



सत्यमेव जयते

GOVERNMENT OF INDIA

**MEMORANDUM
EXPLAINING THE PROVISIONS
IN
THE FINANCE BILL, 2021**

(Clauses referred to are clauses in the Bill)

FINANCE BILL, 2021
PROVISIONS RELATING TO
DIRECT TAXES

Introduction

The provisions of Finance Bill, 2021 (hereafter referred to as "the Bill"), relating to direct taxes seek to amend the Income-tax Act, 1961 (hereafter referred to as 'the Act'), Prohibition of Benami Property Transactions Act, 1988 (hereafter referred to as "PBPT Act"), Finance (No 2) Act, 2004 and Finance Act, 2016 and the Direct Tax Vivad se Vishwas Act, 2020 to continue reforms in direct tax system through tax-incentives, removing difficulties faced by taxpayers and rationalization of various provisions.

With a view to achieving the above, the various proposals for amendments are organized under the following heads:—

- (A) Rates of income-tax;
- (B) Tax incentives;
- (C) Removing difficulties faced by taxpayers;
- (D) Rationalisation of various provisions.

DIRECT TAXES

A. RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2021-22.

In respect of income of all categories of assessee liable to tax for the assessment year 2021-22, the rates of income-tax have either been specified in specific sections (like section 115BAA or section 115BAB for domestic companies, 115BAC for individual/HUF and 115BAD for cooperative societies) or have been specified in Part I of the First Schedule to the Bill. There is no change proposed in tax rates either in these specific sections or in the First Schedule. The rates provided in sections 115BAA or 115BAB or 115BAC or 115BAD for the

assessment year 2021-22 would be same as already enacted. Similarly rates laid down in Part III of the First Schedule to the Finance Act, 2020, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases for the assessment year 2021-22 would now become part I of the first schedule. Part III would now apply for the assessment year 2022-23 and would remain unchanged except that it would also apply to proposed section 194P.

(1) Tax rates under section 115BAC and section 115BAD—

From the assessment year 2021-22 (FY 2020-21), individual and HUF tax payers have an option to opt for taxation under section 115BAC of the Act and the resident co-operative society has an option to opt for taxation under the newly inserted section 115BAD of the Act.

On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Total Income (Rs)	Rate
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5 per cent.
From 5,00,001 to 7,50,000	10 per cent.
From 7,50,001 to 10,00,000	15 per cent.
From 10,00,001 to 12,50,000	20 per cent.
From 12,50,001 to 15,00,000	25 per cent.
Above 15,00,000	30 per cent.

Similarly, a co-operative society resident in India shall have the option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of section 115BAD, subject to fulfilment of certain conditions.

(2) Tax rates under Part I of the first schedule applicable for the assessment year 2021-22

A. Individual, HUF, association of persons, body of individuals, artificial juridical person.

Paragraph A of Part-I of First Schedule to the Bill provides following rates of income-tax:—

- (i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or HUF or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act (not being a case to which any other Paragraph of Part III applies) are as under:—

Up to Rs. 2,50,000	Nil.
Rs. 2,50,001 to Rs.5,00,000	5 percent.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

- (ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Up to Rs. 3,00,000	Nil.
Rs. 3,00,001 to Rs.5,00,000	5 percent.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

- (iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Up to Rs.5,00,000	Nil.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
Above Rs 10,00,000	30 percent.

b. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Bill. They remain unchanged at (10% up to Rs 10,000; 20% between Rs 10,000 and Rs 20,000; and 30% in excess of Rs 30,000)

c. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part I of the First Schedule to the Bill. They remain unchanged at 30%

d. Local authorities

The rate of income-tax in the case of every local authority has been specified in Paragraph D of Part I of the First Schedule to the Bill. They remain unchanged at 30%.

e. Companies

The rates of income-tax in the case of companies have been specified in Paragraph E of Part I of the First Schedule to the Bill. In case of domestic company, the rate of income-tax shall be twenty five per cent. of the total income, if the total turnover or gross receipts of the previous year 2018-19 does not exceed four hundred crore rupees and in all other cases the rate of Income-tax shall be thirty per cent. of the total income.

In the case of company other than domestic company, the rates of tax are the same as those specified for the FY 2019-20.

(3) Surcharge on income-tax

The amount of income-tax shall be increased by a surcharge for the purposes of the Union,—

- (a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act,

including an individual or HUF exercising option under section 115BAC, not having any income under section 115AD of the Act,—

- (i) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income- tax; and
- (ii) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;
- (iii) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
- (iv) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;
- (v) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, but is not covered under clause (iii) or (iv) above, at the rate of fifteen per cent of such incometax:

Provided that in case where the total income includes any income by way of dividend or income chargeable under section 111A and 112A of the Act, the rate of surcharge on the amount of income-tax computed in respect of that part of income shall not exceed fifteen percent;

However, surcharge shall be at the rates provided in (i) to (v) above for all category of income without excluding dividend or capital gains in case if the income is taxable under section 115A, 115AB, 115AC, 115ACA and 115E.

- (aa) in the case of individual or every association of person or body of individuals, whether incorporated or not, or every artificial juridical person

referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act having income under section 115AD of the Act,-

- (i) having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent of such income-tax; and
- (ii) having a total income exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent of such income-tax;
- (iii) having a total income [excluding the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
- (iv) having a total income [excluding the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;
- (v) having a total income [including the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but is not covered in sub-clauses (iii) and (iv), at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income by way of dividend or income chargeable under clause (b) of sub-section (1) of section 115AD of the Act, the rate of surcharge on the income-tax calculated on that part of income shall not exceed fifteen percent;

- (b) in the case of every co-operative society (except resident co-operative society opting under section 115BAD) or firm or local authority, at the rate of twelve per cent of such income-tax, where the total income exceeds one crore rupees;
- (c) In case of resident co-operative society opting under section 115BAD, at the rate of ten percent of such income tax.
- (d) in the case of every domestic company, except such domestic company

whose income is chargeable to tax under section 115BAA or section 115BAB of the Act,—

- (i) at the rate of seven per cent. of such income-tax, where the total income exceeds one crore rupees but does not exceed ten croorerupees;
- (ii) at the rate of twelve per cent. of such income-tax, where the total income exceeds ten crore rupees;
- (e) in the case of domestic company whose income is chargeable to tax under section 115BAA or 115BAB of the Act, at the rate of ten percent;
- (f) in the case of every company, other than a domestic company,—
 - (i) at the rate of two per cent. of such income-tax, where the total income exceeds one crore rupees but does not exceed ten crorerupees;
 - (ii) at the rate of five per cent. of such income-tax, where the total income exceeds ten crorerupees;
- (g) In other cases (including sections 92CE, 115-O, 115QA, 115R, 115TA or 115TD), the surcharge shall be levied at the rate of twelve percent.

(4) Marginal Relief—

Marginal relief has also been provided in all cases where surcharge is proposed to be imposed.

(5) Education Cess—

For assessment year 2021-22, “Health and Education Cess” is to be levied at the rate of four per cent. on the amount of income tax so computed, inclusive of surcharge wherever applicable, in all cases. No marginal relief shall be available in respect of such cess.

II. Rates for deduction of income-tax at source during the financial year (FY) 2021-22 from certain incomes other than “Salaries”.

The rates for deduction of income-tax at source during the FY 2021-22 under the provisions of section 193, 194A, 194B, 194BB, 194D, 194LBA, 194LBB,

194LBC and 195 have been specified in Part II of the First Schedule to the Bill. The rates will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2020, for the purposes of deduction of income-tax at source during the FY 2020-21. For sections specifying the rate of deduction of tax at source, the tax shall continue to be deducted as per the provisions of these sections.

Surcharge—

The amount of tax so deducted shall be increased by a surcharge,—

- (a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act, being a non-resident, calculated,—
 - (i) at the rate of ten per cent. of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds fifty lakh rupees but does not exceed one crore rupees;
 - (ii) at the rate of fifteen per cent. of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed two crore rupees;
 - (iii) at the rate of twenty-five per cent. of such tax, where the income or aggregate of income (excluding the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees but does not exceed five crore rupees;
 - (iv) at the rate of thirty-seven per cent. of such tax, where the income or aggregate of income (excluding the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds five

crore rupees;

- (v) at the rate of fifteen per cent. Of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees, but is not covered under (iii) and (iv) above

provided that in case where the total income includes any income by way of dividend of income chargeable under section 111A and section 112A of the Act, the rate of surcharge on the amount of income-tax deducted in respect of that part of income shall not exceed fifteen per cent.

- (b) in the case of every co-operative society or firm, being a non-resident, calculated at the rate of twelve per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crorerupees;
- (c) in the case of every company, other than a domestic company, calculated,—
 - (i) at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crorerupees;
 - (ii) at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crorerupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

“Health and Education Cess” shall continue to be levied at the rate of four per cent. of income tax including surcharge wherever applicable, in the cases of persons not resident in India including company other than a domestic company.

III. Rates for deduction of income-tax at source from “Salaries”, computation

of “advance tax” and charging of income-tax in special cases during the FY2021-22.

The rates for deduction of income-tax at source from “Salaries” or under section 194P of the Act during the FY 2021-22 and also for computation of “advance tax” payable during the said year in the case of all categories of assessee have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for charging income-tax during the FY 2021-22 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc. There is no change in the tax rates from last year. The salient features of the rates specified in the said Part III are indicated in the following paragraphs-

A. Individual, HUF, association of persons, body of individuals, artificial juridical person.

Paragraph A of Part-III of First Schedule to the Bill provides following rates of income-tax:—

- (i) The rates of income-tax in the case of every individual (other than those mentioned in (ii) and (iii) below) or HUF or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Act (not being a case to which any other Paragraph of Part III applies) are as under:—

UptoRs.2,50,000	Nil.
Rs. 2,50,001 to Rs.5,00,000	5 percent.
Rs. 5,00,001 to Rs.10,00,000	20 percent.
AboveRs10,00,000	30 percent.

- (ii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year,—

Upto Rs. 3,00,000	Nil.
Rs. 3,00,001 to Rs. 5,00,000	5 percent.
Rs. 5,00,001 to Rs. 10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

- (iii) in the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year,—

Upto Rs. 5,00,000	Nil.
Rs. 5,00,001 to Rs. 10,00,000	20 percent.
Above Rs. 10,00,000	30 percent.

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph (including capital gains under section 111A, 112 and 112A) as well as income tax computed under section 115BAC, shall be increased by a surcharge at the rate of,—

- (a) having a total income (including the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax;
- (b) having a total income (including the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) exceeding one crore rupees, at the rate of fifteen per cent. of such income-tax;
- (c) having a total income (excluding the income by way of dividend or income under the provisions of sections 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;
- (d) having a total income (excluding the income by way of dividend or income

under the provisions of sections 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;

- (e) having a total income (including the income by way of dividend or income under the provisions of section 111A and section 112A of the Act) exceeding two crore rupees, but is not covered under clauses (c) and (d), shall be applicable at the rate of fifteen per cent. of such income-tax:

Provided that in case where the total income includes any income by way of dividend or income chargeable under section 111A and section 112A of the Act, the rate of surcharge on the amount of Income-tax computed in respect of that part of income shall not exceed fifteen percent..

Marginal relief is provided in cases of surcharge.

On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:

Total Income (Rs)	Rate
Upto 2,50,000	Nil
From 2,50,001 to 5,00,000	5 per cent.
From 5,00,001 to 7,50,000	10 per cent.
From 7,50,001 to 10,00,000	15 per cent.
From 10,00,001 to 12,50,000	20 per cent.
From 12,50,001 to 15,00,000	25 per cent.
Above 15,00,000	30 per cent.

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for FY 2020-21. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a co-operative society having a total income exceeding

one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

On satisfaction of certain conditions, a co-operative society resident in India shall have the option to pay tax at 22 per cent for assessment year 2021-22 onwards as per the provisions of section 115BAD. Surcharge would be at 10% on such tax.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for FY 2020-21. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

D. Local authorities

The rate of income-tax in the case of every local authority has been specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the FY 2020-21. The amount of income-tax shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

E. Companies

The rates of income-tax in the case of companies have been specified in Paragraph E of Part III of the First Schedule to the Bill. In case of domestic

company, the rate of income-tax shall be twenty five per cent. of the total income, if the total turnover or gross receipts of the previous year 2019-20 does not exceed four hundred crore rupees and in all other cases the rate of Income-tax shall be thirty per cent. of the total income. However, domestic companies also have an option to opt for taxation under section 115BAA or section 115BAB of the Act on fulfillment of conditions contained therein. The tax rate is 15 per cent. in section 115BAB and 22 per cent. in section 115BAA. Surcharge is 10 per cent. in both cases.

In the case of company other than domestic company, the rates of tax are the same as those specified for the FY 2020-21.

Surcharge at the rate of seven per cent. shall continue to be levied in case of a domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act), if the total income of the domestic company exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of twelve per cent shall continue to be levied, if the total income of the domestic company (except those opting for taxation under section 115BAA and section 115BAB of the Act) exceeds ten crore rupees.

In case of companies other than domestic companies, the existing surcharge of two per cent shall continue to be levied, if the total income exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of five per cent shall continue to be levied, if the total income of the company other than domestic company exceeds ten crore rupees.

Marginal relief is provided in surcharge in all cases.

In other cases [including sub-section (2A) of section 92CE, sections 115-O, 115QA, 115R, 115TA or 115TD], the surcharge shall be levied at the rate of twelve per cent.

For FY 2021-22, additional surcharge called the “Health and Education Cess on income-tax” shall be levied at the rate of four per cent on the amount of tax computed, inclusive of surcharge (wherever applicable), in all cases. No marginal relief shall be available in respect of such cess.

[Clause 2 & the First Schedule]

Tax Incentives

Exemption for LTC Cash Scheme

Under the existing provisions of the Act, clause (5) of section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India. In view of the situation arising out of outbreak of COVID pandemic, it is proposed to provide tax exemption to cash allowance in lieu of LTC.

Hence, it is proposed to insert second proviso in clause 5 of section 10, so as to provide that, for the assessment year beginning on the 1st day of April, 2021, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed. It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption under the second proviso in connection with prescribed expenditure, no exemption shall be allowed under this clause in respect of same prescribed expenditure to any other individual.

The conditions for this purpose shall be prescribed in the Income-tax Rules in due course and shall, *inter alia*, be as under:

- (a) The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21;
- (b) “specified expenditure” means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;
- (c) “specified period” means the period commencing from 12th day of October, 2020 and ending on 31st day of March, 2021;
- (d) the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;

(e) the payment to GST registered vendor/service provider is made by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;

(f) If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption under the proposed amendment would be available only to the extent of exemption admissible under above listed provisions.

This amendment will take effect from 1st April, 2021 and will, apply in relation to the assessment year 2021-2022 only.

[Clause 5]

Incentives for affordable rental housing

The existing provision of the section 80-IBA of the Act provides that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building affordable housing project, there shall, subject to certain conditions specified therein, be allowed a deduction of an amount equal to hundred per cent. of the profits and gains derived from such business. One of the conditions is that the project is approved by the competent authority after the 1st day of June 2016 but on or before the 31st day of March 2021.

To help migrant labourers and to promote affordable rental, it is proposed to allow deduction under section 80-IBA of the Act also to such rental housing project which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.

Further, it is also proposed that the outer time limit for 31st March 2021 in this section for getting the affordable housing project approved be extended to 31st March 2022 and same outer time limit be also provided for the proposed affordable rental housing project.

This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[clause 26]

Tax incentives for units located in International Financial Services Centre (IFSC)

Government has establishment a world class financial services centre. Units located in IFSC enjoy some concession. In order to make location in IFSC more attractive, it is proposed to provide the following additional incentives:

- (i) It is proposed to amend section 9A of the Act to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses(a) to (m) of sub-section(3) or clauses (a) to (d) of sub-section (4) of section 9A of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager, if the fund manager is located in an International Financial Services Centre and has commenced operations on or before the 31st day of March, 2024.
- (ii) It is also proposed to amend clause (4D) of section 10 of the Act so as to provide that the exemption under this clause shall also be available in case of any income accrued or arisen to, or received to the investment division of offshore banking unit to the extent attributable to it and computed in the prescribed manner.
- (iii) It is also proposed to amend the expression “specified fund” to include under the purview the investment division of offshore banking unit which has been granted a category III AIF registration and fulfils other conditions to be prescribed including the condition of maintaining separate books for its investment division. The investment division of offshore banking unit is proposed to be defined as an investment division of a banking unit of a non-resident located in an International Financial Services Centre and which has commenced operation on or before the 31st day of March, 2024.

(iv) It is also proposed to insert new clause (4E) in of section 10 of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of International Financial Services Centre which commenced operations on or before the 31st day of March, 2024 and fulfils prescribed conditions.

(v) It is also proposed to insert new clause (4F) in of section 10 of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA for that previous year and has commenced operation on or before the 31st day of the March, 2024.

(vi) It is also proposed to insert new clause (23FF) in of section 10 of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.

“Original Fund” is proposed to be defined as a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

- (a) the fund is not a person resident in India;
- (b) the fund is a resident of a country or a specified territory with which an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A has been entered into; or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf;
- (c) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and

(d) fulfils such other conditions as prescribed;

“Relocation” is proposed to be defined as transfer of assets of the original fund to a resultant fund on or before the 31st day of March, 2023, where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund to the shareholder or unit holder or interest holder of the original fund in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund.

“Resultant fund” is proposed to be defined as a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which-

(a) has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund, and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and exchange Board of India Act, 1992 (15 of 1992); and

(b) is located in any International Financial Services Centre as referred to in sub-section (1A) of section 80LA.

(vii) It is also proposed to amend section 47 of the Act to insert new clauses in the said section so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains. The definition of “Original Fund”, “Relocation” and Resultant Fund shall be as already described above.

(vii) Consequential amendments shall be proposed in section 49, 56 and 79 of the Act on account of such relocation.

(ix) It is also proposed to amend the section 80LA of the Act to:

- provide that deduction under said section is also available to a unit of International Financial Services Centre if it is registered under the International Financial Services Centre Authority Act, 2019 and thereby removing the earlier requirement of obtaining permission under any other relevant law.
- provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.
- to provide that in case the unit is registered under the International Financial Services Centre Authority Act, 2019 then the copy of permission shall mean a copy of the registration obtained under the International Financial Services Centre Authority Act, 2019.

(x) It is proposed to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund. However, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

The expression “investment division of offshore banking unit” is also proposed to have the meaning as defined in Para (iii).

These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clauses 4,5,15, 17, 21, 23 and 30]

Issuance of zero coupon bond by infrastructure debt fund

Clause (48) of section 2 of the Act provides for definition of zero coupon bond, as a bond issued by any infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank and in respect of which no payment and benefit is received or receivable before maturity or redemption. These are required to be notified by the Central Government in the Official Gazette.

In order to enable infrastructure debt fund [which are notified by the Central Government in the Official Gazette under clause (47) of section 10 of the Act] to issue zero coupon bond necessary amendments are proposed in clause (48) of section 2 of the Act. Rules 2F and 8B of Income-tax Rules shall be amendment subsequently after the Finance Bill 2021 is enacted.

This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clause 3]

Consequential amendment has also been proposed in clause (x) of sub-section (3) of section 194A of the Act which will take effect from 1st April, 2021

[Clause 45]

Tax neutral conversion of Urban Cooperative Bank into Banking Company

Section 44DB of Act provides for computing deductions in the case of business re-organization of cooperative banks. Further, the said section, *inter alia*, provides that where such business reorganization of co-operative banks takes place, the deductions under sections 32, 35D, 35DD and section 35DDA will be apportioned between the predecessor co-operative bank and the successor co-operative bank in the proportion of the number of days before and after the date of business reorganization. Further transfer of a capital asset by the predecessor co-operative bank to the successor co-operative bank, as well as transfer of shares by the shareholders in the predecessor co-operative bank, in a case of business reorganization under section 47 of the Act, is also not regarded as transfer.

The Reserve Bank of India (RBI) has permitted voluntary transition of primary co-operative bank [urban co-operative banks (UCB)] into a banking company by way of transfer of Assets and Liabilities vide Circular reference no. DCBR.CO.LS.PCB. Cir.No.5/07.01.000/2018-19 dated September 27, 2018.

It is proposed to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under section 44DB of the Act shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company. Further it is also proposed that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer under section 47 of the Act. Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.

Necessary amendments to this effect have been proposed in section 44DB and in clause (vica) and clause (vicb) of section 47 of the Act.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 13 and 15]

Facilitating strategic disinvestment of public sector company

Section 2 of the Act provides the definitions for the purposes of the Act. Clause (19AA) of the said section defines that "demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.

Section 72A of the Act provides provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc. Sub-section (1) of section 72A of the Act provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbed

depreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

It is proposed to relax the provisions of these two sections for public sector companies in order to facilitate strategic disinvestment by the Government. Accordingly, it is proposed to carry out the following amendments-

(i) It is proposed to amend clause (19AA) of section 2 of the Act to insert Explanation 6 to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if

- such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- the resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and
- fulfils such other conditions as may be notified by the Central Government in the Official Gazette.

(ii) It is proposed to amend sub-section (1) of section 72A of the Act,

(a) to substitute clause (c) to provide that the provision of sub-section (1) of section 72A shall also apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.

(b) to insert clause (d) to provide that the provision of sub-section (1) of section 72A shall also apply in case of amalgamation of an erstwhile public sector company with one or more company or companies, if

- the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and
- the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

(c) to insert a proviso to sub-section (1) to provide that the accumulated loss and the unabsorbed depreciation of the amalgamating company, in case of an amalgamation referred to in clause (d), which is deemed to be loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment;

(d) to insert an Explanation to sub-section (1) to define the followings:-

(A) “Control” shall have the same meaning as assigned to in clause (27) of Section 2 of the Companies Act, 2013;

(B) “Erstwhile public sector company” means a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government.

(C) “Strategic disinvestment” shall mean sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51%, along with transfer of control to the buyer.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 3 and 22]

Extension of date of sanction of loan for affordable residential house property

The existing provision of the section 80EEA of the Act, *inter alia*, provides a deduction in respect of interest on loan taken for a residential house property from any financial institution up to one lakh fifty-thousand rupees subject to the condition that the loan has been sanctioned during the period beginning on 1st April, 2019 and ending on 31st March, 2021. There are further conditions that the stamp duty value of residential house property does not exceed forty-five lakh rupees and the assessee

does not own any residential house property on the date of sanction of loan. This provision allows deduction to the first time home buyers, in respect of interest on home loan. In order to help such first time home buyers further, it is proposed to amend the provision of section 80EEA of the Act to extend the outer date for sanction of loan from 31st March 2021 to 31st March 2022.

This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clause 24]

Extension of date of incorporation for eligible start up for exemption and for investment in eligible start-up

The existing provisions of the section 80-IAC of the Act, *inter alia*, provides for a deduction of an amount equal to hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years at the option of the assessee. This is subject to the condition that the total turnover of its business does not exceed one hundred crore rupees. The eligible start-up is required to be incorporated on or after 1st day of April, 2016 but before 1st day of April 2021.

The existing provisions of the section 54GB of the Act, *inter alia*, provide for exemption of capital gain which arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee. The assessee is required to utilise the net consideration for subscription in the equity shares of an eligible start-up, before the due date of furnishing of return of income under sub-section (1) of section 139 of the Act. The eligible start-up is required to utilise this amount for purchase of new asset within one year from the date of subscription in equity shares by the assessee. Further, it has been provided that benefit is available only when the residential property is transferred on or before 31st March, 2021.

In order to help such eligible start-up and help investment in them,-

(i) it is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022; and

(ii) it is proposed to amend the provisions of section 54GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March 2022.

These amendments will take effect from 1st April, 2021.

[Clauses 19 and 25]

Removing difficulties faced by taxpayers

Increase in safe harbour limit of 10% for home buyers and real estate developers selling such residential units

Section 43CA of the Act, *inter alia*, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head “income from other sources”. It also provide that where the

assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds ten per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "Income from other sources".

In order to boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a lower rate to home buyers, it is proposed to increase the safe harbour threshold from existing 10% to 20% under section 43CA of the Act, if the following conditions are satisfied:-

- The transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021
- The transfer is by way of first time allotment of the residential unit to any person
- The consideration received or accruing as a result of such transfer does not exceed two crore rupee

Further it is proposed to provide the consequential relief to buyers of these residential units by way of amendment in clause (x) of sub-section (2) of section 56 of the Act by increasing the safe harbour from 10% to 20%. Accordingly, for these transactions, circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 10 and 21]

Relaxation for certain category of senior citizen from filing return of income-tax

Section 139 of the Act provides for filing of return of income. Sub-section (1) of the section provides that every person being an individual, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax, shall, on or before the due date, furnish a return of his income.

In order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance for them, it is proposed to insert a new section to provide a relaxation from filing the return of income, if the following conditions are satisfied:-

- (i) The senior citizen is resident in India and of the age of 75 or more during the previous year;
- (ii) He has pension income and no other income. However, in addition to such pension income he may have also have interest income from the same bank in which he is receiving his pension income;
- (iii) This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
- (iv) He shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

This amendment will take effect from 1st April, 2021.

[Clause 47]

Rationalisation of provisions related to Sovereign Wealth Fund (SWF) and Pension Fund (PF)

Clause (23FE) of section 10 of the Act provides for the exemption to specified persons from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India. Specified persons are SWF or PF which fulfils conditions prescribed therein and are specified for this purpose by the Central Government through notification in the Official Gazette. This provision was introduced through the Finance Act, 2020 to encourage investments of SWF and PF into infrastructure sector of India. Subsequent to enactment, a notification was also

issued to enlarge the scope of infrastructure activities eligible for investments. One SWF has already been notified under this provision. In order to rationalise the provision of this clause and to remove the difficulties in meeting some of the conditions, the followings amendments are proposed in the Bill:

- Allowing Alternate Investment Fund (AIF) to invest up to 50% in non-eligible investments

Presently SWF/PFs may invest in a Category-I or Category-II Alternative Investment Fund, having 100% investment in eligible infrastructure company. It is proposed to:

- (a) relax the condition of 100% to 50%.
- (b) allow the investment by Category-I or Category-II AIF in an Infrastructure Investment Trust (InvIT).
- (c) Exemption under this clause shall be calculated proportionately, in case if aggregate investment of AIF in infrastructure company or companies or in InvIT is less than 100%.

- Investment through holding company

Presently, SWF/PFs are not allowed to invest through holding company. It is proposed to allow the same subject to the following conditions:

- (a) Holding company should be a domestic company.
- (b) It should be set up and registered on or after 1st April, 2021.
- (c) It should have minimum 75% investments in one or more infrastructure companies.
- (d) Exemption under this clause shall be calculated proportionately, in case if aggregate investment of holding company in infrastructure company or companies is less than 100%

- Investment in NBFC- IDF/IFC (non-banking finance company-infrastructure debt fund/Infrastructure finance company)

Presently, SWF/PFs are not allowed to invest in NBFC-IFC/IDF. It is proposed to allow the same subject to the following conditions:

(a) NBFC-IDF/IFC should have minimum 90% lending to one or more infrastructure entities.

(b) Exemption under this clause shall be calculated proportionately, in case if aggregate lending of NBFC-IDF or NBFC-IFC in infrastructure company or companies is less than 100%.

- Loan or borrowings by SWF/Pension Fund

Presently, SWF/PFs are not allowed to have loans or borrowings or deposit or investments as there is a condition that no benefit should enure to private person. It is proposed to provide that there should not be any loan or borrowing for the purpose of making investment in India. It is also proposed to provide that the condition regarding no benefit to private person and assets going to government on dissolution would not apply to any payment made to creditor or depositor for loan taken or borrowing other than for the purpose of making investment in India.

- Commercial activity

Presently, SWF/PFs are not allowed to undertake any commercial activity. This condition is proposed to be removed and replaced with a condition that SWF/PFs shall not participate in day to day operation of investee. However, appointing director and executive director for monitoring the investment would not amount to participation in day to day operation. The term "investee" is proposed to define to mean a business trust or a company or an enterprise or an entity or a category I or II Alternative Investment Fund or an Infrastructure Investment Trust or a domestic company or an Infrastructure Finance Company or an Infrastructure Debt Fund, in which the SWF or PF, as the case may be, has made the investment, directly or indirectly, under the provisions of this clause.

- Liable to Tax

Presently, some PFs are liable to tax in their country though given exemption subsequently. It is proposed to amend this sub-clause to provide that if pension fund is liable to tax but exemption from taxation for all its income has been

provided by the foreign country under whose laws it is created or established, then such pension fund shall also be eligible.

- Rules to prescribe the method of calculation

It is also proposed to provide that the Central Government may prescribe the method of calculation of 50% or 75% or 90% referred above.

This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clause 5]

Addressing mismatch in taxation of income from notified overseas retirement fund

Representations have been received that there is mismatch in the year of taxability of withdrawal from retirement funds by residents who had opened such fund when they were non-resident in India and resident in foreign countries. At present the withdrawal from such funds may be taxed on receipt basis in such foreign countries, while on accrual basis in India. In order to address this mismatch and remove this genuine hardship, it is proposed to insert a new section 89A to the Act to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the Central Government. It is also proposed to define the expression “specified person”, as a person resident in India who opened a specified account in a notified country while being non-resident in India and resident in that country. “Specified account” is proposed to be defined as an account maintained in a notified country which is maintained for retirement benefits and the income from such account is not taxable on accrual basis and is taxed by such country at the time of withdrawal or redemption. “Notified country” is proposed to be defined to mean a country notified by the Central Government for the purposes of this section in the Official Gazette.

This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clause 28]

Rationalisation of provisions of Minimum Alternate Tax (MAT)

Section 115JB of the Act provides for MAT at the rate of fifteen per cent of its book profit, in case tax on the total income of a company computed under the provisions of the Act is less than the fifteen per cent of book profit. Book profit for this purpose is computed by making certain adjustments to the profit disclosed in the profit and loss account prepared by the company in accordance with the provisions of the Companies Act, 2013.

Representations were received that the computation of book profit under section 115JB does not provide for any adjustment on account of additional income of past year(s) included in books of account of current year on account of secondary adjustment under section 92CE or on account of an Advance Pricing Agreement (APA) entered with the taxpayer under section 92CC. Representation has also been received that since dividend income is now taxable in the hand of shareholders, dividend received by a foreign company on its investment in India is required to be excluded for the purposes of calculation of book profit in case the tax payable on such dividend income is less than MAT liability on account of concessional tax rate provided in the Double Taxation Avoidance Agreement (DTAA). Hence it is proposed to,-

(i) provide that in cases where past year income is included in books of account during the previous year on account of an APA or a secondary adjustment, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner. Further, the provision of section 154 of the Act shall apply so far as possible and the period of four years specified in sub-section (7) of section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.

(ii) to provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and Fee for Technical Services (FTS) in calculating book profit for the purposes of section 115JB of the Act, so that both specified dividend income and the expense claimed in respect thereof are reduced and added back, while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clause 31]

Exemption of deduction of tax at source on payment of Dividend to business trust in whose hand dividend is exempt

Section 194 of the Act provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers. It is proposed to amend second proviso to section 194 of the Act to further provide that the provisions of this section shall also not apply to such income credited or paid to a business trust by a special purpose vehicle or payment of dividend to any other person as may be notified.

This amendment will take effect retrospectively from 1st April, 2020.

[Clause 44]

Rationalisation of the provision concerning withholding on payment made to Foreign Institutional Investors (FIIs)

Section 196D of the Act provides for deduction of tax on income of FII from securities as referred to in clause (a) of sub-section (1) of section 115AD of the Act (other than interest referred in section 194LD of the Act) at the rate of 20 per cent.

Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction. The situation is different in cases where the provision mandates TDS at rate in force. This is for the reason that the definition of the expression “rate in force”, in clause (37A) of section 2 of the Act, allows benefit of agreement under section 90 or section 90A in determining the rate of tax at which the tax is to be deducted at source. This principle of tax deduction has also been upheld by Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012).

Representations have been received requesting that the benefit of agreements under section 90 or section 90A of the Act may be considered at the time of tax deduction on payments to FIIs. Accordingly, it is proposed to insert a proviso to sub-section (1) of section 196D of the Act to provide that in case of a payee to whom an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A applies and such payee has furnished the tax residency certificate referred to in sub-section (4) of section 90 or sub-section (4) of section 90A of the Act, then the tax shall be deducted at the rate of twenty per cent. or rate or rates of income-tax provided in such agreement for such income, whichever is lower.

This amendment will take effect from 1st April, 2021.

[Clause 49]

Rationalisation of provisions relating to tax audit in certain cases

Under section 44AB of the Act, every person carrying on business is required to get his accounts audited, if his total sales, turnover or gross receipts, in business exceed or exceeds one crore rupees in any previous year. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, fifty lakh rupees in any previous year. In order to reduce compliance burden on small and medium enterprises, through Finance Act 2020, the threshold limit for a person carrying on business was increased from one crore rupees to five crore rupees in cases where,-

- (i) aggregate of all receipts in cash during the previous year does not exceed five per cent of such receipt; and
- (ii) aggregate of all payments in cash during the previous year does not exceed five per cent of such payment.

In order to incentivise non-cash transactions to promote digital economy and to further reduce compliance burden of small and medium enterprises, it is proposed to increase the threshold from five crore rupees to ten crore rupees in cases listed above.

This amendment will take effect from 1st April, 2021 and will accordingly apply for the assessment year 2021-22 and subsequent assessment years.

[Clause 11]

Advance tax instalment for dividend income

Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax instalments as per section 208 of the Act. The assessee is liable to pay a simple interest at the rate of 1% per month for a period of three months on the amount of shortfall calculated with respect to the due dates for advance tax instalments.

The first proviso of the sub section (1) provides for the relaxation that if the shortfall in the advance tax instalment or the failure to pay the same on time is on account of the income listed therein, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax instalments. These exclusions are: -

- (a) the amount of capital gains; or
- (b) income of the nature referred to in sub-clause (ix) of clause (24) of section 2;
or
- (c) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or
- (d) income of the nature referred to in sub-section (1) of section 115BBDA.

Aforesaid relaxation is to insulate the taxpayers from payment of interest under section 234C of the Act in cases where accurate determination of advance tax liability is not possible due to the intrinsic nature of the income. Therefore, after considering various representations favourably, it is proposed to include dividend income in the above exclusion but not deemed dividend as per sub-clause (e) of clause (22) of section 2 of the Act.

This amendment will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clause 53]

Raising of prescribed limit for exemption under sub-clause (iiia) and (iiib) of clause (23C) of section 10 of the Act

Clause (23C) of section 10 of the Act provides for exemption of income received by any person on behalf of different funds or institutions etc. specified in different sub-clauses.

Sub-clause (iiia) of clause (23C) of the section 10 provides for the exemption for the income received by any person on behalf of university or educational institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such university or educational institution do not exceed the annual receipts as may be prescribed. Similarly, sub-clause (iiib) of clause (23C) of the section provides for the exemption for the income received by any person on behalf of hospital or institution as referred to in that sub-clause. The exemptions under the said sub-clause are available subject to the condition that the annual receipts of such hospital or institution do not exceed the annual receipts as may be prescribed. The presently prescribed limit for these two sub-clauses is Rs 1 crore as per Rule 2BC of the Income-tax Rule.

Representations have been received to increase this limit of Rs 1 crore, as provided under Rule 2BC. In order to provide benefit to small trust and institutions, it has been proposed that the exemption under sub-clause (iiia) and (iiib) shall be increased to Rs 5 crore and such limit shall be applicable for an assessee with respect to the aggregate receipts from university or universities or educational institution or institutions as referred to in sub-clause (iiia) as well as from hospital or hospitals or institution or institutions as referred to in sub-clause (iiib).

This amendment will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clause 5]

Extending due date for filing return of income in some cases, reducing time to file belated return and to revise original return and also to remove difficulty in cases of defective returns

Section 139 of the Act contains provisions in respect of the filing of return of income for different persons or class of persons. The said section also provides the due dates for filing of original, belated and revised returns of income for different classes of assessee.

Sub-section (1) of the section provides for the filing of original return of income for an assessment year. The Explanation 2 of the said section specifies the due-dates for filing of original return for different class of persons. The sub-clause (iii) of clause (a) of the said Explanation 2 provides that the due date for filing of original return of income for the partner of a firm whose accounts are required to be audited under the said Act or under any other law for the time being in force shall be 31st day of October of the assessment year.

Section 5A of the Act provides for taxation of spouses governed by Portuguese Civil Code. On account of this provision any income earned by a partner of a firm whose accounts are required to be audited shall be apportioned between the spouses and included in their total income, if the section 5A applies to them.

Since the total income of a partner can be determined after the books of accounts of such firm have been finalised, the due dates of partners are already aligned with the due date of the firm. Thus, the due date for filing of original return of income of such partner is 31st October of the assessment year. However, this relaxation is not there for spouse of such partner to whom section 5A of the Act applies. Therefore, it is proposed that the due date for the filing of original return of income be extended to 31st October of the assessment year in case of spouse of a partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, if the provisions of section 5A applies to them.

Further, in the case of a firm which is required to furnish report from an accountant for entering into international transaction or specified domestic transaction, as per section 92E of the Act, the due date for filing of original return of income is the 30th November of the assessment year. Since the total income of such partner can be determined after the books of accounts of such firm have been finalised, it is

proposed that the due date of such partner be extended to 30th November of the assessment year.

Sub-sections (4) and (5) of section 139 of the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under sub-sections (4) and (5) respectively of the said section at present could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier. With the massive technological upgrade in the Department where the processes under the Act are moving towards becoming faceless and jurisdiction-less, the time taken to conduct and complete such processes has greatly reduced. Therefore, it is proposed that the last date for filing of belated or revised returns of income, as the case may be, be reduced by three months. Thus the belated return or revised return could now be filed three months before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Sub-section (9) of section 139 of the Act lays down the procedure for curing a defective return. It provides that in case a return of income is found to be defective, the Assessing Officer will intimate the defect to the assessee and give him a period of 15 days or more to rectify the said defect and if the defect is not rectified within the said period, the return shall be treated as an invalid return and the assessee will be considered to have never filed a return of income. The Explanation to the sub-section lists the conditions in which a certain return of income shall be considered to be defective. Representations have been received that the aforesaid conditions create difficulties for both the taxpayer and the Department, as a large number of returns become defective by application of the said conditions. This has resulted in a number of grievances. It has been represented that the conditions given in the said Explanation may be relaxed in genuine cases. Therefore, it is proposed that a proviso be inserted to the said Explanation empowering the Board to specify, vide notification that any of the above conditions shall not apply for a class of assessee or shall apply with such modifications, as maybe specified in such notification.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clause 32]

Rationalisation of various Provisions

Payment by employer of employee contribution to a fund on or before due date

Clause (24) of section 2 of the Act provides an inclusive definition of the income. Sub-clause (x) to the said clause provide that income to include any sum received by the assessee from his employees as contribution to any provident fund or superannuation fund or any fund set up under the provisions of ESI Act or any other fund for the welfare of such employees.

Section 36 of the Act pertains to the other deductions. Sub-section (1) of the said section provides for various deductions allowed while computing the income under the head 'Profits and gains of business or profession'.

Clause (va) of the said sub-section provides for deduction of any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date. Explanation to the said clause provides that, for the purposes of this clause, "due date" to mean the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there-under or under any standing order, award, contract of service or otherwise.

Section 43B specifies the list of deductions that are admissible under the Act only upon their actual payment. Employer's contribution is covered in clause (b) of section 43B. According to it, if any sum towards employer's contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees is actually paid by the assessee on or before the due date for furnishing the return of the income under sub-section (1) of section 139, assessee would be entitled to deduction under section 43B and such deduction would be admissible for the accounting year. This provision does not cover employee contribution referred to in clause (va) of sub-section (1) of section 36 of the Act.

Though section 43B of the Act covers only employer's contribution and does not cover employee contribution, some courts have applied the provision of section 43B on employee contribution as well. There is a distinction between employer

contribution and employee's contribution towards welfare fund. It may be noted that employee's contribution towards welfare funds is a mechanism to ensure the compliance by the employers of the labour welfare laws. Hence, it needs to be stressed that the employer's contribution towards welfare funds such as ESI and PF needs to be clearly distinguished from the employee's contribution towards welfare funds. Employee's contribution is employee own money and the employer deposits this contribution on behalf of the employee in fiduciary capacity. By late deposit of employee contribution, the employers get unjustly enriched by keeping the money belonging to the employees. Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measures of penalizing employers who mis-utilize employee's contributions.

Accordingly, in order to provide certainty, it is proposed to –

- (i) amend clause (va) of sub-section (1) of section 36 of the Act by inserting another explanation to the said clause to clarify that the provision of section 43B does not apply and deemed to never have been applied for the purposes of determining the “due date” under this clause; and
- (ii) amend section 43B of the Act by inserting Explanation 5 to the said section to clarify that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 8 and 9]

Constitution of Dispute Resolution Committee for small and medium taxpayers

The Central Government has consciously adopted a policy to make the processes under the Act, which require interface with the taxpayer, fully faceless. In this backdrop, new schemes for faceless assessment, for faceless appeal at the level of Commissioner (Appeals) and for faceless imposition of penalty have already

been made operational. Further, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has empowered the Central Government to introduce similar schemes for other functions being performed by the income-tax authorities.

It is expected that with these reforms, there would be lesser number of disputes. However, some disputes would still be there. Government has always been striving to reduce disputes and provide tax certainty. Vivad se Vishwas scheme was launched last year to settle pending disputes. Indications are there that the scheme has been a great success. While pending disputes are being resolved or adjudicated, it is important that in future there is less number of disputes from fresh assessments. Hence, in order to provide early tax certainty to small and medium taxpayers, it is proposed to introduce a new scheme for preventing new disputes and settling the issue at the initial stage.

The new scheme is proposed to be incorporated in a new section 245MA and has the following features

- (i) The Central Government shall constitute one or more Dispute Resolution Committee (DRC).
- (ii) This committee shall resolve disputes of such persons or class of person which shall be specified by the Board. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.
- (iii) Only those disputes where the returned income is fifty lakh rupee or less (if there is a return) and the aggregate amount of variation proposed in specified order is ten lakh rupees or less shall be eligible to be considered by the DRC.
- (iv) If the specified order is based on a search initiated under section 132 or requisition made under section 132A or a survey initiated under 133A or information received under an agreement referred to in section 90 or section 90A, of the Act, such specified order shall not be eligible for being considered by the DRC.
- (v) Assessee would not be eligible for benefit of this provision if there is detention, prosecution or conviction under various laws as specified in the proposed section.

(vi) Board will prescribe some other conditions in due course which would also need to be satisfied for being eligible under this provision.

(vii) The DRC, subject to such conditions as may be prescribed, shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.

(viii) The Central Government has also been empowered to make a scheme by notification in the Official Gazette for the purpose of dispute resolution under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from 1st April, 2021

[Clause 66]

Constitution of the Board for Advance Ruling

With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Advance Rulings was incorporated in the Act vide the Finance Act, 1993 by inserting a new Chapter XIX-B. Under these provisions the Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the Tax department. AAR consists of a Chairman and various Vice-Chairman, revenue members and law members. There are three benches of the Authority. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member,

each. A bench cannot function if the post of Chairman or Vice-Chairman is vacant. As per section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired judges of the Supreme Court, retired Chief Justice of a High Court or retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the persons eligible for appointment as Vice-Chairman are retired judges of a High Court. As per past experience, the posts of Chairman and Vice-Chairman have remained vacant for a long time due to non-availability of eligible persons.

This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner. Hence, it is proposed to constitute a Board of Advance Ruling and to make the following amendments in the existing provisions of AAR:-

- (i) The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).
- (ii) It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.
- (iii) Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.
- (iv) Section 245N is proposed to be amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.

- (v) Section 245-O is proposed to be amended to provide that the Authority constituted under the said section shall cease to operate on or after the notified date.
- (vi) Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings.
- (vii) Section 245P is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted;
- (viii) Section 245Q (which deals with filing of application) is proposed to be amended to provide that the pending application with the Authority i.e. in respect of which order under section 245R(2) or section 245R(4) has not been passed before the notified date shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.
- (ix) Section 245R (which deals with the procedure) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
- (x) The Central Government is also proposed to be empowered to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Board of Advance Ruling under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

- (xi) Section 245S (which deals with the applicability of advance ruling and makes it binding on the assessee and the Department) is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date.
- (xii) Section 245T (which deals with advance ruling to be void in certain situation) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted. Also, a specific reference to advance ruling pronounced by the Authority shall be amended to make it advance ruling pronounced under sub-section (6) of section 245R so that the Board for Advance Ruling can also exercise powers under the said section in respect of rulings pronounced by the present Authority.
- (xiii) Section 245U is proposed to be amended to provide that on or from the notified date, the powers of the “Authority” under the said section shall be exercised by the “Board for Advance Rulings” and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
- (xiv) Section 245V is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date
- (xv) A new section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. This appeal can be filed by the applicant as well as by the Department. Such appeal shall be filed within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal. The Central Government shall be empowered to notify a scheme for filing of appeal by the Assessing Officer so as to impart greater efficiency, transparency and accountability by optimising utilisation of the resources through economies of scale and functional specialisation; introducing a system with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall

apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

- (xvi) References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in section 245N and in section 245Q relating to application for advance ruling is proposed to be omitted.

These amendments will take effect from 1st April, 2021

[Clauses 67 to 77]

Income escaping assessment and search assessments

Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases. These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section

285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued. The salient features of new procedure are as under:-

- (i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- (ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.
- (iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).
- (iii) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when 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. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

(iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.

(v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.

(vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

- in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of

three years from the end of the relevant assessment year can be taken only in a few specific cases.

- in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;
- Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.
- Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.
- It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.

(ix) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —

- (a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

(x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

These amendments will take effect from 1st April, 2021.

[Clauses 35 to 40 and 42 to 43]

Allowing prescribed authority to issue notice under clause (i) of sub-section (1) of section 142

Section 142 of the Act provides for conduct of inquiry before assessment. Clause (i) of sub section (1) of the said section gives the Assessing Officer the authority to issue notice to an assessee, who has not submitted a return of income, asking for submission of return. This is necessary to bring into the fold of taxation non-filers or stop filers who have transactions resulting in income. However, this power can be currently invoked only by the Assessing Officer.

The Central Government is following a conscious policy of making all the processes under the Act, where physical interface with the assessee is required, fully faceless by eliminating person to person interface between the taxpayer and the Department. In line with this policy, and in order to enable centralized issuance of notices etc. in an automated manner, it is proposed to amend the provisions of clause (i) of the sub-section (1) of the section 142 to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the said clause.

This amendment will take effect from 1st April, 2021.

[clause 33]

Provision for Faceless Proceedings before the Income-tax Appellate Tribunal (ITAT) in a jurisdiction less manner

In order to impart greater efficiency, transparency and accountability to the assessment process, appeal process and penalty process under the Act a new faceless assessment scheme, faceless appeal scheme and faceless penalty scheme have already been introduced. Further, vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 the Central Government has been empowered to notify similar schemes in respect of many other processes under the Act that require a physical interface with the taxpayers.

In order to ensure that the reforms initiated by the Department to reduce human interface from the system reaches the next level, it is imperative that a faceless scheme be launched for ITAT proceedings on the same line as faceless appeal scheme. This will not only reduce cost of compliance for taxpayers, increase transparency in disposal of appeals but will also help in achieving even work distribution in different benches resulting in best utilisation of resources.

Therefore, it is proposed to insert new sub-sections in the section 255 of the Act so as to provide that the Central Government may notify a scheme for the purposes of disposal of appeal by the ITAT so as to impart greater efficiency, transparency and accountability by,—

- (a) eliminating the interface between the ITAT and parties to the appeal in the course of proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing an appellate system with dynamic jurisdiction. It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March, 2023. It is proposed that every notification issued shall, as

soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from 1st April, 2021.

[Clause 78]

Discontinuance of Income-tax Settlement Commission

It is proposed to discontinue Income-tax Settlement Commission (ITSC) and to constitute Interim Board of settlement for pending cases. The various amendments proposed are as under:

- ITSC shall cease to operate on or after 1st February, 2021
- No application under section 245C of the Act for settlement of cases shall be made on or after 1st February, 2021;
- All applications that were filed under section 245C of the Act and not declared invalid under sub-section (2C) of section 245D of the Act and in respect of which no order under section 245D(4) of the Act was issued on or before the 31st January, 2021 shall be treated as pending applications.
- Where in respect of an application, an order, which was required to be passed by the ITSC under section 245(2C) of the Act on or before the 31st day of January, 2021 to declare an application invalid but such order has not been passed on or before 31st January, 2021, such application shall be deemed to be valid and treated as pending application.
- The Central Government shall constitute one or more Interim Board for Settlement (hereinafter referred to as the Interim Board), as may be necessary, for settlement of pending applications. Every Interim Board shall consist of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.

- On and from 1st February, 2021, the provisions related to exercise of powers or performance of functions by the ITSC viz. provisional attachment, exclusive jurisdiction over the case, inspection of reports and power to grant immunity shall apply mutatis mutandi to the Interim Board for the purposes of disposal of pending applications and in respect of functions like rectification of orders for all orders passed under sub-section (4) of section 245D of the Act. However, where the time-limit for amending any order or filing of rectification application under section 245(6B) of the Act expires on or after 1st February, 2021, in computing the period of limitation, the period commencing from 1st February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to sixty days, if less than sixty days.
- With respect to a pending application, the assessee who had filed such application may, at his option, withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner, about such withdrawal.
- Where the option for withdrawal of application is not exercised by the assessee within the time allowed, the pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.
- The Board may, by an order, allot any pending application to any Interim Board and may also transfer, by an order, any pending application from one Interim Board to another Interim Board.
- Where the pending application is allotted to an Interim Board or transferred to another Interim Board subsequently, all the records, documents or evidences, with whatever name called, with the ITSC shall be transferred to such Interim Board and shall be deemed to be the records before it for all purposes.
- Where the assessee exercises the option to withdraw his application, the proceedings with respect to the application shall abate on the date on which such application is withdrawn and the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance

with the provisions of this Act as if no application under section 245C of the Act had been made. However, for the purposes of the time-limit under sections 149, 153, 153B, 154 and 155 and for the purposes of payment of interest under section 243 or 244 or, as the case may be, section 244A, for making the assessment or reassessment, the period commencing on and from the date of the application to the ITSC under section 245C of the Act and ending with the date on which application is withdrawn shall be excluded. Further, the income-tax authority shall not be entitled to use the material and other information produced by the assessee before the ITSC or the results of the inquiry held or evidence recorded by the ITSC in the course of proceeding before it. However, this restriction shall not apply in relation to the material and other information collected, or results of the inquiry held or evidence recorded by the Assessing Officer, or, as the case may be, other income-tax authority during the course of any other proceeding under this Act irrespective of whether such material or other information or results of the inquiry or evidence was also produced by the assessee or the Assessing officer before the ITSC.

- The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of settlement in respect of pending applications by the Interim Board, so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible; optimising utilisation of the resources through economies of scale and functional specialisation; and introducing a mechanism with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after the 31st March, 2023. Every such notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

These amendments will take effect from 1st February, 2021.

[Clauses 54 to 65]

Reduction of time limit for completing assessment

Section 153 of the Act contains provisions in respect of time-limit for completion of assessment, reassessment and re-computation under the Act. The sub-section (1) of the said section provides that the time-limit for passing an assessment order under section 143 or 144 of the Act shall be 21 months from the end of the assessment year in which the income was first assessable. However, this time limit had earlier been curtailed in order to improve the efficacy and efficiency of the Department to give effect to computerization of processes under the Act. As a result, the time limit for completion of assessment proceedings under sections 143 or 144 of the Act was reduced to 18 months for A.Y. 2018-19 and 12 months for A.Y. 2019-20 and subsequent assessment years vide the Finance Act, 2017.

Since then, the assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019. The assessment procedure is now conducted in a completely faceless and jurisdiction-less way where all internal and external communication is made electronically and different aspects of the assessment procedure like verification, scrutiny of books of accounts etc. are carried on by different units. The person-to-person interface between the taxpayer and the Department has been eliminated. This team-based approach for assessment with a dynamic jurisdiction is technologically driven and very efficient. Thus, the time required for completion of assessment procedure needs to be further reduced.

The benefits of shorter time period for scrutiny proceedings are manifold. On the one hand, it reduces the compliance burden on the taxpayers who find it easier to explain matters pertaining to a recent previous year which also improve the ease of doing business. On the other hand, it enhances the ability of the Department to detect and bring to tax any leakages of revenue as the instances of tax evasion come to the notice of the Department within a shorter span of time.

Hence, it has been proposed that the time limit for completion of assessment proceedings may be reduced further by three months. Thus the time for completing of assessment is proposed to be nine months from the end of the assessment year

in which the income was first assessable, for the assessment year 2021-22 and subsequent assessment years.

This amendment will take effect from 1st April, 2021

[Clause 41]

Rationalisation of the provision of Charitable Trust and Institutions to eliminate possibility of double deduction while calculating application or accumulation

Exemption to funds, institutions, trusts etc. carrying out religious or charitable activities is provided under clause (23C) of section 10 of the Act and sections 11 and 12 of the Act. Section 12A of the Act, *inter alia*, provides for procedure to make application for the registration of the trust or institution to claim exemption under section 11 and 12. Section 12AB is the new section which comes into effect from the 1st April, 2021.

Under the existing provisions of the Income-tax Act, 1961, corpus donations received by trusts, institutions, funds etc. are exempt as follows:

- a) Explanation to third proviso to clause (23C) of section 10 provides that income of the funds or trust or institution or any university or other educational institution or any hospital or other medical institution, shall not include income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus.
- b) Clause (d) of sub-section (1) of Section 11 provides that voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be included in the total income of the trust or institution.

These entities are not allowed to accumulate more than 15% of their income or accumulate for specific purpose up to 5 years, other than corpus donations referred above. Instances have come to the notice where these entities claim the corpus donations to be exempt and at the same time claim their application as part of the mandatory 85% application from income other than such corpus. This results in a

situation where the corpus income has been exempted and its application has been claimed as application against the mandatory 85% application of non-corpus income.

Instances have also come to the notice where these entities take loans or borrowings and make application for charitable or religious purposes out of the proceeds of loans and borrowings. Such loans or borrowings when repaid, are again claimed as application. This results in unintended double deduction.

Both these situations, at times, also result in paper loss which is claimed by the assessee as carry forward resulting in unintended short application (less than 85%) in following years.

To ensure that there is no double counting while calculating application or accumulation, it has been proposed that-

- a)** Voluntary contributions made with a specific direction that it shall form part of the corpus shall be invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus.
- b)** Application out of corpus shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus from the income of the previous year, such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.
- c)** Application from loans and borrowings shall not be considered as application for charitable or religious purposes for the purposes of third proviso of clause (23C) and clauses (a) and (b) of section 11. However, when loan or borrowing is repaid from the income of the previous year, such repayment shall be allowed as application in the previous year in which it is repaid to the extent of such repayment.
- d)** Clarify in both clause (23C) of section 10 and section 11 that for the computation of income required to be applied or accumulated during the

previous year, no set off or deduction or allowance of any excess application, of any of the year preceding the previous year, shall be allowed

These amendments will take effect from 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent assessment years.

[Clauses 5 and 6]

Taxation of proceeds of high premium unit linked insurance policy (ULIP)

Clause (10D) of section 10 of the Act provides for the exemption for the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy in respect of which the premium payable for any of the years during the terms of the policy does not exceed ten percent of the actual capital sum assured.

Under the existing provisions of the Act, there is no cap on the amount of annual premium being paid by any person during the term of the policy. Instances have come to the notice where high net worth individuals are claiming exemption under this clause by investing in ULIP with huge premium. Allowing such exemption in policy/policies with huge premium defeats the legislative intent of this clause. The intention was to provide benefit to small and genuine cases of life insurance. Hence, it is proposed to provide for the followings:

- (i) Insert Explanation 3 to the clause (10D) of section 10 of the Act to define ULIP as a life insurance policy which has components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 dated the 8th day of July, 2019.
- (ii) insert fourth proviso to clause (10D) of section 10 of the Act to provide that the exemption under this clause shall not apply with respect to any ULIP issued on or after the 1st February, 2021, if the amount of premium payable for any of the previous year during the term of the policy exceeds two lakh and fifty thousand rupees.

(iii) insert fifth proviso to this clause to provide that, if premium is payable by a person for more than one ULIPs, issued on or after the 1st February, 2021, exemption under this clause shall be available only with respect to such policies aggregate premium whereof does not exceed the amount of two lakh fifty thousand rupees, for any of the previous years during the term of any of the policy.

(iv) insert sixth proviso to this clause providing that the provisions of fourth and fifth provisos shall not apply to any sum received on the death of a person.

(v) insert seventh proviso to this clause to enable CBDT to issue guidelines with the approval of Central Government for the purpose of removing the difficulty and to lay every guideline issued by the Board before each House of Parliament and to make it binding on the income-tax authorities and the assessee.

(vi) provide that a ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] is a capital asset under clause (14) of section 2 of the Act.

(vii) provide for the deemed taxation of profit and gains from the redemption of ULIP [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] as capital gains by inserting new sub-section (1B) in section 45 and to take power to prescribe rules for calculation of such capital gains.

(viii) Include such ULIPs [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso] in the definition of equity oriented fund in section 112A so as to provide them same treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 3, 5, 14 and 29]

Consequential amendment has also been proposed in Finance (No 2) Act, 2004 to make security transaction tax applicable on maturity or partial withdrawal with

respect to unit linked insurance policy issued by insurance company on or after the 1st February, 2021 [to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso]

This amendment will take effect from 1st February, 2021.

[Clauses 154 to 158]

Rationalisation of the provision of slump sale

Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sub-section (42C) of section 2 of the Act defines “slump sale” to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer listed in sub-section (47) of section 2 of the Act, in relation to definition of the word “transfer” in relation to capital asset like exchange, relinquishment etc, are excluded.

While discussing transfer as a result of sale it needs to be kept in mind that it is the substance of transaction that is more important than the name given to it by the parties to the transaction. For example, a transaction of “sale” may be disguised as “exchange” by the parties to the transaction, but such transactions may already be covered under the definition of slump sale as it exists today on the basis that it is transfer by way of sale and not by way of exchange. This principle was enunciated by Hon'ble Supreme Court in CIT vs. R.R. Ramakrishna Pillai [(1967) 66 ITR 725 SC]. Thus, if a transfer of an asset is in lieu of another asset (non-monetary) it can be said to be monetized in a situation where the consideration for the asset transferred is ascertained first and is then discharged by way of non-monetary assets. In this situation it would be a case of transfer by way of sale and would thus be covered within existing provisions of section 50C of the Act. Based on this principle, Hon'ble SC in the case of Artex Manufacturing Company [(1997), 227 ITR 260] held that the sale of business on a going concern for a lump-sum non-monetary consideration was transfer by way of sale on the ground that the slump price was determined by the value on the basis of itemized assets, though this price was not mentioned in the agreement. Similarly, Hon'ble SC in the case of Dhampur Sugar Mills [(2006) 147 STC 57] considered the case of a dealer who took a sugar mill on long term lease for an agreed amount of license fee and in satisfaction therefore, the

dealer was required to give the entire quantity of molasses to the owner of the sugar mill. It was held that the said transaction “in effect and substance” involved passing of monetary consideration and was accordingly liable to sales tax.

Thus, a transfer which “in effect and substance” is by way of sale is also currently covered in the definition of slump sale under section 50C of the Act as interpreted by various courts. However, it is still seen that tax avoidance schemes are drawn to defeat the intent of this provision and Courts can always intervene to find the true substance of the transaction and purpose of section of 50C of the Act.

In order to make the intention clear, it is proposed to amend the scope of the definition of the term “slump sale” by amending the provision of clause (42C) of section 2 of the Act so that all types of “transfer” as defined in clause (47) of section 2 of the Act are included within its scope.

This amendment will take effect from the 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clause 3]

Rationalisation of provision of transfer of capital asset to partner on dissolution or reconstitution

The existing provisions of section 45 of the Act *inter alia*, provides that any profits or gains arising from the transfer of a capital asset shall be chargeable to income-tax under the head Capital gains and shall be deemed to be the income of the previous year in which such transfer takes place. Further sub-section (4) of the said section, *provides that* the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place. Further, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.

In this regard, it has been noticed that there is uncertainty regarding applicability of provisions of aforesaid sub-section to a situation where assets are revalued or self-generated assets are recorded in the books of accounts and payment is made to partner or member which is in excess of his capital contribution.

Hence, it is proposed to substitute the existing sub-section (4) of section 45 of the Act with a new sub-section (4) and also insert a new sub-section (4A) to this section.

New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the previous year any capital asset at the time of dissolution or reconstitution of the specified entity. The capital asset represents the balance in the capital account of such specified person in the books of the specified entity at the time of its dissolution or reconstitution. In this situation, the profit and gains arising from the receipt of such capital asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "capital gains" and shall be deemed to be the income of such specified entity of the previous year in which the capital asset was received by the specified person. For the purposes of section 48 of the Act, the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

New proposed section sub-section (4A) of section 45 of the Act applies in a case where a specified person receives during the previous year any money or other asset at the time of dissolution or reconstitution of the specified entity. The money or other asset is required to be in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution. In this situation, the profits or gains arising from the receipt of such money or other asset by the specified person shall be chargeable to income-tax as income of the specified entity under the head "Capital gains" and shall be deemed to be the income of such specified entity of the previous year in which

the money or other asset was received by the specified person. For the purposes of section 48 of the Act,

- value of the money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset; and
- the balance in the capital account of the specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition.

The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

For the purposes of these two sub-sections,-

- “specified person” is proposed to be defined as a person who is partner of a firm or member of other association of persons or body of individuals (not being a company or a cooperative society), in any previous year;
- “specified entity” is proposed to be defined as a firm or other association of persons or body of individuals (not being a company or a cooperative society);and
- “self-generated goodwill” and “self –generated assets” are proposed to be defined as goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

Consequential amendment is also proposed in section 48 of the Act to provide that in case of specified entity, the amount included in the total income of such specified entity under sub-section (4A) of section 45 which is attributable to the capital asset being transferred, shall be reduced from the full value of the consideration to compute income charged under the head “capital gains”. This is to be calculated in the manner to be prescribed later. This is to mitigate the double taxation which may have happened but for this provision in a situation where an asset which was revalued and for which income under the proposed sub-section (4A) of section 45 of the Act was brought to tax is transferred subsequently by the specified entity.

These amendments will be effective from the 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 14 and 16]

Provisional attachment in Fake Invoice cases

Section 281B of the Act contains provisions which provide that in cases of assessment or reassessment the Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months. Further, the said section allows the assessee to furnish a bank guarantee of the value of the property so attached for revocation of the provisional attachment. The above bank guarantee shall be invoked if the assessee fails to pay his tax demand on time. The powers under this section can only be exercised by the Assessing Officer.

Section 271AAD of the Act was inserted vide the Finance Act, 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts. It is an anti-abuse provision. Upon initiation of such penalty proceedings, it is highly likely that the taxpayer may also evade the payment of such penalty, if imposed. Hence, in order to protect the interest of revenue, it is proposed to amend the provision of section 281B of the Act to enable the Assessing Officer to exercise the powers under this section during the pendency of proceedings for imposition of penalty under section 271AAD of the Act, if the amount or aggregate of amounts of penalty imposable is likely to exceed two crore rupees.

This amendment will take effect from 1st April, 2021.

[Clause 79]

Rationalisation of the provisions of Equalisation Levy

Under section 165A of Finance Act, 2016, as inserted by section 153 of the Finance Act, 2020, Equalisation Levy is to be levied at the rate of two per cent. of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated, by it-

- (i) to a person resident in India; or
- (ii) to a non-resident in the specified circumstances as referred to in sub-section (3); or
- (iii) to a person who buys such goods or services or both, using internet protocol address located in India.

For this purpose, E-commerce supply or service is defined as to mean:-

- (i) online sale of goods owned by the e-commerce operator;
- (ii) online provision of services provided by the e-commerce operator;
- (iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator; or
- (iv) any combination of activities listed in clause (i), (ii) or clause (iii);

Clause (50) of section 10 of the Act provides for the exemption for the income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021 and chargeable to equalisation levy under that Chapter.

It is seen that there is need for some clarification to correctly reflect the intention of various provisions concerning this levy. Hence, it is proposed to carry out the following amendments in the Finance Act, 2016:-

- Insert an Explanation to section 163 of the Finance Act, 2016, clarifying that consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India under the Income-tax Act read with the agreement notified by the Central Government under section 90 or section 90A of the Income-tax Act.

- Insert an Explanation to clause (cb) of section 164 of the Finance Act, 2016, providing that for the purposes of defining e-commerce supply or service, “online sale of goods” and “online provision of services” shall include one or more of the following activities taking place online:
 - (a) Acceptance of offer for sale;
 - (b) Placing the purchase order;
 - (c) Acceptance of the Purchase order;
 - (d) Payment of consideration; or
 - (e) Supply of goods or provision of services, partly or wholly
- Amend section 165A of the Finance Act, 2016, to provide that consideration received or receivable from e-commerce supply or services shall include:
 - (i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and
 - (ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

These amendments will take effect retrospectively from 1st April, 2020.

[Clause 159]

It is also proposed to amend section 10(50) of the Act to -

- (i) provide that section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after 1st April, 2020.
- (ii) clarify that exemption under section 10(50) will not apply for royalty or fees for technical services which is taxable under the Act read with the agreement notified by the Central Government under section 90 or section 90A of the Act.
- (iii) define e-commerce supply or services under section 10(50) as the meaning assigned to it in clause (cb) of section 164 of Chapter VIII of the Finance Act, 2016.

This amendment will take effect from 1st April 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years

Depreciation on Goodwill

Section 2 of the Act provides the definitions for the purposes of the Act. Clause (11) of the said section defines "block of assets" to mean a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed.

Section 32 of the Act relates to depreciation. Sub-section (1) of the said section provides for deduction on account of depreciation on tangible assets (Building, machinery, plant and furniture) and intangible assets (know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998 which are owned, wholly or partly by the assessee which are used wholly and exclusively for the purpose of business and profession while computing the income under the head 'Profits and gains of business or profession'.

Further, Explanation 3 to sub-section (1) provides that for the purposes of this sub-section, the expression "assets" shall mean to be tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Section 50 of the Act provides for conditions for the applicability of provisions of section 48 and 49 for computation of capital gains in case of depreciable assets where the capital asset is an asset forming part of a block of asset in respect of which depreciation has been allowed under this Act.

Section 55 of the Act provides meaning of terms "adjusted", "cost of improvement" and "cost of acquisition" for the purposes of sections 48 and 49 of the Act. In relation to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business or profession, tenancy rights, stage carriage

permits or loom hours, it is defined to mean the purchase price if it is acquired by purchase. In other cases it is nil except when it is covered by sub-clauses (i) to (iv) of sub-section (1) of section 49.

It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act. The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case *Smiff Securities Limited* [(2012)348 ITR 302 (SC)]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

However, there are other sections of the Act which are relevant for calculation of depreciation under section 32 of Act. These are as under:

- Sixth proviso to the section 32 of the Act mandates that in a case of succession/amalgamation/demerger during the previous year, depreciation is to be calculated as if the succession or amalgamation or demerger has not taken place during the previous year and apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.
- Explanation 2 of sub-section (1) of section 32 of the Act provides that the term "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.
- Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, *inter-alia*, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year.
- Sub-section (1) of section 43 of the Act which defines "Actual cost" as actual cost of the assets to the assessee. Explanation 7 to this section covers a situation where in a scheme of amalgamation, any capital asset is transferred

by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It clarifies that in this situation, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

- Explanation 2 of clause (c) of sub-section (6) of section 43 of the Act also covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It also clarifies that in this situation, the actual cost of the block of asset in the hand of the amalgamated company would be written down value of that block in the immediate preceding previous year in the case of amalgamating company as reduced by depreciation actually allowed in that preceding previous year.

Thus, while Hon'ble Supreme Court has held that the Goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is required to be carried out in accordance with various other provisions of the Act, including the ones listed above. Once we apply these provisions, in some situations (like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.

However, in some other cases (like that of acquisition of goodwill by purchase) there could be valid claim of depreciation on goodwill in accordance with the decision of Hon'ble Supreme Court holding goodwill of a business or profession as a depreciable asset.

It is seen that Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant & machinery. Hence there appears to be little justification

for depreciation on goodwill even in the category of cases referred to in the immediately preceding paragraph.

In view of above discussion, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

Therefore, to give effect to the above decision, it has been proposed to,

- (a) amend clause (11) of section 2 of the Act to provide that 'block of asset' shall not include goodwill of a business or profession;
- (b) amend clause (ii) of sub-section (1) of section 32 of the Act to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation. Further, it is also proposed to amend Explanation 3 to sub-section (1) of the said section to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section.
- (c) amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.
- (d) amend section 55 of the Act by substituting clause (a) of sub-section (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any

article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be *nil*

(e) provide that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

[Clauses 7, 18 and 20]

Rationalisation of the provision relating to processing of returned income and issuance of notice under sub-section (2) of section 143 of the Act

The existing provisions of clause (a) of sub-section (1) of section 143 of the Act provides that at the time of processing of return of income made under section 139, or in response to a notice under sub-section (1) of section 142, the total income or loss shall be computed after making the adjustments specified in clauses (i) to (vi) therein.

It is proposed to amend the following provisions of sub-section (1) of section 143 of the Act,-

- (i) Amend sub-clause (iv) of clause (a) of sub-section (1) of the section 143 of the Act, to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.
- (ii) Amend sub-clause (v) of clause (a) of sub-section (1) of the section 143 of the Act so as to give consequential effect to amendment carried out in section 80 AC vide Finance Act, 2018.
- (iii) Amend the provisions of section 143 to reduce the time limit for sending intimation under sub-section (1) of section 143 of the Act from one year to nine months from the end of the financial year in which the return was furnished.

Consequently, it is also proposed to reduce the time limit for issue of notice under sub-section (2) of section 143 of the Act from six months to three months from the end of the financial year in which the return is furnished.

These amendments will take effect from 1st April, 2021

[Clause 34]

Adjudicating authority under the PBPT Act

Section of the 71 of the PBPT Act, *inter alia*, provides that the Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the PBPT Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA) and the Appellate Tribunal established under section 25 of the PMLA may discharge the functions of the Adjudicating Authority and the Appellate Tribunal, respectively, under the PBPT Act for such period and in respect of such cases or class of cases as may be specified in the said notification.

Since there is no appointment of the Adjudicating Authority under the PBPT Act, the Adjudicating Authority under the PMLA is discharging the functions of the Adjudicating Authority under the PBPT Act. It is now proposed to provide that the Competent Authority constituted under sub-section (1) of section 5 of the Smugglers

and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act which shall commence discharging the function from 1st July, 2021. As the said Adjudicating Authority under PBPT Act is proposed to commence the discharging the functions from 1st July, 2021, it is proposed to extend the period of limitation under sub-section (7) of section 26 of the PBPT Act to provide that where the time limit for passing order under sub-section (7) of section 26 of the PBPT Act expires during the period beginning from 1st July, 2021 and ending on 29th September, 2021, the time limit for passing such order shall stand extended to 30th September, 2021.

This amendment will take effect from 1st July, 2021.

[Clauses 142 to 147]

Rationalisation of the provision of presumptive taxation for professionals under section 44ADA

Section 44ADA of the Act relates to special provision for computing profits and gains of profession on presumptive basis.

Sub-section (1) of the said section provides that notwithstanding anything contained in sections 28 to 43C, in case of an assessee, being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, a sum equal to fifty per cent of the total gross receipts of the assessee in the previous year on account of such profession, or as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the assessee, shall be deemed to be the profits and gains of such profession chargeable to tax.

The provisions of section 44ADA of the Act were made applicable to individual, Hindu undivided family (HUF) and partnership firm but not a Limited Liability Partnership (LLP) as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. This is for the reason that LLP are required to maintain books of accounts in any case under LLP Act.

It is proposed to make this position clear in the law. Hence it is proposed to amend sub-section (1) of section 44ADA of the Act to provide that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm, not

being an LLP as defined under clause (n) of sub-section (1) of section 2 of Limited Liability Partnership Act, 2008. All other provisions like being a resident in India engaged in a profession referred to in sub-section (1) of section 44AA and whose total gross receipts do not exceed fifty lakh rupees in a previous year, shall remain same.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

[Clause 12]

Clarification regarding the scope of Vivad se Vishwas Act, 2020

With the objective of reducing pending income tax litigation, generating timely revenue for the Government and giving benefit to taxpayers by providing them peace of mind, certainty and savings on account of time and resources, the Direct Tax Vivad se Vishwas Act, 2020 (hereinafter referred to as 'VsV') was enacted on 17th March, 2020.

The settlement provisions under the Income-tax Act, 1961 (Income-tax Act) provide for an alternate mechanism to a taxpayer who chooses to exit the regular process of assessment which would have resulted into determination of tax liability and instead approached the Income Tax Settlement Commission (ITSC) for settlement of his case under Chapter XIX-A of the Income-tax Act. As the VsV was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case under Chapter XIX-A of the Income-tax Act, such cases as are covered by Chapter XIX-A of the Income-tax Act (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.

With a view to remove any ambiguity, it is proposed to amend the provisions of VsV to clarify the original legislative intent for which the definitions of "appellant" in section 2(1)(a), "disputed tax" in section 2(1)(j) and "tax arrear" in section 2(1)(o), of the VsV are proposed to be amended by way of removal of doubts by this Bill.

The said amendments are proposed to take effect retrospectively from the 17th March 2020.

[Clause 160]

Definition of the term “Liable to tax”

The Act currently does not define the term “liable to tax” though this term is used in section 6, in clause (23FE) of section 10 and various agreements entered into under section 90 or section 90A of the Act. Hence, it is proposed to insert clause (29A) to section 2 of the Act providing its definition. The term “liable to tax” in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided.

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

[Clause 3]

Income Declaration Scheme (IDS) amendment

The Income Declaration Scheme, 2016 (the Scheme) contained in Chapter-IX of the Finance Act, 2016 provided an opportunity to the persons who had not disclosed any income in the past to come clean and make payment of tax, surcharge and penalty as per the provisions of the Scheme. The Scheme commenced on 01.06.2016.

Section 187 of the Finance Act, 2016 *inter alia*, provides that the tax, surcharge and penalty payable under the Scheme shall be paid on or before the specified date and if the declarant failed to pay such amount, the declaration filed by the declarant shall be deemed invalid. Further, section 191 of the Finance Act, 2016, *inter alia*, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable. A proviso was inserted in section 191 of the Finance Act, 2016 vide Finance (No. 2) Act, 2019 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable. It is now proposed to amend the proviso of section 191 of the Finance Act, 2016, so as to provide that the excess amount of tax, surcharge or penalty paid in pursuance of a

declaration made under the Scheme shall be refundable to the specified class of persons without payment of any interest.

This amendment will take effect retrospectively from 1st June, 2016.

[Clause 159]

Tax Deduction at Source (TDS) on purchase of goods

Chapter XVIIIB of the Act relates to deduction of tax at source. The provisions of this chapter provide for TDS on various payments at rates contained therein. It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods. The rate of TDS is kept very low at 0.1%. To ensure that compliance burden is only on those who can comply with it, it is proposed that the tax is only required to be deducted by those person (i.e. “buyer”) whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Central Government is proposed to be empowered by notification in the Official Gazette to exempt a person from obligation under this section on fulfilment of conditions as may be specified in that notification. Tax is required to be deducted by such person, if the purchase of goods by him from the seller is of the value or aggregate of such value exceeding fifty lakh rupees in the previous year. It is also proposed to provide that the provisions of this section shall not apply to,-

- (i) a transaction on which tax is deductible under any provision of the Act; and
- (ii) a transaction, on which tax is collectible under the provisions of section 206C other than transaction to which sub-section (1H) of section 206C applies.

This means, if on a transaction a TDS or tax collection at source (TCS) is required to be carried out under any other provision, then it would not be subjected to TDS under this section. There is one exception to this general rule. If on a transaction TCS is required under sub-section (1H) of section 206C as well as TDS under this section, then on that transaction only TDS under this section shall be carried out.

Board with the approval of the Central Government has been empowered to issue guidelines for removing difficulty in giving effect to the provisions of this section.

Every guideline issued by the Board is required to be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax

It is also proposed to consequentially amend sub-section (1) of section 206AA of the Act and insert second proviso to further provide that where the tax is required to be deducted under section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of five per cent.

These amendments will take effect from 1st July, 2021.

[Clauses 48 and 50]

TDS/TCS on non filer at higher rates

Section 206AA of the Act provides for higher rate of TDS for non-furnishing of PAN. Similarly section 206CC of the Act provides for higher rate of TCS for non-furnishing of PAN. It is seen that while these provisions have served their purpose in ensuring obtaining and furnishing of PAN by various person, there is need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS.

Hence, it is proposed to insert a new section 206AB in the Act as a special provision providing for higher rate for TDS for the non-filers of income-tax return. Similarly it is proposed to insert a section 206CCA in the Act as a special provision for providing for higher rate of TCS for non-filers of income-tax return.

Proposed section 206AB of the Act would apply on any sum or income or amount paid, or payable or credited, by a person (herein referred to as deductee) to a specified person. This section shall not apply where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act. The proposed TDS rate in this section is higher of the followings rates:-

- twice the rate specified in the relevant provision of the Act; or
- twice the rate or rates in force; or
- the rate of five per cent

If the provision of section 206AA of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA of the Act.

Proposed section 206CCA of the Act would apply on any sum or amount received by a person (herein referred to as collectee) from a specified person. The proposed TCS rate in this section is higher of the following rates:-

- twice the rate specified in the relevant provision of the Act; or
- the rate of five percent

If the provision of section 206CC of the Act is applicable to a specified person, in addition to the provision of this section, the tax shall be collected at higher of the two rates provided in this section and in section 206CC of the Act.

The specified person is a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be. Further the time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these assessment years. There is another condition that aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Specified person shall not include a non-resident who does not have a permanent establishment in India

Consequential amendment is proposed in sub-section (4) of section 194-IB of the Act

This amendment will take effect from 1st July, 2021.

[Clauses 46, 51 and 52]

Taxability of Interest on various funds where income is exempt

Clause (11) of section 10 of the Act provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from any other provident fund set up by the Central Government and

notified by it in this behalf in the Official Gazette. Similarly, Clause (12) of this section provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule

Instances have come to the notice where some employees are contributing huge amounts to these funds and entire interest accrued/received on such contributions is exempt from tax under clause (11) and clause (12) of section 10 of the Act. This exemption without any threshold benefits only those who can contribute a large amount to these funds as their share. Accordingly, it is proposed to insert proviso to clause(11) and clause (12) of section 10 of the Act, providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of contribution made by the person exceeding two lakh and fifty thousand rupees in a previous year in that fund, on or after 1st April, 2021, computed in such manner as may be prescribed.

These amendments will take effect from 1st April, 2022 and shall apply to the assessment year 2022-23 and subsequent assessment years.

[Clause 5]

CUSTOMS

Note:

- (a) “Basic Customs Duty” means the customs duty levied under the Customs Act, 1962.
- (b) Clause nos. in square brackets [] indicate the relevant clause of the Finance Bill, 2021.
- (c) Amendments carried out through the Finance Bill, 2021 will come into effect on the date of its enactment, unless otherwise specified.

I. AMENDMENTS IN THE CUSTOMS ACT, 1962

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	In Section 2, a new clause 7(B) is being introduced defining a “common portal” (Common Customs Electronic Portal)	[80]
2.	Sub-section (3) to section 5 of Customs Act is being amended to empower Commissioner (Appeals) to carry out functions specified under Chapter XV, Section 108 and the new sub-section (1D) of Section 110 of Customs Act	[81]
3.	Section 25 of the Customs Act is being amended to prescribe that all conditional exemptions, unless otherwise specified or varied or rescinded, given under Customs Act shall come to an end on 31 st March falling immediately two years after the date of such grant or variation. All existing conditional exemptions in force as on the date on which the Finance Bill 2021 receives the assent of the President unless having a prescribed end date, shall come to an end on 31 st March, 2023 (if not specifically extended/ rescinded earlier) on review.	[82]
4.	A new section 28BB is being introduced prescribing a two-year time-limit, further extendable by one year by the Commissioner, for completion of any proceedings under this act which would culminate in issuance of a notice under section 28 of the Customs Act, 1962.	[83]
5.	Sub section (3) of section 46 is being amended so as to- a) mandate filing of bill of entry before the end of the day preceding the day (including holidays) of arrival of goods. b) A new proviso is being introduced therein, to enable the Board to	[84]

	notify the time period for presenting bill of entry in certain cases as it may deem fit.	
6.	Section 110 of the Customs Act is being amended so as to revise the procedure for pre-trial disposal of seized gold, in any form as notified. Commissioner (Appeals) having jurisdiction, to certify the correctness of inventory of the seized goods and carry out other procedures as prescribed, before the disposal of the gold in a manner as may be determined by the Central Government. Other consequential amendments to give effect to this provision are also being carried out.	[85]
7.	Sub-section (ja) is being added to section 113 to provide for the confiscation of any goods entered for exportation under claim of remission or refund of any duty or tax or levy, so as to make a wrongful claim in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force.	[86]
8.	A new section 114AC is being inserted in Customs Act to prescribe penalty in specific case where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilize Input Tax Credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax.	[87]
9.	Explanation to section 139 of Customs Act is being amended so as to include inventories, photographs and lists certified by the Commissioner (Appeals) under the new sub-section (1D) to the documents within the meaning of that section to give evidentiary value to such documents.	[88]
10.	Section 149 is being amended so as to- a) introduce a second proviso which would allow amendments to be done through the customs automated system on the basis of risk evaluation through appropriate selection criteria. b) introduce a third proviso so that certain amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.	[89]
11.	Section 153 is being amended so as to insert a new clause '(ca)' under sub section (1) thereof so as to enable service of order, summons, notice, etc. by making it available on the common portal.	[90]
12.	Chapter XVII is being amended so as to insert a new section 154C for notification of a common portal for facilitating registration, filing of bills of entry, shipping bills, any other document or form prescribed under this act or under any other law for the time being in force or the rules and regulations made thereunder, payment of duty and for carrying out such other functions and for such purposes as may be specified.	[91]

II. AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	Section 8B of the Customs Tariff Act is being amended to incorporate certain technical changes.	[92]
2.	Section 9 of the Customs Tariff Act is being amended to include provisions for anti-absorption, retrospective levy from the date of initiation of investigation in anti-circumvention cases, aligning countervailing duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when countervailing duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing Countervailing duty on review for period not exceeding 5 years at a time, instead of the 5 years at present	[93]
3.	Section 9A of the Customs Tariff Act is being amended to include provisions for anti-absorption, retrospective levy in anti-circumvention cases, aligning anti-dumping duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when anti-dumping duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing ADD on review for period not exceeding 5 years at a time, instead of the 5 years at present.	[94]

III. AMENDMENTS IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975

AMENDMENTS				
A.	Tariff rate changes for Basic Customs Duty [to be effective from 02.02.2021, unless otherwise specified] * [Clause [95 (i)] of the Finance Bill, 2021]		Rate of Duty	
S. No.	Heading, sub-heading tariff item	Commodity	From	To
		Chemicals		
1.	2803 00 10	Carbon Black	5%	7.5%
		Plastic items		
2.	3925	Builder's ware of Plastics	10%	15%
		Gems and Jewellery Sector		
3.	7104	Cut and Polished Synthetic stones, including Cut and Polished Cubic Zirconia	10%	15%
		Electrical and Electronics Sector		
4.	8414 30 00	Compressors of a kind used in refrigerating equipment	12.5%	15%
5.	8414 80 11	Compressors of a kind used in air-conditioning equipment	12.5%	15%
6.	8504 90 90	Printed Circuit Board Assembly [PCBA] of charger or adapter (All goods under this tariff item, other than above, will continue to attract the existing effective rate of BCD at 10%)	10%	15%
		Parts of Automobiles		
7.	7007	Safety glass, consisting of toughened (tempered) or laminated glass. (All goods under this heading, other than those used with motor vehicles, will continue to attract the existing effective rate of BCD at 10%)	10%	15%
8.	8512 90 00	Parts of Electrical lighting and signaling equipment, windscreen wipers, defrosters and demisters, of a kind used for cycles or motor	10%	15%

		vehicles		
9.	8544 30 00	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	10%	15%
10.	9104 00 00	Instrument Panel Clocks and Clocks of a similar type for vehicles, Aircraft, Spacecraft or Vessels	10%	15%
B.	Tariff rate changes (without any change in the effective rates of Basic Customs Duty)		Rate of Duty	
S. No.	Heading, sub-heading tariff item	Commodity	From	To
1.	8414 40	Air compressors mounted on a wheeled chassis for towing	7.5%	15%
2.	8414 80 (except 8414 80 11)	Gas Compressors (other than of a kind used in air-conditioning equipment), free-piston generators for gas turbine, turbo charger and other compressors	7.5%	15%
3.	8501 10 to 8501 53	Electric Motors	10%	15%
4.	8536 41 00 and 8536 49 00	Relays	10%	15%
5.	8537	Boards, panels, consoles, etc. for electric control or distribution of electricity	10%	15%
6.	9031 80 00	Other instruments, appliances and machines	7.5%	15%
7.	9032 89	Electronic automatic regulators and other controlling instruments or apparatus	10%	15%
C.	New entries added to the First Schedule [Clause 95 (ii) and 95 (iii) of the Finance Bill, 2021]			
1.	Harmonizing the Customs Tariff Act 1975 with the HSN 2022 - Changes to the first schedule to the Customs Tariff Act are being proposed that are to come into effect from 01.01.2022. This is in accordance with HSN 2022, which proposes 351 amendments to the existing harmonized nomenclature, covering a wide range of goods moving across borders. - The amendments are necessary to adapt to the current trade through the recognition of new product streams, the changing nature of commodities being traded, advent of new technologies and addressing the environmental and social issues of global concern- all with a prime focus on the larger goal of ease of doing business and trade facilitation.			

* Will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

A.	Trade Facilitation- Amendment to IGCR rules, 2017
1.	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 [IGCR Rules] are being amended to provide the following facilities: - to allow job-work of the materials (except gold and jewellery and other precious metals) imported under concessional rate of duty - to allow 100% out-sourcing for manufacture of goods on job-work - to allow imported capital goods that have been used for the specified purpose to be cleared on payment of differential duty, along with interest, on the depreciated value. The depreciation norms would be the same as applied to EOUs, as per Foreign Trade Policy.

S. No	Chapter, Heading, sub-heading, tariff item	Commodity	From	To
		Agricultural Products and By Products		
1.	2207 20 00	Denatured Ethyl Alcohol (ethanol) for use in manufacture of excisable goods	2.5%	5%
2.	23	All goods except dog and cat food and shrimp larvae feed	Nil/ 5%/ 10%/ 15%/ 20%/ 25%/ 30%/ 35%/ 40%/ 45%/ 50%/ 55%/ 60%/ 65%/ 70%/ 75%/ 80%/ 85%/ 90%/ 95%/ 100%	15%

			20%/30%	
		Minerals		
3.	2528	Natural borates and concentrates thereof	Nil/5%	2.5%
		Fuels, Chemicals and Plastics		
3.	2710	Naphtha	4%	2.5%
5.	2907 23 00	Bis-phenol A	Nil	7.5%
6.	2910 30 00	Epichlorohydrin	2.5%	7.5%
7.	2933 71 00	Caprolactam	7.5%	5%
8.	3907 40 00	Polycarbonates	5%	7.5%
9.	3908	Nylon chips	7.5%	5%
10.	3920 99 99	Other plates, sheets, films, etc. of other plastics	10%	15%
		Leather		
11	41	Wet blue chrome tanned leather, crust leather, finished leather of all kinds, including splits and sides of the aforesaid	Nil	10%
		Textiles		
12.	5002	Raw Silk (not thrown)	10%	15%
13.	5004, 5005, 5006	Silk yarn, yarn spun from silk waste (whether or not put up for retail sale)	10%	15%
14.	5201	Raw Cotton	Nil	5% + 5% AIDC*
15.	5202	Cotton waste (including yarn waste or garneted stock)	Nil	10%
16.	5402, 5403, 5404, 5405 00 00, 5406, 5501 to 5510	Nylon Fibre and Yarn	7.5%	5%
		Gems and Jewellery Sector		
17.	7106	Silver	12.5%	7.5%+ 2.5% AIDC*
18.	7106	Silver Dore	11%	6.1% + 2.5%

				AIDC*
19.	7108	Gold	12.5%	7.5%+ 2.5% AIDC*
20.	7108	Gold Dore	11.85%	6.9%+ 2.5% AIDC*
21.	7107 00 00, 7109 00 00, 7111 00 00	Base metals or precious metals clad with precious metals	12.5%	10%
22.	7110	Other precious metals like Platinum, Palladium, etc.	12.5%	10%
23.	7112	Waste and scrap of precious metals or metals clad with precious metals	12.5%	10%
24.	7112	Spent catalyst or ash containing precious metals	11.85%	9.17%
25.	7113	Gold or Silver Findings	20%	10%
26.	7118	Coin	12.5%	10%
		Metals		
27.	7204	Iron and steel scrap, including stainless steel scrap [up to 31.03.2022]	2.5%	Nil
28.	7206 and 7207	Primary/Semi-finished products of non-alloy steel	10%	7.5%
29.	7208, 7209, 7210, 7211, 7212, 7225 (except 7225 11 00) and 7226 (except 7226 11 00)	Flat products of non-alloy and alloy steel	10% /12.5%	7.5%
30.	7213, 7214, 7215, 7216, 7217, 7221, 7222, 7223, 7227 and 7228	Long product of non-alloy, stainless and alloy steel	10%	7.5%
31.	7225	Raw materials for use in manufacture of CRGO steel [up to 31.03.2023]	2.5%	Nil
32.	7404	Copper Scrap	5%	2.5%
33.	7318	Screw, bolts, nuts, etc. of iron and steel	10%	15%

		Capital Goods		
34.	8430	Tunnel boring machines	Nil	7.5%
35.	8431	Parts and components for manufacture of tunnel boring machines with actual-user condition	Nil	2.5%
		IT, Electronics and Renewable		
36.	8544 (other than 8544 70 and 8544 30 00)	Specified insulated wires and cables	7.5%	10%
37.	39, 74 and 85	Former, bases, bobbins, brackets; CP wires; P.B.T.; Phenol resin moulding powder; Lamination/ El silicon steel strips for use in manufacture of transformers (entry at S.No. 198 of 25/1999-Customs)	Nil	Applicable rate
38.	Any Chapter	Inputs or parts for manufacture of Printed Circuit Board Assembly (PCBA) of cellular mobile phone (w.e.f. 1.4.2021)	Nil	2.5%
39.	Any Chapter	Inputs or parts for manufacture of camera module of cellular mobile phone (w.e.f. 1.4.2021)	Nil	2.5%
40.	Any Chapter	Inputs or parts for manufacture of connectors of cellular mobile phone (w.e.f. 1.4.2021)	Nil	2.5%
41.	Any Chapter	Inputs or raw material for manufacture of specified parts like back cover, side keys etc. of cellular mobile phone (w.e.f. 1.4.2021)	Nil	2.5%
42.	Any Chapter	Inputs or raw material (other than PCBA and moulded plastics) for manufacture of charger or adapter of cellular mobile phones	Nil	10%
43.	8504 90 90 or 3926 90 99	Moulded plastics for manufacture of charger or adapter	10%	15%
44.	Any Chapter	Inputs or parts of Printed Circuit Board Assembly of charger or adapter of cellular mobile phones	Nil	10%
45.	Any Chapter	Inputs or parts of Moulded Plastic of charger or adapter of cellular mobile phones	Nil	10%

46.	Any Chapter	Inputs or raw materials (other than Lithium-ion cell and PCBA) of Lithium-ion battery or battery pack (w.e.f. 1.4.2021)	Nil	2.5%
47.	Any Chapter	Parts or components of PCBA of Lithium-ion battery or battery pack (w.e.f. 1.4.2021)	Nil	2.5%
48.	Any Chapter	Inputs or raw materials of following goods: - (i) Other machines capable of connecting to an automatic data processing machine or to a network (8443 32 90) (ii) Ink cartridges, with print head assembly (8443 99 51) (iii) Ink cartridges, without print head assembly (8443 99 52) (iv) Ink spray nozzle (8443 99 53) (w.e.f. 1.4.2021)	Nil	2.5%
49.	Any Chapter	Inputs and parts of LED lights or fixtures including LED Lamps	5%	10%
50.	Any Chapter	Inputs for use in the manufacture of LED driver or MCPCB (Metal Core Printed Circuit Board) for LED lights or fixtures including LED Lamps	5%	10%
51.	9405 50 40	Solar lanterns or solar lamps	5%	15%
52.	8504 40	Solar Inverters	5%	20%
53.	9503	Parts of Electronic Toys for manufacture of electronic toys	5%	15%
		Aviation Sector		
54.	Any Chapter	Components or parts, including engines, for manufacture of aircrafts or parts of such aircrafts, by Public Sector Units under Ministry of Defence subject to condition specified.	2.5%	0%
		Medical devices		
55.	9018-9022	Medical Devices imported by International Organization and Diplomatic Missions	Health Cess @ 5%	Health Cess @ Nil
		Goods imported under Project Import Scheme		
56.	9801	High Speed Rail Projects being brought under project imports	Applicable Rate	5%

57.	8714 91 00, 8714 92, 8714 93, 8714 94 00, 8714 95, 8714 96 00, 8714 99	All goods other than Bicycle parts and components	10%	15%
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* Agriculture Infrastructure and Development Cess

VI Other miscellaneous changes

S. No.	Notification No.	Notification Subject
1.	42/1996 – Customs dated 23 rd July, 1996	High Speed Rail Projects are being included in list of projects to which Project Imports Scheme is applicable
2.	230/1986 – Customs dated 3 rd April, 1986	National High Speed Rail Corporation Ltd. is being nominated as the 'Sponsoring Authority' under Project Import Regulations, 1986 for approving the items required to be imported under the Project Imports Scheme for High-Speed Rail Projects

VII Pruning and review of customs duty concessions/ exemptions:

A. Review of concessional rates of BCD prescribed in notification No. 50/2017 – customs dated 30.6.2017: The BCD exemption hitherto available on certain goods are being withdrawn by omitting following entries of notification No. 50/2017-Customs dated 30.6.2017.

S. No.	S. No. of Notfn	Description/ CTH
1.	209	Diphenylmethane 4, 4-diisocyanate (MDI) for use in the manufacture of spandex yarn
2.	230	Ink cartridges, ribbon assembly, ribbon gear assembly, ribbon gear carriage, for use in printers for computers
3.	229 [w.e.f 1.4.2021]	71 items like wax items, wood polish materials, prints for photo frames, velvet fabric/paper, handles/blades for cutlery, jigat, wine tools etc.
4.	311 [w.e.f 1.4.2021]	35 items like fasteners, zippers, shoulder pads, buckles, rivets, Velcro tape, toggles, stud, elastic cloth and band, bobbin, hooks, anglets etc.
5.	312	42 items like buckles, buttons, stamping foil, sewing thread,

	[w.e.f 1.4.2021]	Loop rivets, Glove Liners, shoe laces, inlay cards etc.
6.	313 [w.e.f 1.4.2021]	18 items like lace, Velcro tape, curtain hooks, Tassel, Beads, Sequins, sewing threads, poly wadding materials, quilted wadding materials etc.

B. Prescribing the condition of observance of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules, 2017) for certain conditional entries in notification No. 50/2017-Customs dated 30.06.2017, in lieu of certain exiting conditions. Besides certain other conditions for imports are being rationalized/simplified.

- Accordingly, the condition Nos. 22, 24, 30, 38, 51, 52, 53, 54, 60, 61 and 74, in the said customs notification have been amended to prescribe condition of IGCR.
- In addition, it has been prescribed that the changed jurisdictional authority under IGCR Rules, 2017, shall also issue the end use certificate for the past period after due verification as per the rules.

C. Customs duty exemptions, including those which have been granted through certain other stand-alone notifications, have also been reviewed by rescinding the notification:

S. No.	Notification No.	Notification Subject
1.	1/2011-Customs, dated the 6.1.2011	Exemption to all items of machinery, instruments, appliances, components or auxiliary equipment for initial setting up of solar power generation project or facility
2.	34/2017-Customs dated 30 th June, 2017	This notification provided exemption to tags or labels (whether made of paper, cloth, or plastic), or printed bags (whether made of polyethylene, polypropylene, PVC, high molecular or high density polyethylene) imported for fixing on articles for export or for the packaging of such articles. Similar exemption exists at S. No.257 of notification No. 50/2017-Cus. These have been merged in the said S. No.257 and notification No 34/2017-Cus has been omitted.
3.	75/2017-Customs dated 13 th September, 2017	Exemption for goods imported for organizing FIFA Under-17 World Cup, 2017.

VIII. IMPOSITION OF AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON IMPORT OF CERTAIN ITEMS [to be effective from 02.02.2021] [Clause [115] of the Finance Bill, 2021]

An Agriculture Infrastructure and Development Cess (AIDC) has been proposed on import of specified goods. To ensure that imposition of cess does not lead to additional burden in most of these items on the consumer, the BCD rates has been lowered. This cess shall be used to

finance the improvement of agriculture infrastructure and other development expenditure. The list of items on which cess has been imposed and the applicable duty and AIDC on them would be as follows:

S. No	Heading, sub-heading tariff item	Commodity	Basic customs duty	AIDC
1.	0808 10 00	Apples	15%	35%
2.	1511 10 00	Crude Palm Oil	15%	17.5%
3.	1507 10 00	Crude Soya-bean oil	15%	20%
4.	1512 11 10	Crude Sunflower seed oil	15%	20%
5.	0713 10	Peas (Pisum sativum)	10%	40%
6.	0713 20 10	Kabuli Chana	10%	30%
7.	0713 20 20	Bengal Gram (desichana)	10%	50%
8.	0713 20 90	Chick Peas (garbanzos)	10%	50%
9.	0713 40 00	Lentils (Mosur)	10%	20%
10.	2204	All goods (Wine)	50%	100%
11.	2205	Vermouth and other wine of fresh grapes, flavoured	50%	100%
12.	2206	Other fermented beverages for example, Cider, Perry, Mead, sake, mixture of fermented beverages or fermented beverages and nonalcoholic beverages	50%	100%
13.	2208	All goods (Brandy, Bourbon whiskey, Scotch etc.)	50%	100%
14.	2701	Various types of coal	1%	1.5%
15.	2702	Lignite, whether or not agglomerated	1%	1.5%
16.	2703	Peat, whether or not agglomerated	1%	1.5%
17.	3102 10 00	Urea	Nil	5%
18.	3102 30 00	Ammonium nitrate	2.5%	5%
19.	31	Muriate of potash, for use as manure or for the production	Nil	5%

		of complex fertilisers		
20.	3105 30 00	Diammonium phosphate, for use as manure or for the production of complex fertilisers	Nil	5%
21.	5201	Cotton (not carded or combed)	5%	5%
22.	7106	Silver (including imports by eligible passengers)	7.5%	2.5%
23.	7106	Silver Dore	6.1%	2.5%
24.	7108	Gold (including imports by eligible passengers)	7.5%	2.5%
25.	7108	Gold Dore	6.9%	2.5%

IX. OTHER CHANGES (INCLUDING CERTAIN CLARIFICATIONS/ TECHNICAL CHANGES BY AMENDING NOTIFICATION NO. 50/2017-CUSTOMS DATED 30.06.2017)

S.No.	S.No. of Notfn	Description
1.	20	a) The HS [0713 20 00] was split into [0713 20 10], [0713 20 20] and [0713 20 90] vide notification 22/2018-Cus dated 20.03.2020. However, the transposition of the same has not been done for entry 20 of notification No. 50/2017-Cus. b) It is proposed to specifically mention Kabuli Chana & Bengal gram (desichana) in the exclusions to this entry.
2.	21E	The entry is redundant (was valid only upto 31.12.2020 and is proposed to be omitted.
3.	44	The entry is redundant (was valid only upto 30.09.2017) and is proposed to be omitted.
4.	131	Acid grade fluorspar attracts 5% BCD vide serial numbers 120 and S.N. 131 of notification No. 50/2017-Customs dated 30.06.2017. Entry at S.No. being redundant is being omitted.
5.	175	“Any Chapter” mentioned in the Chapter/heading etc. of this entry is being replaced by the specific entry heading 2501.
6.	284	An explanation is being inserted in Sr. No. 284 of the notification no. 50/2017-Customs dated 30 th June 2017 so as to clarify that the said exemption entry does not cover toy balloons made of natural

S.No.	S.No. of Notfn	Description
		rubber latex as such toy balloons are classified under customs heading 9503, so as to avoid misclassification.
7.	293A & 293B	The language of exemption entries providing concessional rates on newsprint & other uncoated paper conforming to the specifications of newsprint (other than its surface roughness) is being simplified so as to remove any doubts regarding the specification of uncoated papers used for printing of newspapers on which the concessional rates apply.
8.	First Proviso	Clauses (b), (c) and (e) are being omitted as they are redundant.

X. Review of levy of Social Welfare Surcharge on various items.

- A. Notification No. 12/2018-Customs, dated 02.02.2018 prescribing effective rates of 3% on certain items, including gold and silver, is being rescinded.
- B. SWS is also being rescinded on goods falling under heading 2515 11 and 2515 12
- C. SWS is being exempted on the value of AIDC imposed on gold and silver. Accordingly, these items would attract SWS, at normal rate, only on value plus basic customs duty.

XI. Other Miscellaneous changes pertaining to Anti-Dumping Duty (ADD)/ Countervailing Duty (CVD)/ Safeguard Measures

1.	Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 provide for manner and procedure for investigation into dumping of goods that cause injury to domestic industry. Changes are being made in the Rules, to provide that with effect from 01.07.2021, to provide that final findings are to be issued by the designated authority, in review cases, at least three months prior to expiry of the ADD under review. The ADD Rules are also being amended to provide for provisional assessment in cases of anti-circumvention investigation. Certain other changes are being made for bringing clarity in the scope of these rules.
2.	Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 provide for manner and procedure for causing investigation into the cases of imports of subsidized goods that cause injury to domestic industry. Changes are being made in the Rules to provide that with effect from 01.07.2021, the final findings are to be issued by the designated authority, in review cases, at least three months prior to expiry of the CVD under review. The CVD Rules are also being amended to provide for provisional assessment in cases of anti-circumvention

	investigation. Certain other changes are being made for bringing clarity in the scope of these rules.
3	Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (Safeguard Duty being changed to Safeguard Measures) provide for manner and procedure for causing investigation into the cases of imports in increased quantity that cause injury to domestic industry. Changes in the rules are being proposed to elaborate in detailed manner the modalities of implementation of safeguard measure, along with technical modifications consequent to the changes made earlier in section 8B of the Customs Tariff Act <i>vide</i> Finance Act, 2020.
4.	Anti-Dumping duty is being temporarily revoked for the period commencing from 2.2.2021 till 30.09.2021, on imports of the following- a) Straight Length Bars and Rods of alloy-steel, originating in or exported from People's Republic of China, imposed <i>vide</i> notification No. 54/2018-Cus (ADD) dated 18.10.2018; b) High Speed Steel of Non-Cobalt Grade, originating in or exported from Brazil, People's Republic of China and Germany, imposed <i>vide</i> notification No. 38/2019-Cus (ADD) dated 25.09.2019; c) Flat rolled product of steel, plated or coated with alloy of Aluminum or Zinc, originating in or exported from People's Republic of China, Vietnam and Korea RP, imposed <i>vide</i> notification No. 16/2020-Cus (ADD) dated 23.06.2020.
5.	Countervailing duty is being temporarily revoked for the period commencing from 2.2.2021 till 30.09.2021, on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products, originating in or exported from People's Republic of China, imposed <i>vide</i> notification No. 1/2017-Cus (CVD) dated 07.09.2017.
6.	Provisional Countervailing duty is being revoked on imports of Flat Products of Stainless Steel, originating in or exported from Indonesia, imposed <i>vide</i> notification No. 2/2020-Customs (CVD) dated 9.10.2020.
7.	In Sunset Review, anti-dumping duty on Cold-Rolled Flat Products of Stainless Steel of width 600 mm to 1250 mm and above 1250 mm of non bonafide usage originating in or exported from People's Republic of China, Korea RP, European Union, South Africa, Taiwan, Thailand and United States of America has been discontinued upon expiry of the anti-dumping duty hitherto leviable <i>vide</i> notifications no. 61/2015-Customs (ADD) dated 11th December, 2015 and 52/2017-Customs (ADD) dated 24th October, 2017.

EXCISE

- Note:** (a) “Basic Excise Duty” means the excise duty set forth in the Fourth Schedule to the Central Excise Act, 1944.
- (b) “Road and Infrastructure Cess” means the additional duty of central excise levied under section 112 of the Finance Act, 2018.
- (c) “Special Additional Excise Duty” means a duty of excise levied under section 147 of the Finance Act, 2002.
- (d) “NCCD” means National Calamity Contingency Duty levied under Finance Act, 2001, as a duty of excise on specified goods at rates specified in seventh schedule to Finance Act, 2001
- (e) Clause Nos. in square brackets [] indicate the relevant clause of the Finance Bill, 2021.
- (f) Amendments carried out through the Finance Bill, 2021 come into effect on the date of its enactment, unless otherwise specified.

I. AMENDMENT IN THE FOURTH SCHEDULE

S.No.	Amendment	Clause [] of the Finance Bill, 2021
1.	Amendment in Fourth Schedule made by Notification No. 08/2019-CE (T) dated 31.12.2019 shall be made effective w.e.f. 01.01.2020, retrospectively.	[98]
2.	New tariff items [2404 11 00] and [2404 19 00] inserted in Chapter 24 in the fourth Schedule of the Central Excise Act, 1944 accordance with upcoming Harmonised System 2022 Nomenclature and to prescribe tariff rate of 81% on these tariff items with effect from 01.01.2022.	[96 (ii)]

II. Retrospective amendment in Chapter 27 of the Fourth Schedule to the Central Excise Act, 1944.

No.	Amendment	Clause of the Finance Bill, 2021
1.	(i) It is proposed to specify correct IS “17076” against the tariff item 27101249 and made effective from	[97 (i)]

	01.01.2020, retrospectively.	
2.	(ii) It is proposed that tariff rate of 14%+ Rs. 15.00 per litre against tariff item 2710 20 10 and 2710 20 20 may be prescribed and made effective from 01.01.2020, retrospectively.	[97 (ii) and 97 (iii)]

III. Amendment in Chapter 27 of the Fourth Schedule to the Central Excise Act, 1944.

Tariff items 2709 10 00, 2709 20 00, and the entries are being substituted relating thereto as under: [to be made effective from 01.04.2021] [Clause [96(i)] of the Finance Bill, 2021]

Tariff Item	Description of goods	Unit	Rate of duty
2709	Petroleum oils and oils obtained from bituminous minerals, crude		
2709 00 10	petroleum crude	Kg.	Nil
2709 00 20	other	Kg.	

IV. IMPOSITION OF AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS (AIDC) ON PETROL AND DIESEL

An Agriculture Infrastructure and Development Cess (AIDC) as an additional duty of excise has been proposed on Petrol and High speed diesel vide Clause [116] of the Finance Bill, 2021. This cess shall be used to finance the improvement of agriculture infrastructure and other development expenditure. The details of the cess are as under:

S. No.	Commodity	Rate of AIDC [Clause [116] of the Finance Bill, 2021]*
1	Motor spirit commonly known as petrol	Rs. 2.5 per litre
2	High speed diesel	Rs. 4 per litre

*Will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

V. CHANGE IN EFFECTIVE RATE OF BASIC EXCISE DUTY AND SPECIAL ADDITIONAL EXCISE DUTY ON PETROL AND DIESEL [to be effective from 02.02.2021]

Consequent to imposition of AIDC, the Basic Excise Duty (BED) and Special Additional Excise Duty (SAED) on Petrol and High-speed diesel is being reduced so that consumer does

not have to bear any additional burden on account of imposition of AIDC. The revised duty structure on petrol and HSD shall be as follows.

A	Item	BED (Rs/Ltr)	SAED (Rs/Ltr)	AIDC (Rs/Ltr)
1	Petrol (unbranded)	1.4	11	2.5
2	Petrol (branded)	2.6	11	2.5
3	High speed diesel (unbranded)	1.8	8	4
4	High speed diesel (branded)	4.2	8	4

VI. EXEMPTIONS FOR M-15, E-20 AND OTHER BLENDED FUELS

S. No.	Amendment to central excise notifications
1.	Exemptions from cesses and surcharges on the lines of other blended fuels (like E-5 and E-10) if these blended fuels are made of duty paid inputs

VII. Amendments in the Schedule VII of the Finance Act 2001 (NCCD Schedule)

1.	New tariff items [2404 11 00] and [2404 19 00] inserted in accordance with upcoming HS 2022 Nomenclature and prescribe NCCD of 25% on these tariff items with effect from 01.01.2022.
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Goods and Service Tax

Note: (a) CGST Act, 2017 means Central Goods and Services Tax Act, 2017

(b) IGST Act, 2017 means Integrated Goods and Services Tax Act, 2017

Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States and Union territories with Legislature.

I. AMENDMENTS IN THE CGST ACT, 2017:

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or <i>vice-versa</i> , for cash, deferred payment or other valuable consideration.	[99]
2.	A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.	[100]
3.	Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.	[101]
4.	Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.	[102]
5.	Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge	[103]

	interest on net cash liability with effect from the 1st July, 2017.	
6.	Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.	[104]
7.	An <i>explanation</i> to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.	[105]
8.	Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.	[106]
9.	A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.	[107]
10.	Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.	[108]
11.	Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.	[109]
12.	Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.	[110]
13.	Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.	[111]
14.	Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under section	[112]

	151 to call for information.	
15.	Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.	[113]

II. AMENDMENTS IN THE IGST ACT, 2017:

S. No.	Amendment	Clause of the Finance Bill, 2021
1.	Section 16 of the IGST Act is being amended so as to: (i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations; (ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and (iii) link the foreign exchange remittance in case of export of goods with refund.	[114]
