The introduction of an in-house credit assessment model by public sector banks marks a significant shift from traditional asset and turnover-based assessments, which often overlooked the nuanced financial needs of MSMEs resulting in under financing of MSME and leading to credit stress. By incorporating digital footprints and comprehensive financial data from GST and income tax portals, this new model will ensure more accurate credit assessments and reduce the risks of under or over-financing.

However, the credit support mechanism for MSMEs during stress periods, while beneficial, does not fully address the potential risks of insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC). MSMEs in the SMA stage are practically in default, and additional safeguards are necessary to protect these enterprises from legal actions under IBC during stress period.

Moreover, the proposals to enhance MUDRA loans, broad-base TReDS onboarding, and expand SIDBI's reach are timely interventions. These measures will improve access to credit, enhance liquidity, and foster an environment conducive to growth and innovation. The support for food irradiation units and E-Commerce Export Hubs reflects a strategic move to boost the quality, safety, and global competitiveness of MSME products.

In summary, while the Budget proposals lay a strong initiative for the MSME sector, continuous monitoring and refinement will be essential to ensure these measures translate into tangible benefits. Emphasis on timely implementation, reducing bureaucratic delays, and safeguarding MSMEs from insolvency risks will be key to achieving the desired outcomes.

INCREASE IN THE THRESHOLD LIMITS ON DISCLOSURE OF FOREIGN ASSETS UNDER THE BLACK MONEY ACT

- Sections 42 and 43 of the Black Money Act levies a penalty of INR 1 million (Penalty Amount) in respect of failure to furnish return or failure to furnish any income/information or furnishing of inaccurate particulars of foreign income or asset in the income tax returns filed by persons being a resident other than not ordinarily resident in India.
- Previously, Sections 42 and 43 of the Black Money Act did not apply in respect of an asset, being one or more bank accounts having an aggregate balance not exceeding a value equivalent to INR 500,000 at any time during the previous year.
- Sections 42 and 43 of the Black Money Act are proposed to be amended to provide that Section 42 and Section 43 of the Black Money Act would not apply in respect of an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed INR 2 million.

- These amendments are proposed to come into effect from October 1, 2024, and accordingly would apply in relation to AY 2025-26 and thereafter.

ELP COMMENTS:

The amendments to Sections 42 and 43 of the Black Money Act primarily seek to address the concerns of the stakeholders that the previous threshold limit of INR 500,000 was deemed too low, which often results in the imposition of penalties where the asset value itself is less than the Penalty Amount. Accordingly, the increase in the threshold limit to INR 2 million would address this concern. Moreover, Indian professionals working in multinational entities get ESOPs and invest in social security schemes and other movable assets abroad, which, if not reported, attracted penal consequences under the Black Money Act. Such non-reporting of movable assets up to INR 2 million is proposed to be de-penalised.

VARIABLE CAPITAL COMPANY STRUCTURE

- The Budget proposes that the GOI will seek legislative approvals for providing an efficient and flexible mode for financing and leasing of aircrafts and ships, and pooled funds of private equity through a 'variable company structure'.

ELP COMMENTS:

Sophisticated jurisdictions such as the United Kingdom and Singapore have been successful in implementing Variable Capital Company like legal structures. Variable Capital Company will provide greater flexibility for pooling of funds and accommodating investors with different needs, addressing limitations of current structures prevalent in India. Recently, IFSCA established a committee to examine the feasibility of the Variable Capital Company/s as a vehicle for fund management in IFSCs in India. The announcement of the possibility of having Variable Capital Company/s in India for financing and leasing of aircrafts and ships, and pooled funds of private equity is a welcome move by the GOI.

BOOST TO THE SPACE ECONOMY

- The GOI intends to set up a venture capital fund which will focus on the space economy.
- It is proposed that the fund will deploy INR 10 billion over the next 10 years to expand the space economy by 5 times.

ELP COMMENTS:

On April 16, 2024, the MoF amended Schedule I of the Foreign Exchange Management (Non-Debt) Rules, 2019, easing the entry routes for foreign investment in specific space-related activities. Building on this, the Budget proposes the establishment of INR 10 billion venture capital fund aimed at fostering innovation, exploration, and development within the space sector. This fund may be designed to support early-stage startups, enhance private sector participation and enable Indian companies to compete on a global scale. This strategic initiative underscores

the government's commitment to advancing the Indian space industry and positioning it as a significant player in the global space economy.

SIMPLIFICATION OF FDI AND OVERSEAS INVESTMENTS

- The rules and regulations for FDI and overseas investments will be simplified to facilitate foreign direct investments, nudge prioritization, and promote opportunities for using INR as a currency for overseas investments.

VOLUNTARY CLOSURE OF LLPS

- The LLP Act currently permits voluntary winding up of LLPs.
- It is proposed to utilize the services of C-PACE for voluntary winding up of LLPs to reduce the associated timelines.

ELP COMMENTS:

C-PACE was establishment via an MCA notification dated March 17, 2023 to fast track the voluntary winding up of companies with the aim of significantly reducing the timeline associated with voluntary winding up of companies. The services of C-PACE have now been proposed to be extended to LLPs for a faster voluntary winding up process.

REAL ESTATE

AFFORDABLE HOUSING

The FM announced PM Awas Yojana-Urban 2.0 to fulfil housing requirements of 1 crore urban poor and middle-class families with an investment of INR 10 lakh crores including assistance of INR 2.2 lakh crores from the Central Government, over the next 5 years.

ELP COMMENTS:

This initiative is expected to drive demand for affordable housing and provide a much-needed fillip for construction activities, benefiting developers and construction entities engaged in the affordable housing segment.

RENTAL HOUSING

Construction of Rental Housing with dormitory type accommodation for industrial workers will be facilitated in PPP mode with VGF (viability gap funding) support and commitment from anchor industries.

ELP COMMENTS:

The Rental Housing coupled with facilitation of development of investment-ready "plug and play" industrial parks with complete infrastructure in or near 100 cities in partnership with the states and private sector, shall significantly boost growth of Tier II and Tier III cities and create job opportunities across various sectors.

LAND RECORDS

Land records in urban areas will be digitized with GIS mapping and an IT based system for property record administration, updating and tax administration will be established.

Similarly, for rural lands the government has proposed setting up of a land registry, allotting a Unique Land Parcel Identification Number (ULPIN) or Bhu-Aadhaar, digitization of cadastral maps, survey of map with sub-division as per current ownership etc. are some of the steps that have been proposed to be undertaken.

ELP COMMENTS:

This measure will bring a lot of ease to the common man and developers as well as the local bodies for governance and recovery of taxes.

STAMP DUTY

The Government has encouraged the States to moderate the stamp duty rates and consider lowering the duties for purchase by women.

ELP COMMENTS:

Implementation of this measure will be a step towards women empowerment. Further integrating the reduction of stamp duty with urban development schemes will further boost investment activity in the affordable housing sector. However, the State Governments need to implement policies for reduction of stamp duty, which will act as a welcome step to accelerate real estate purchase transactions.

AMENDMENTS TO BENAMI PROPERTY TRANSACTIONS ACT, 1988 – W.E.F. 1 OCTOBER 2024

The Finance Bill proposes substantial amendments to the Prohibition of Benami Property Transactions Act, 1988, focusing on improving its operational effectiveness.

These amendments aim to expedite the response to notices, extend administrative timelines to ensure thorough assessments and necessary actions. The provisions introduced are aimed at granting immunity to individuals (benamidars) involved in benami transactions, contingent upon them providing complete and truthful disclosures. Such measures are intended to strengthen the enforcement framework of the Act.

GLOSSARY OF TERMS

Abbreviation	Meaning
AAR	Authority for Advance Rulings
AIDC	Agriculture and Infrastructure Development Cess
AIF	Alternative Investment Fund
AJP	Artificial Juridical Person
AMT	Alternate Minimum Tax
AO	Assessing Officer
AOP	Association of Persons
ALP	Arm's Length Price
AY	Assessment Year
BAR	Board for Advance Rulings
BBT	Banking Transaction Tax
BCD	Basic Customs Duty
BEPS	Base Erosion Profit Shifting
Bill/ Finance Bill	Finance Bill 2024
Black Money Act	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
BOI	Body of Individuals
Budget	The Union Budget for FY 2024-25 dated July 23, 2024
CBAM	Carbon Border Adjustment Mechanism
CBDC	Central Bank Digital Currency
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCTS	Carbon Credit Trading Scheme
CENVAT	Central Value Added Tax
CESTAT	Customs Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Services Tax Act, 2017
CGST	Central Goods and Services Tax
CGTMSE	Credit Guarantee Fund Trust for Micro and Small Enterprises
CIT(A)	Commissioner of Income-tax (Appeals)
C-PACE	Centre for Processing Accelerated Corporate Exit

CPSEs	Central Public Sector Enterprises
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
DRP	Dispute Resolution Panel
DTAA	Double Taxation Avoidance Agreement entered into by India
EL	Equalisation Levy
ENA	Extra Neutral Alcohol
ESOP	Employee Stock Option Plan
ETF	Electronic Funds Transfer
EWS	Economically Weaker Sections
FDI	Foreign Direct Investment
FM	Finance Minister
FMV	Fair market value
FRSB	Floating Rate Savings Bonds
FY	Financial Year
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GIFT	Gujarat International Finance Tech-city
GIS	Geographic Information System
GOI	Government of India
GST	Goods and Services Tax
HC	High Court
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IFSC	International Financial Services Centre
IFSCA	The International Financial Services Centres Authority Act, 2019
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
INR	Indian Rupees
IPO	Initial Public Offering

IT Act	The Income-tax Act, 1961
ITAT	Income-tax Appellate Tribunal
ITC	Input Tax Credit
ISD	Input Service Distributor
ITR	Income Tax Return
LLP	Limited Liability Partnership
LLP Act	Limited Liability Partnership Act, 2008
LRS	Liberalised Remittance Scheme
LTCG	Long Term Capital Gains Tax
MAT	Minimum Alternate Tax
MCA	Ministry of Corporate Affairs
MMR	Maximum Marginal Rate
MoF	Ministry of Finance
MoC	Ministry of Commerce
MOOWR	Manufacturing and Other Operations in a Warehouse
MSME	Micro Small and Medium Enterprises
MUDRA	Micro Units Development & Refinance Agency Limited
NABARD	National Bank for Agriculture and Rural Development
NABL	National Accreditation Board for Testing and Calibration Laboratories
NPA	Non-performing assets
NRI	Non-resident Indian
OFS	Offer for Sale
OECD	Organization for Economic Co-operation and Development
PAN	Permanent Account Number
PAT	Perform, Achieve and Trade
PCBA	Printed Circuit Board Assembly
PE	Permanent Establishment
PPP	Public Private Partnership
REITs	Real Estate Investment Trusts
ROI	Return on Investment
SDT	Specified Domestic Transactions
SEBI	Securities and Exchange Board of India

SEBI Act	Securities Exchange Board of India Act, 1992
SIDBI	Small Industries Development Bank of India
SMA	Special Mention Account
SLP	Special Leave Petition
STCG	Short-Term Capital Gains
STT	Securities Transaction Tax
SWS	Social Welfare Surcharge
TCS	Tax Collected at Source
TDS	Taxes Deducted at Source
TP	Transfer Pricing
TPO	Transfer Pricing Officer
TReDS	Trade Receivables Discounting System
UTGST	Union Territory Goods and Services Tax
ULPIN	Unique Land Parcel Identification Number
UNCITRAL	The United Nations Commission on International Trade Law
UOI	Union of India
VCC	Venture Capital Company
VCF	Venture Capital Fund
VGF	Viability Gap Funding
VSV Scheme	Vivad Se Vishwas Scheme
W.P.	Writ Petition

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