

UNION BUDGET 2021



February, 2021

S.R. DINODIA & Co. LLP
CHARTERED ACCOUNTANTS

The Indian Union Budget 2021 - Foreword

The year 2020 saw one of the greatest challenges in human history in the wake of Covid-19 pandemic. The Government of India's proactive approach helped in steering the nation and the economy through socio-economic reforms under the umbrella of 'Atma Nirbhar Bharat'.



Even after a series of socio economic reforms and initiatives undertaken by the Government, this Budget of 2021 was a real challenge! There was a need to provide financial impetus, on the demand side, to help the economy in its recovery phase while addressing the concern of taxpayers of a possible increased burden of additional taxes.

The major thrust of the budget proposals were laid on 'Atma Nirbhar Bharat' which was precisely codified into 6 pillars from 'Health & wellbeing' to 'inclusive development' etc. The Government has attempted to push the country's fiscal growth and economic recovery by increasing government spending on various fronts particularly on capital expenditure by proposing a Rs.5.54 Lakhs Crores of Capex which is 34.5% more than the previous Budget estimates.

Fiscal deficit for 2020-21 at 9.5% of GDP looks alarming though Government with its sustained efforts aims to reduce it to 4.5% by 2025-26.

Personal & Corporate taxes remain unchanged. A long standing demand of individual taxpayers for increased tax deductions on account of small savings is not met this year too.

Populist measures like tax relief extensions to the affordable housing & Start up sectors are welcome.

The scope of slump sale has been widened to include the non-cash/non-monetary slump sale of undertakings. Certain amendments were made to reverse the established judgments of Courts. Notably, the Apex Court's landmark Judgment in case of **Smifs Securities Ltd** [(2012) 348 ITR 302 (SC)] which held the field that, Goodwill is a depreciable assets has been overturned by amending the law to effect that, Goodwill would not be considered as part of block of assets for the purpose of depreciation claim, anymore under the Income-tax Act, 1961. Similarly, delayed employee's contributions to EPF, ESIC etc. are now taxable even if deposited before the due date of return filing. Section 43B has been amended reversing the judgments of various courts including Delhi High Court in case of **Aimil Ltd** [321 ITR 508 (Delhi)].

The Government has continued to fulfill its commitment of reducing litigations - the timelines for Vivad se Vishwas Scheme has been extended further before the Budget. The establishment of a Dispute Resolution Committee (DRC) and the Board of Advance Rulings is a positive attempt in this direction.

Perhaps the most challenging change proposed in the Budget 2021 is taking away the taxpayers right to personally present (or through an AR) his grievance before the Income Tax Appellate Tribunal. An appeal which has already travelled one faceless round before the CIT(A) may need to be explained on a face to face basis before the Income-tax Appellate Tribunal (ITAT) due to the complexity involved, the ITAT being the last fact finding authority on tax issues. I personally feel that keeping an option for personal hearing before the Tax Tribunal would go a long way in delivery the justice to the aggrieved taxpayers.

As regards, the foreign investors, the budget proposals are encouraging. Further, clarity has been provided to allow benefit of lower treaty rate for dividend income at the withholding stage itself.

Overall, I feel that sincere effort has been made by the Finance Ministry to balance the expectations of various stakeholders and providing the much needed impetus for the recovery and growth of the Indian Economy.

Pradeep Dinodia

Date: 1st February, 2021

Place: New Delhi

Income Tax Rates for Individuals, HUF, AOP/BOI or artificial juridical person:-

There is no change in Tax rates of the Individual, HUF, AOP/BOI or artificial juridical person.

As per last year Finance Act, 2020

An individual or HUF (subject to certain conditions) shall, from assessment year 2021-22 onwards, have the option to pay tax in respect of the total income at following rates:-

Sl. No.	Total income	Rate of tax (old regime)	Rate of tax (new regime)
1.	Upto Rs 2,50,000	Nil	Nil
2.	From Rs 2,50,001 to Rs 5,00,000	5 per cent.	5 per cent.
3.	From Rs 5,00,001 to Rs 7,50,000	20 per cent.	10 per cent.
4.	From Rs 7,50,001 to Rs 10,00,000	20 per cent.	15 per cent.
5.	From Rs 10,00,001 to Rs 12,50,000	30 per cent.	20 per cent.
6.	From Rs 12,50,001 to Rs 15,00,000	30 per cent.	25 per cent.
7.	Above Rs 15,00,000	30 per cent.	30 per cent.

*Surcharge and Education Cess rate remains same for AY 2021-22.

1. No change in Slabs, rates for taxation including surcharge & cess thereon under Old Tax Regime:-

- The slabs for personal taxation remain same along with the rate of taxes.
- The surcharge rate [excluding dividend & income u/s 111A & 112A (i.e. STCG & LTCG)] has laid down in Part III of First Schedule to the Finance Act 2020 remains same for AY 2021-2022:-

Total Income Slab	Rate of Surcharge	Effective Tax Rate (MMR)
Exceeding Rs. 50 Lacs but less than Rs.1 Crore	10%	34.32%
Exceeding Rs. 1 Crore but less than Rs.2 Crore	15%	35.88%
Exceeding Rs. 2 Crore but less than Rs.5 Crore	25%	39.00%
Exceeding Rs. 5 Crore	37%	42.74%

- The surcharge rate [including dividend and income u/s 111A & 112A (i.e. STCG & LTCG)] has laid down in Part III of First Schedule to the Finance Act 2020 remains same for AY 2021-2022:-

Total Income Slab	Rate of Surcharge
Exceeding Rs. 50 Lacs but less than Rs.1 Crore.	10%
Exceeding Rs.1 Crore.	15%

- The present levy of "Health and Education Cess" @ 4% remains same for FY 2020-21.

 **Withdrawal of exemption of Interest earned of PF and accumulated balance in employee participating recognised PF**

Earlier any interest earned on PF account is exempt u/s 10(11) and u/s 10(12). Now as per Finance Bill 2021, exemption of interest earned on PF and on accumulated balance of RPF will now taxable if, such interest relates to the amount deposited by that person in excess of Rs 2,50,000/- in any previous year in that fund on or after 1st April, 2021 and computed in such manner as may be prescribed. The extract of added proviso is as follows:

“Provided that the provisions of this clause shall not apply to the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the aggregate of amounts of contribution made by that person exceeding two lakh and fifty thousand rupees in any previous year in that fund, on or after the 1st day of April, 2021 and computed in such manner as may be prescribed;”

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

In order to provide relief to senior citizen who are of the age of 75 years or above and reduce compliances for them, a new section 194P is proposed to insert, which provides that any specified senior citizen has pension income and may also have interest income from the same bank in which he is receiving his pension income is not liable to file his return of income, if the bank has deducted the TDS as per the provision of newly inserted section. The amendment will take effect from 1st April 2021.

 **Extension of time limit to avail benefit under section 80EEA**

80EEA provides for deduction in respect of interest on loan up to one lakh fifty thousand availed from 1st April 2019 to 31st March 2021 for residential house property having stamp value of forty-five lakhs or less. Time for availing loans under this section has been increased by another year up to 31st March 2022.

 **Rationalisation of the provision of Section 44ADA**

Earlier the provision of sub-section (1) of section 44ADA provides the applicability of said section to the assessee, being a resident in India engaged in a profession referred u/s 44AA(1) and whose total gross receipts do not exceed Rs 50 Lakh. Earlier there is no clear position about who is included as assessee being resident in India or who is not. Accordingly to make this position clear in the law, Finance Bill, 2021 has made the clarificatory amendment by amending the provision of sub-section (1) of section 44ADA that the provision of this section shall apply to an assessee, being an individual, HUF or partnership firm (except LLP).

 **Exemption for LTC Cash Scheme**

LTA - Leave Travel
Allowance



In order to overcome the situation of COVID pandemic, the government through press releases had introduced the Leave Travel Concession (LTC) Cash Voucher Scheme first for the Central government employees, which was later extended to the non-Central government employees as well.

Now it is proposed to make an amendment in the section 10(5) of the I.T. Act and extended the benefit of LTC cash scheme for AY 2021-22 subject to the fulfilment of conditions as may be prescribed.

The above amendment will take effect from 1st April 2021 and will apply from AY 2021-22 only.



Rationalisation of provision relating to Tax Audit in certain cases.

In order to boost the digital economy, it is proposed to reduce the compliance burden of the small and medium enterprises by increasing the threshold limit of Tax Audit u/s 44AB to Rs. 10 Crore from Rs. 5 Corer in Previous year. The Amendment will be effective from AY 2021-22

The condition are as under:

- (i) Aggregate of all receipts in cash during the previous year does not exceed five percent of such receipt and
- (ii) Aggregate of all payments in cash during the previous year does not exceed five percent of such payment



Extension of date of incorporation for eligible start up for exemption (80-IAC) and for investment in eligible start-up (54GB)

- In order to incentivize start-ups in the country, FM announced extension in the eligibility for claiming tax holiday for start-ups by one more year till 31st March, 2022.
- In order to incentivize funding of start-ups, FM proposed extending the Capital Gains exemption for investment in start-ups by one more year till 31st March, 2022



Extension of tax exemption for affordable rental housing projects - Section 80-IBA



- In order to help migrant labourers and to promote affordable rental, it is proposed to extend the outer limit from 31st March 2021 to 31st March 2022 specified under one of condition of project approval for affordable rental housing project in order to get the deduction of 100% of profit under section 80IBA of the I.T. Act
- The above amendment will take effect from 1st April 2022 and will apply from AY 2022-23.



Amendment Related to Dividend and its compliance

The provision of Section 194 provides for deduction of tax at source (TDS) on payment of dividend to a resident. The second proviso of the section excludes certain insurance companies or insurers on which such section is not applied. The Finance Bill 2021, proposed the amendment in said proviso by giving the exemption in respect of the income credited or paid to a business trust by a special purpose vehicle (SPV). Accordingly no TDS is required to be deducted by SPV on dividend paid to a Business trust. This amendment will take effect **retrospectively** from 1st April, 2020.

Rationalisation of provision of MAT

- Amendment has been made in the computation of Book profit u/s 115JB by insertion of new clause (2D) which provide that **where there is an increase in book profit of the previous year due to income of past year or years included in the book profit on account of an advance pricing agreement entered into by the assessee under section 92CC or on account of secondary adjustment required to be made under section 92CE, the Assessing Officer shall, on an application made to him in this behalf by the assessee, recompute the book profit of the past year or years and tax payable, if any, by the assessee during the previous year and the provisions of section 154 shall apply and the period of four years shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.**

For Example; In case of secondary adjustment of Rs. 10 Lakhs on account of interest imputed on the amount of primary adjustment made by the TPO and accepted by the assessee, the said amount of Rs. 10 Lakhs shall be added back in the MAT computation as per the above amendment to the year to which it relates.

- Dividend income received by the foreign company on its investment made in India is to be reduced from the income u/s 115JB for the purpose of Minimum Alternate Tax in case the tax payable on dividend income is less than the MAT liability on account of concessional tax rate provided in DTAA.
- The Amendments would be effective from the AY 2021-22.

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

- Under the Act, share of employee's contribution to labour funds viz. EPF, ESIC etc is first added to the taxable income of the employer and post that the employer is allowed deduction w.r.t. such amount under the provisions of section 36(va) when such employer deposits the amount of the employee's contribution to such fund on or before the due date of payment as specified under the relevant act governing such fund.
- Various courts including Delhi High Court in case of **Aimil Ltd** 321 ITR 508 (Delhi) have given the favourable judgments allowing the delayed employee's contributions to EPF, ESIC etc. if deposited before the due date of return filing applying the beneficial provisions of section 43B of the Act.
- In order to reverse the above favourable judgments, the amendment is proposed to specifically provide the exclusion of employee's share of contribution out of the ambit of provisions of section 43B.
- Consequently, the share of employee's contribution to the labour funds shall not be allowed deduction to the employer under section 36(va) unless the same is deposited within the due date of the relevant Act(s).

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



Rationalisation of provision of charitable trust to eliminate double deduction

Corpus Donation :-

- It is proposed to exempt the corpus donation from taxation if it is invested or deposited in one or more of the forms or modes specified in Sec 11(5) maintained for such corpus. Earlier, such corpus donation was treated as exempt without any requirement of such amount being invested or deposited in the forms or modes specified u/s 11(5) of the I. T. Act. – **Sec 11(1)(d)**.
- Further in order to eliminate the double deduction of application of income, explanation 4 u/s 11 of the Act is inserted and clarifies the following:-
 - a) An application of income made from the corpus donation shall not be treated as application of income in the year of donation but would be treated as application of income in the year when invested or deposited in the specified modes/forms u/s 11(5) of the I.T. Act.
 - b) An application of income from any loan or borrowing shall not be treated as applicable of income in the year of loan or borrowing taken but would be treated as application of income for charitable purpose when such loan or borrowing is repaid.



Restriction of excess application in one year to be set off in subsequent year



Insertion of explanation 5 under section 11 of the I.T. Act and has clarified that no set off or deduction or allowance of any excess application of income of any previous years shall be allowed in a subsequent year.

This is to overrule the judgment of the Supreme Court in the case of Subros Educational Society [303 CTR 1 / 166 DTR 257 (SC)]

Similar amendments made for the funds, institutions, trust etc. specified u/s 10(23C) of the I.T. Act.

The above amendment will take effect from 1st April 2022 and will apply from AY 2022-23.



Amendment in section 43CA and 56(2)(x) to provide concession to home buyers and real estate developers



In order to *boost the demand in the real-estate sector and to enable the real-estate developers to liquidate their inventory at a lower rate to home buyers*, it is proposed to increase the limit of tolerance from 110% to 120% u/s 43CA and 56(2)(x) for the difference between the value adopted by the authority for the purpose of payment of stamp duty and the consideration received or accruing as a result of the transfer,

if the following conditions are satisfied:

- The transfer of residential unit taken place between 12th Nov 2020 to 30th June 2021.
- The transfer is by way of first time allotment of the residential unit to any person.
- Consideration received or accruing on such transfer does not exceeds Rs. 2 Cr.

The above amendment will take effect from 1st April 2021 and will apply from AY 2021-22.



Amendment Related to Dividend and its compliance

The provision of Section 234C provides for advance tax instalment and interest due on short payment of instalments. The first proviso of the said section provides relaxation, if the shortfall is due to the under estimation of income listed therein, no interest shall be charges on such shortfall if the assessee has paid full tax in subsequent instalment. One of the exclusion is “**(d) income of the nature referred to in sub-section (1) of section 115BBDA**”. Now as per the Finance Bill, 2021 the said clause has been substituted namely “**(d) the amount of dividend income**”. Further an Explanation – 2 has also been inserted which provides that the abovementioned dividend shall not include dividend define u/s 2(22)(e). The amendment will take effect from 1st April, 2021.

Discontinuance of Income-Tax Settlement Commission (ITSC)



- It is proposed to discontinue Income Tax Settlement Commission (ITSC) and to constitute Interim Board for settlement of pending case
- ITSC shall cease to operate on or after 1st February, 2021.
- The government shall constitute one or more interim board for settlement of pending applications.
- Provision related to excise of power or performance of functions by the ITSC shall apply mutatis mutandi to the Interim Board.

The above amendment will take effect from 1st February 2021.



Issuance of zero coupon bonds by Infrastructure Debt Fund

In order to enlarge the scope of funding of infrastructure debt fund as defined in sec 10(47) of the Act, the Budget proposes to make notified infrastructure debt funds eligible to raise funds by issuing tax efficient zero coupon bonds by making amendment in sec 2(48) of the Act w.e.f AY 2022-23.

Further Infrastructure Debt Fund is not required to deduct TDS on any income paid/payable in relation to zero coupon bonds as per sec 194A(3)(x) of the Income Tax Act w.e.f 01st April 2021.



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

In order to provide benefit to small trust & institutions, threshold exemption limit under section 10(23C) for Charitable Institution (University/ Educational Institution/ Hospital) raised from Rs. 1 Crore to Rs. 5 Crore w.r.t aggregate receipts from university or educational institution referred to in sub clause (iiia) as well as hospital or institutions referred in sec (iiib)



Amendment in processing of ITR & issuance of notice u/s 143(2) w.e.f. 01st April 2021

- The time limit for sending the Intimation for processing of ITR u/s 143(1) shall be reduced from 12 months to 9 months from end of FY in which the return was filed.
- Similarly time limit for issuance of notice for assessment u/s 143(2) is reduced to 3 months from 6 months from end of FY in which the return was filed.
- While processing the return of income, the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income shall be considered.



TCS on non-filer at higher rates

Earlier provisions of Section 206AA & section 206CC were introduced to provide for higher rate of TDS/ TCS for non-furnishing of PAN. Similarly, 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. For this purpose, two new sections 206AB & 206CCA are proposed to be inserted in the Income Tax Act.

Sec 206AA - Higher Rate of TDS for non-furnishing of PAN

Sec 206CC - Higher Rate of TCS for non-furnishing of PAN

Sec 206AB - Higher Rate of TDS for non-filers of ITR

Sec 206CCA - Higher Rate of TCS for non-filers of ITR

- New sections 206AB & 206CCA are introduced from **01st July 2021**.
- **206AB** : any sum or income or amount paid, or payable or credited, by a person to a specified person (other than where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act), the TDS rate shall be **higher** of:-
 - ✓ 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

- **206CCA** : any sum or income or amount recieved by a person from specified person, the TCS rate shall be **higher** of:-
 - ✓ twice the rate specified in the relevant provision of the Act; or
 - ✓ the rate of five percent
- Specified Person means
 - ✓ a person who has not filed the returns of income for both of the two AY's relevant to the two PY's which are immediately before the previous year in which tax is required to be deducted or collected, as the case may be.
 - ✓ The time limit for filing tax return under sub-section (1) of section 139 of the Act has expired for both these AY's.
 - ✓ 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 PY's.
 - ✓ Specified person shall not include a non-resident who does not have a permanent establishment in India.



Tax incentives for units located in IFSC

In order to make IFSC more attractive, it is proposed to provide the following additional incentives:

- (i) Some of the provisions of subsection (3) & (4) not to apply to an eligible investment fund or its manager if the fund manager located in an IFSC and commence operations on or before 31.03.2024.
- (ii) Exemption of any income accrued or arisen or received to the investment division of offshore banking unit to the extent attributable to it and computed in prescribed manner.
- (iii) "Specified fund" to include within purview investment division of offshore banking unit which is granted category III AIF registration, along with other conditions.
- (iv) Exempt any income as a result of transfer of non-deliverable forward contracts entered into with offshore banking unit of IFSC which commenced operations on or before 31.03.2024.
- (v) Exempt any income of NR by way of Royalty on account of lease of aircraft paid by a unit of IFSC, provided unit is eligible of Sec 80LA deduction and commenced operation on or before 31.03.2024.
- (vi) Exempt any income of NR in the nature of capital gain on account of transfer of share of company resident in India, subject to conditions.
- (vii) Any transfer in relocation of a capital asset by the original fund to the resultant fund shall not be considered as transfer. Also to provide that transfer by shareholder or unit holder, in relocation, of a capital asset being a share or unit held by him in original fund in consideration of share or unit in resultant fund shall not be regarded as transfer.

- (viii) Proposed to amend section 80LA to provide for deduction under the said section to a unit of IFSC if registered under IFSC Authority 2019. To provide that income from transfer of an asset being an aircraft or aircraft engine to a domestic company engaged in business of aircraft operation before such transfer, shall also be eligible for 100% deduction subject to conditions, and to provide that registration obtained under IFSC Authority Act 2019 shall mean copy of permission.
- (ix) To amend section 115AD to make it applicable to investment division of an offshore banking unit in the same manner it applies to the fund.

These amendment will take affect from 01.04.2022 and apply to AY 2022-23 and subsequent years.



Liabile to tax

Since the Act currently does not define the term “liable to tax”, though used in various sections and agreements u/s 90 & 90A. It is proposed to insert clause (29A) to section 2 to provide that “liable to tax, in relation to a person, means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to imposition of tax liability, an exemption has been provided;

This amendment to take place from 01.04.2021 and apply in relation to AY 2021-22 and subsequent years.



Rationalization of the provisions of Equalization Levy

In order to provide some clarification to correctly reflect the intention of provisions of Equalization Levy, following amendment carried out in F.Act 2016-

- a) Clarify that the consideration received or receivable for specified services and e-commerce supply or service shall not include royalty or fees for technical services.
- b) To provide that for the purpose of defining e-commerce supply or service, “online sale of goods” and “online provision of service” shall include one of more of the following activities taking place online:
 - i) Acceptance of offer for sale
 - ii) Placing of PO
 - iii) Acceptance of the PO
 - iv) Payment of consideration, or
 - v) Supply of goods or provision of service, wholly or partly
- c) To provide that consideration received or receivable from e-commerce supply or service shall include consideration for sale of goods irrespective whether owned by e-commerce operator or not, and consideration for provision of service irrespective whether provided or facilitated by e-commerce operator.

This amendment will take effect retrospectively from 1st April, 2020, i.e. AY 2020-21.

Also proposed to amend section 10(50) to provide that it will apply to e-commerce supply or service made or provided or facilitated on or after 01.04.2020, exemption u/s 10(50) not to apply for royalty or fees for technical service, and define e-commerce supply or service u/s 10(50) as meaning assigned in Sec 164 of Chap-VIII.

This amendment will take effect from 1st April, 2021, and accordingly apply to AY 2021-22 and subsequent years



TDS on purchase of goods

It is proposed to insert new section 194Q to provide of tax deduction by the buyer from the resident seller @ 0.1%, for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year. Any contradiction between this section and Sec 206C, the provision of this section shall prevail.

“Buyer” means a person 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, except persons to be notified by CG.

Provision of Section 206AA amended to provide that of PAN of the seller is not available; the TDS rate shall be 5% instead of 0.1%.

This amendment shall take affect from 01.07.2021



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

In the Chapter of capital gain, on the issue of transfer of assets by specified entity to a specified person, there are few changes proposed in the budget. Existing sub-section (4) of section 45 is being substituted with new sub-section (4) of section 45 and new sub-section 4A is also being inserted in section 45.

The newly introduced section 45(4) of the Income Tax Act propose to tax any profits or gains arising from receipt of a capital asset by the specified person from the specified entity in the hands of specified entity and for this matter, fair market value of capital asset will be taken as full value of consideration and cost of acquisition of such capital asset shall be determined in accordance with provisions of chapter of capital gains.

The capital asset sought to be covered in section 45(4) which is distributed by the specified entity to the specified person on dissolution or reconstruction of specified entity represents the capital balance of specified person in the books of accounts of specified entity. It is also contemplated that capital balance of the specified person in the books of specified entity will be calculated without taking into account the 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.

A new sub-section (4A) to be inserted to provide that where such specified person (partner) receives **any money or other assets** at the time of dissolution or reconstitution of the specified entity (firm), **in excess of his capital balance** as per the books of the firm at the time of dissolution or reconstruction, then any profit or gain arising from the receipt of such money or other asset by the partner shall be chargeable to tax in the hands of the firm under the head capital gain.

This taxation is also based on the fair market value of assets as on the date of receipt by the specified person. Balance in the capital account of the specified person is to be treated as cost of acquisition. Here also the capital account of the specified person is to be adopted as per the books of account of the specified entity without taking into consideration an increase in the capital account due to revaluation of any asset or due to self generated goodwill or other self generated asset.

It appears from the joint reading of section 45(4) and 45(4A) that there could be some amount which could be subject to double taxation. In order to mitigate double taxation in the hands of specified entity, consequential amendment is also proposed in section 48 of the Act to provide that in case of specified entity being firm, 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”, along with expenses on transfer and cost of acquisition.

This amendment to take place from 01.04.2021 and apply in relation to AY 2021-22 and subsequent years.



Constitution of Dispute Resolution Committee (DRC) for small and medium taxpayers

In order to provide early tax certainty to small and medium tax payer, the central government is proposed to constitute one or more Dispute Resolution Committee (DRC) which has the following features:

- a) The assessee shall have the option to opt for or not opt for the dispute resolution through the DRC.
- b) Only those disputed where returned income is equal to or less than Rs. 50 Lakh (*if there is return*) and the aggregate amount of variation proposed in specified order is equal to or less than Rs. 10 Lakh shall be eligible to be considered by the DRC.
- c) The DRC, subject to the 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.

Following cases are not eligible for Dispute Resolution Committee (DRC).

- a) Where specified order is based on a
 - i) search initiated under section 132 or
 - ii) requisition made under section 132A or a survey initiated under 133A or
 - iii) information received under an agreement referred to in section 90 or section 90A,of the Act.

- b) Where there is there is detention, prosecution or conviction under various laws as specified in the proposed section.

This amendment will take effect from 1st April 2021.



Amendments in Section 147, 148, 149, 151 & 151A and insertion of new Section 148A of the Act



The Finance Bill proposes a completely new procedure of income escaping assessment and search assessment.



Amendment in Section 147 – Income escaping assessment (Substitution of new section for Section 147)

- The Assessing Officer subject to the provisions of Sections 148 to 153, assess or reassess the income or recomputed the loss or depreciation allowance for any assessment year, if any income chargeable to tax has escaped assessment.
- Further, as per the explanation to Section 147, the Assessing Officer may assess or reassess the income of any issue, which comes to his notice subsequently in the course of proceedings under this section, irrespective of the fact that the provisions of Section 148A have not been complied with.
- **This amendment will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.**



Amendment in Section 148 – Issue of notice where income has escaped assessment (Substitution of new section for Section 148)

- The Assessing Officer subject to the provision of Section 148A, shall serve a notice along with copy of order passed requiring to furnish a return of income in the prescribed form within such period as may specified in the notice.
- However, it should be noted that, no notice shall be issued unless ‘there is information with the Assessing Officer which suggest that the income chargeable to tax has escaped assessment’ (referred in explanation 1) and the AO has obtained prior approval of the ‘specified authority’ (as specified in Section 151)
- **Explanation 1:-** The information with the Assessing Officer which suggest that the income chargeable to tax has escaped assessment means:-
 - a. Information flagged with the risk management strategy formulated by the Board;
 - b. any final objection raised by the Comptroller and General and Auditor General of India.

- **Explanation 2:-** For the purpose of this section, where:-
 - a. a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after 1st April, 2021;
 - b. a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April, 2021;
 - c. the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee;
 - d. the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have 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 books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

- **This amendment will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.**



Insertion of New Section 148A – Conducting inquiry, providing opportunity before issue of notice under section 148

- The Assessing Officer before issuing any notice under section 148,-
 - a. conduct any enquiry, with prior approval of specified authority ('as defined in Section 151');
 - b. provide an opportunity of being heard to the assessee by serving show cause notice for issuance of notice under section 148 of the Act & giving time for a period of seven to thirty days;
 - c. consider the reply of the assessee furnished;
 - d. decide, on the basis of reply of the assessee by passing an order with the prior approval of specified authority, within a one month from the end of the month in which reply of the assessee is received by him;
- The provision of section shall not be apply in cases where search is initiated under section 132 or books of accounts are requisitioned under section 132A on or after 1st April, 2021.



Amendment in Section 149 – Time limit for notice (Substitution of new section for Section 149)

- The new substituted section 149 shall provide the time limit for issuance of notice under section 148 of the Act which are as follows:-

Cases	Particulars	Time Limit
Normal Case	Where the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of assets, which has escaped assessment amounts to or is likely to amount of less than fifty lakh rupees for that year.	Within the 3 years form the end of the relevant assessment year
Specific Case	Where the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of assets, which has escaped assessment amounts to or is likely to amount of fifty lakh rupees or more for that year.	Beyond the period of 3 years but within the period of 10 years from the end of the relevant assessment year

- However, it should be noted that notice under section 148 of the Act cannot be issued according to the new substituted section 149 for the assessment year beginning on or before 1st April, 2021, if such notice could not have been issued under the earlier provision of Section 149 of the Act.
- Further, the provision of this section shall not apply in case, where notice under section 153A, or Section 153C r.w.s.153A is required to be issued in relation to a search initiated under section 132 or books of accounts are requisitioned under section 132A on or before 31st March, 2021.
- Further, the normal or extended time allowed to assessee as per the provisions of Section 148A (clause (b)) or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded in computing the period of limitation of this section.
- Further, after excluding the above time limit, the period of limitation available to AO for passing the order under section 148A (clause (d)) is less than seven days, such remaining period is extended to seven days and period of limitation under section 149 shall be deemed to be extended accordingly.

**Amendment in Section 151 – Sanction for issue of notice (Substitution of new section for Section 151)**

- Specified Authority for the purpose of Section 148 & 148A shall 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 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.
- **These amendments will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.**

**Amendment in Section 151A**

- The words & phrase “**conduction of enquiries or issuance of show causes notice or passing of order under section 148A**” shall be inserted along with the words phrase ‘issuance of notice under section 148’.
- **These amendments will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.**

**Amendment in Section 153(1) – Reduction of time limit for completing assessment**

- Since the assessment procedure has been completely overhauled by the introduction of the Faceless Assessment Scheme, 2019, therefore the time required for completion of assessment procedure needs to be further reduced.
- The third proviso to subsection (1) of Section 153 shall be inserted to provide the time limit of “nine months” for completing assessment under section 143 or 144 for the assessment year commencing on or after the 1st day of April, 2021.
- **This amendment will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.**


Assessment Year	Time Limit in Months	Last Date
2018-19	18 Months from the end of the relevant assessment year	31.03.2021*
2019-20	12 Months from the end of the relevant assessment year	31.03.2021
2020-21	12 Months from the end of the relevant assessment year	31.03.2022
2021-22	09 Months from the end of the relevant assessment year	31.12.2022

*This was already extended from 30.09.2020 to 31.03.2021 by the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act, 2020.

 There are consequential amendments in Section 153A & 153C in order to give effect of the amendment made under sections 147, 148, 149, 151, 151A of the Act.

 **Amendment in Section 153A – Assessment in case of search or requisition**

The provisions of the Section 153A shall be now applicable up to on or before 31st March, 2021.

 **Amendment in Section 153C – Assessment of income of any other person**

- The sub-section 3 of Section 153C shall be inserted to provide that the provisions of Section 153C shall not be applicable on or after the 1st April, 2021 in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A of the Act.
- These amendments will take effect from 1st April, 2021, i.e. F.Y. 2020-21 & A.Y. 2021-22.

 **Rationalisation of the provisions concerning withholding on payment made to Foreign Institution Investors (FIIs*) (Section 196D)**




Where the FII receives income by way of dividend in respect of securities, the rate of deduction of withholding as per Act is @ 20%. Considering the expression “rates in force” and as the rates were expressly specified in the Act, the benefit of Double Taxation Avoidance Agreement (DTAA) under Section 90 or 90A was not being given at the time of deduction.

To provide the benefit of lower rate of withholding tax as per the DTAA, a proviso is propose to be inserted to sub-section (1) of section 196D of the Act, where when an FII payee furnishes TRC, the tax shall be deducted at the rate of 20% or rates of income-tax provided in such agreement referred in Section 90 or 90A of the Act for such income, whichever is lower.

* As per Notification No. SO 199(E), dated 22.01.2014, Government specifies Foreign Portfolio Investors registered under the SEBI (Foreign Portfolio Investors) Regulation, 2014 as Foreign Institutional Investors for the said section.

This amendment will take effect from 1st April, 2021, i.e. AY 2021-22.

 **Constitution of the Board for Advance Ruling**



Board of Advance Ruling replaces the erstwhile regime of the Authority for Advance Ruling; necessary amendments have been made in the existing provisions of AAR to allow for greater efficiency, transparency and accountability by optimum utilisation of resources.

A. Constitution of Board – The Central Government replaces the constitution. Now, there is no need of appointment of retired judges of Supreme Court & High Court in a bench. The Central Government shall constitute one or more Board for Advance Rulings and the Board can appoint 2 members, each being an officer not below the rank of Chief Commissioner.

B. Appealable Order – The Advance rulings of 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.

C. Amendments in Definitions Clause: Now the definition of “Applicant” is – An applicant means a person who-

- I. is a non-resident referred to in sub-clause (i) of clause (a); or
- II. is a resident referred to in sub-clause (ii) of clause (b); or
- III. is a resident referred to in sub-clause (iia) of clause (a) falling within any such class or category of persons as the Central government may by notification in the Official gazetted specify; or
- IV. is a resident falling within any such class or category of persons as the Central Government may, by notification in the Official gazette, specify in this behalf; or
- V. is referred to in sub-clause (iv) of clause (a),
and makes an application under sub-section (1) of section 245Q.

All the clauses of (B), (C) and (D) where references to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant is proposed to be omitted.

This amendment will take effect from 1st April, 2021, i.e. AY 2021-22.

Reduction of time limit for filing belated return and revised return by assessee ~ 3 months prior to the end of relevant assessment year.



Currently, section 139(4) and 139(5) allows an assessee to file the belated/revised income tax return upto the end of the relevant assessment year or completion of assessment whichever is earlier.

The amendment provides that the assessee now has to file its belated/revised return **within 3 months before the end of the relevant assessment year** or completion of assessment whichever is earlier.

Such amendment has been brought in view of the time lines of the processed being reduced in the wake of technological upgrade in the income tax department where the processes are now becoming more faceless, automatic and jurisdiction less.

Delegation of power by the Act to the Board to relax the conditions binding on the assessee non-fulfilment of which renders the assessee's return to be defective

Currently explanation to section 139(9) provides certain conditions the non-fulfilment of which leads to the assessee's return becoming defective subject to the communication of the defect by the assessing officer and providing the opportunity to the assessee to rectify the defect within the period of 15 days from the intimation date.

In order to remove difficulties being faced by taxpayers as well as the department on large number of returns becoming defective by application of said conditions, the amendment by way of insertion of proviso to explanation has now delegated the powers to the board wherein the board may by notification relax/modify such conditions.

Extending the due date of filing of return by the spouses governed by Portugese Civil Code (Section 5A of the Act) of the partner in line with the extended due date as already specified for the partner of firm whose accounts are required to be audited

Currently, as per the provisions of explanation 2 to section 139(1), the due date for filing income tax return by the partner of a firm whose accounts are required to be audited is that of the due date of the firm i.e. 31st October of the assessment year. The other individuals are otherwise required to file its return by 31st July of the assessment year thereby not being eligibile for extended time line benefit.

Post amendment, this extended due date shall now become applicable to the spouses (governed by Portugese Civil Code as per section 5A of the Act) of such partner of a firm whose accounts are required to be audited viz. due date of the firm i.e. 31st October of the assessment year instead of 31st July.

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

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



In line with the faceless assessments and faceless appeals, it is proposed to amend the provisions to enable the Government to notify the scheme for faceless ITAT proceedings. This amendment is proposed to be notified latest by 31st March 2023.

Rationalisation of the provision of slump sale



The scope of slump sale has been widened to include the non-cash/non-monetary slump sale of undertakings. In other words now the “Slump Exchanges” would also come under the tax ambit post this amendment.

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

 **Goodwill no longer a depreciable asset**

The Hon'ble Apex Court in its landmark Judgment in case of **Smifs Securities Ltd** [2012] 348 ITR 302 (SC) has held that Goodwill is a depreciable asset. However, in order to overrule the said judgement, it is proposed to inter-alia amend the provision that the goodwill of business/profession shall not be a part of block of assets for the purpose of claim of depreciation under Income Tax Act.

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

Insertion of clause (aa) to section 7 of CGST Act, 2017 – “Supply”



It is proposed to amend the expression “Supply” to constitute transaction mentioned under clause (aa) a supply in terms of provision of section 7(1) instead of section 7(1A) of CGST Act, 2017 “Activities or Transactions to be treated either as supply of goods or supply of services as referred in schedule II”

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.–For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”.

This amendment will take effect retrospectively from 1st July, 2017.

Abolishment of GST Audit U/s 35(5) of CGST Act, 2017, only Annual Return on self-certification basis required.

It is proposed to omit the section 35 (5) of CGST Act, 2017 to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.

However, it is further proposed to substitute Section 44 of CGST Act, 2017 to provide for furnishing of Annual Return (GSTR-9) which may include self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement

This amendment will take effect from such date as Central Government may prescribe by notification in the Official Gazette.

Stringent provisions for refund in case of “Zero rated supply” - Section 16 of IGST Act, 2017

It is proposed to amend section 16 (1) of IGST Act, 2017 to clarify that the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit shall be treated as zero rated supply only when the said supply is for authorized operations;

It is proposed to link the condition of realization of sales proceed with time limit prescribed FEMA, 1999 for receipt of foreign exchange remittance in case of zero rated supply of goods without payment of tax.

It is proposed to restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services

This amendment will take effect from such date as Central Government may prescribe by notification in the Official Gazette

Insertion of clause (aa) to section 16(2) of CGST Act, 2017 – Condition for availment of Input Tax Credit



Insertion of new clause (aa) to sub-section (2) of the section 16 of the CGST Act, 2017 to provide that input tax credit on invoice or debit note may be availed by the recipient of such invoice or debit note only when the details of the same have been furnished by the supplier in their GSTR-1 and such details have been communicated to the recipient in the manner specified under section 37.

This amendment will take effect from such date as Central Government may prescribe by notification in the Official Gazette

Retrospective amendment for Interest to be charged on Net Cash Liability

Proviso to Section 50 of the CGST Act, 2017 is proposed to be amended retrospectively **w.e.f 1st July 2017**, stating that interest shall be charged on net cash liability.

Others Major Amendments

(The below mentioned amendments will take effect from such date as Central Government may prescribe by notification in the Official Gazette)

- It is proposed to insert an explanation to sub-section (12) of section 75 of the CGST Act, 2017, to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies reported in GSTR-1 in accordance with Section 37 but not reported in GSTR-3B in accordance with section 39.
- Section 74 of the CGST Act, 2017 is being amended so as to make seizure, confiscation of goods and conveyances in transit to be proceeded separate from recovery of tax.
- It is proposed to insert a proviso to section 107(6) of CGST Act, 2017 to make appellant liable to deposit a sum equal to twenty-five per cent of the penalty for filing appeal against an order made by the proper officer detaining or seizing goods or conveyances under section 129(3) of the CGST Act, 2017
- Section 129 and 130 of the CGST Act, 2017 is being amended so as to have separate proceedings for each detention, seizure, conveyances in transit and confiscation of goods independently
- It is proposed to substitute Section 151 of the CGST Act, 2017 to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.
- Section 152 of the CGST Act is being amended so as to provide that information obtained under sections 150 and 151 shall not be used without giving an opportunity of being heard to the person concerned.

S.R.Dinodia & Co. LLP., Chartered Accountants

ASSURANCE SERVICES

- Statutory Assurance
- Management Assurance
- Advisory Services
- SocioConnect Assurance

TAXATION SERVICES

- Direct Taxation Advisory
- Cross Border Taxation
- Taxation Litigation Services
- Tax Connect Services

S.R. DINODIA & Co. LLP
CHARTERED ACCOUNTANTS

TRANSACTION ADVISORY SERVICES

- Corporate Finance Advisory
- Mergers and Acquisitions & Re-structuring
- Sales, Divestitures and Demergers
- Transaction Evaluation (Due Diligence)
- Negotiation & transaction Management
- CapitalConnect

REGULATORY ADVISORY SERVICES

- Corporate Law
- Foreign Exchange Law
- Limited Liability Partnership Law
- EthiConnect

For further details, contact:

Pallavi Dinodia Gupta,
Partner

E: pallavidinodia@srdinodia.com

Tel: 011-43703300

Office:

K-39, Connaught Circus,
New Delhi – 110001, INDIA

E : srdinodia@srdinodia.com

Website : www.srdinodia.com