VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

INDIA budget statement 2021

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INDIVIDUAL
INCOME-TAX
RATES AND
SURCHARGE

Rates of Income-tax

The rates of income tax are the same as those specified for AY 2021-22. Comparative chart of tax rates as applicable to individual are as follows:

Total Income		Proposed	Existing
		AY 22-23	AY 21-22
	Up to ₹ 2.50 lac	Nil	Nil
	Above ₹ 2.50 lac to ₹ 5.00 lac	5%	5%
	Above ₹ 5.00 lac to ₹ 10.00 lac	20%	20%
	Above ₹ 10.00 lac	30%	30%

Rebate under section 87A to INR 12,500 resulting in no tax for total incomes below INR 5 lac (INR 0.50 Million) remains unaltered.

Basic exemption limit is the same for :

- Resident individuals above 60 of INR 3.00 lac, and
- Resident individuals 80 years of age or more of INR 5.00 lac

Tax Slabs – Section 115BAC

Tax incentive scheme under **Section 115BAC** for individuals and HUFs, where 7 tax slabs were provided by the previous finance act, continues to be available this year as well:

Total Income	Proposed Rate	Existing Rate
Up to ₹ 2,50,000	Nil	Nil
Above ₹ 2,50,000 to ₹ 5,00,000	5%	5%
Above ₹ 5,00,000 to ₹ 7,50,000	10%	20%
Above ₹ 7,50,000 to ₹ 10,00,000	15%	20%
Above ₹ 10,00,000 to ₹ 12,50,000	20%	30%
Above ₹ 12,50,000 to ₹ 15,00,000	25%	30%
Above ₹ 15,00,000	30%	30%


TAX INCENTIVES

Exemption for LTC Cash Scheme

In view of the COVID-19 pandemic, to provide tax exemption to cash allowance in lieu of LTC, second proviso in section 10(5) inserted from AY 2021-22:

- Value in lieu of any travel concession or assistance received/due to, an individual be exempt subject to fulfilment of prescribed conditions.
- Where exemption claimed and allowed, no exemption under this clause to be made available to any other individual.
- Conditions shall, inter alia, are as under:
  - The employee exercises an option for the **deemed LTC fare** in lieu of the applicable LTC in the **Block year 2018-21**;
  - Specified expenditure is taxed at least @ **12% GST**
  - GST - from **registered vendors/service providers**;
  - Specified period means the period **commencing from October 12, 2020 and ending on March 31, 2021**;
  - The amount of **exemption shall not exceed INR 36,000 per person or one-third of specified expenditure, whichever is less**;
  - **Tax invoice** is obtained from the vendor/service provider
  - Payment is made by an **account payee cheque or draft, ECS** or through other prescribed **electronic modes** as per Rule 66ABBA

Exemption for LTC Cash Scheme

- 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 April 1, 2021 and will apply in relation to the **AY 2021-2022 only**.

Exemption for LTC Cash Scheme

VKC Insight:

The LTC cash incentive scheme allows tax-free payout on purchase of goods and services in lieu of holiday travel which could not be undertaken owing to the COVID-19 pandemic situation. The Ministry of Finance has issued 5 office memorandums & 1 press release for clarifications on this scheme. Gist of the clarifications issued is as under:

- *Scheme is in lieu of LTC travel*
- *Applicable for block year 2018-21*
- *If reimbursable amount is less than the advance drawn, this would be treated as under-utilization and balance amount will be recovered from the employee*
- *Multiple bills are accepted*
- *There is no prescribed format for applying for this scheme, a simple application will suffice*
- *Partial availing of the Scheme is allowed, in case a person wants to avail the scheme of LTC of part of the eligible family*
- *Though there is no limit on number of transactions, it is recommended to keep the number to a minimum to avoid difficulty/delay*

Exemption for LTC Cash Scheme

VKC Insight:

- *Procurement from e-commerce platform is also permissible provided relevant invoice/details are submitted*

  (Source: Office Memorandums dated 12-20-2020 & 20-10-2020)
- *The scheme is for both Government & non-Central Government employees*

  (Source: Press release dated 29-10-2020)
- *Rules relating to advance are not applicable to the present scheme. Therefore, advance taken under the Scheme can be settled on or before 31-03-2021 (and not within 30 days of disbursal of amount), invoice may be in the name of the spouse or the family member*

  (Source: Office Memorandum dated 04-11-2020)
- *Working spouse can avail of the scheme separately*
- *If employee spends less than 3 times of the deemed fare entitlements, reimbursement will be on pro-rata basis.*
- *Any unutilized LTC of block of 18-21 is eligible*
- *Intention of this scheme, inter alia, is to promote digital mode of purchase*

  (Source: Office Memorandum dated 10-11-2020)

Exemption for LTC Cash Scheme

VKC Insight:

- *This Scheme can be availed by utilizing the applicable LTC without opting for leave encashment.*
- *Number of days of leave encashment is to be in accordance with LTC rules*
- *Payment of premium of existing insurance policies is not covered under this Scheme. However, payment of premium of insurance policies purchased from 12-10-20 till 31-03-21 is eligible for reimbursement under the Scheme*
- *Original bills need not be submitted, self attested photocopies will suffice, original bills may be produced on demand if required*
- *Employees due to superannuate, should submit the vouchers/bills before the date of superannuation*

(Source: Office Memorandum dated 25-11-2020)

Incentives for Affordable Rent Housing

Deduction to rental housing project and extension of outer limit

Sec 80-IBA provides for 100% deduction of profits & gains derived from business of developing & building affordable housing project. Conditions for eligibility, inter alia, project approval by competent authority on/before March 31, 2021.

To help migrant labourers and to promote affordable rental, it is proposed:

- To allow deduction also to such **rental housing project** which is **notified** by the CG in Official Gazette and fulfils such conditions as specified
- Outer time limit for March 31, 2021 be extended to **March 31, 2022** and same limit be also provided for proposed affordable rental housing project.

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

Section 80EEA provides tax benefits up to INR 1.50 lac (0.15 Million) on the interest paid on loans taken (sanctioned) for residential house property for affordable housing, over and above tax benefit of INR 2 lakh available under section 24(b).

It is proposed to extend the time period for taking loans to buy such houses from March 31, 2021 to **March 31, 2022**.

Incentives for Startups

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

Section **80-IAC** provides for 100% deduction of profits & gains derived from an eligible business by an eligible start-up for 3 consecutive AYs out of 10 years at option of assessee. Eligible start-up is required to be i**ncorporated** on or after April 1, 2016 but before April 1, 2021.

It is proposed to extend tax holiday by one year i.e., upto **March 31, 2022**.

Benefits for promters/investors in startups

Existing section **54GB**, inter alia, provides

- for capital gain exemption on transfer of a long-term capital asset, being a residential property (**a house or a plot of land**), owned by eligible assessee.
- The assessee is required to utilize the net consideration for subscription in **equity shares of an eligible start-up**, before due date of furnishing of ITR.
- The eligible start-up is required to utilize this amount for purchase of new asset within one year from date of such subscription in its equity shares.
- Benefit available only when residential property is transferred on/before March 31, 21

Now the same has been **extended to March 31, 2022**

Units in International Financial Services Centre(IFSC)

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

- Non-applicability of clauses(a) to (m) of sub-section (3) or clauses (a) to (d) of sub-section (4) of section 9A to **an eligible investment fund or its eligible fund manager**, if the fund manager is located in an IFSC and has commenced operations on or before the March 31, 2024.
- 10(4D) to be available in case 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 the prescribed manner.
- Expression "specified fund" amended to include offshore banking unit which has been granted a category III AIF registration
- 10(4E) inserted to exempt any income of a non-resident as a result of transfer of **non-deliverable forward contracts** entered into with an offshore banking unit of IFSC which commenced operations on or before March 31, 2024 and fulfils prescribed conditions.
- 10(4F) inserted to exempt income of a non-resident of royalty on account of lease of an aircraft in a PY paid by a unit of an IFSC (covered u/s 80LA and if business commenced by March 31, 2024.)

Units in International Financial Services Centre(IFSC)

- Section 10(23FF) inserted to exempt any income of the nature of capital gains, of a non-resident, (which is on account of transfer of share of a company resident in India 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)
- Section 47 amended to provide that exemption for any transfer, in relocation, of a capital asset by the original fund to the resultant fund

Following amendments proposed in Section 80LA:

- Deduction is now also available to IFSC registered under the International Financial Services Centre Authority Act, 2019, (permission not be obtained, copy of registration certificate will now serve as 'copy of permission')
- 100% deduction to income arising from transfer of an asset, being an aircraft or aircraft engine leased by a unit u/s 80LA(2)(c) provided business commenced before March 31, 2024.

Other Amendments

Zero Coupon Bond by Infrastructure Debt Fund

Section 2(48) defines a zero coupon bond as issued by any infrastructure capital company, infrastructure capital fund, public sector company or scheduled bank and in respect of which no payment & benefit is received or receivable before maturity or redemption. In order to enable **infrastructure debt fund** to issue zero coupon bond, necessary amendments are proposed in Section 2(48). Rules 2F and 8B of Income-tax Rules shall be amendment subsequently after the Finance Bill 2021 is enacted. Consequential amendment has also been proposed in clause (x) of sub-section (3) of section 194A which will take effect from April 1, 2021.

Tax Neutral Conversion of Urban Cooperative Bank into Banking Company

The Bill proposes to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company with effect from AY 2021-22 along with availability of deduction under section 44DB. Further proposed that transfer of a capital asset as a result of such conversion shall not be treated as transfer under Section 47. Consequently, 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.


REMOVING
DIFFICULTIES
FACED BY
TAXPAYERS

Increase In Safe Harbour Limit

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

In order to boost the demand in real-estate sector and to enable 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, if the following conditions are satisfied:

- The transfer of residential unit takes place during the period **from November 12, 2020 to June 30, 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 **INR 2 crore**.

Further it is proposed to provide the consequential relief to buyers of these residential units by way of amendment in Section 56(2)(x) 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% of the consideration w.e.f **AY 2021-22**

Increase In Safe Harbour Limit

VKC Insight:

The increase in tolerance limit from 110% to 120% was initially brought in as part of Aatma Nirbhar Bharat Package 3.0 on November 12, 2020 for residential units meeting the specified conditions.

Legislative amendments were to be brought in due course. This is a consequential amendment made under the provisions of section 43CA & 56(2)(x) to give effect to the said announcement by the Ministry of Finance.

Relaxation For Senior Citizen from ITR Filing

In order to provide relief to senior citizens and to reduce compliance for them, it is proposed to insert a new section with effect from April 1, 2021 to provide a relaxation from filing ITR, if the following conditions are satisfied:

- The senior citizen is resident in India and of the **age of 75 or more** during PY;
- 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;
- This bank is a **specified bank**. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
- 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, for the relevant AY 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 AY.

Relaxation For Senior Citizen from ITR Filing

VKC Insight:

The exemption from filing of income-tax return proposed for senior citizens aged 75 and more, is a significant proposal. However, following additional checks will filter out many senior taxpayers who may have a diverse portfolio or maintaining their deposits in different banks:

1. *Senior citizen should be earning only pension and interest incomes, and no other incomes*
2. *Pension as well as interest incomes should be from the same specified bank*
3. *Government will be notifying the 'specified banks'*
4. *Relaxation is only on submission of declaration before the bank*
5. *Taxes will be deducted by the Bank on the returned income after allowing deduction under chapter VI-A and rebate under section 87A. Only then will the senior citizen be exempt from furnishing their income-tax return.*

Mismatch In Overseas Retirement Fund Addressed

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 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**.
- "Specified person" - person resident in India who opened a specified account in a notified country while being NR in India and resident in that country.
- "Specified account" - an account maintained in a notified country 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" - a country notified by the Central Government for the purposes of this section in the Official Gazette.

Exempt dividend and Tax deducted at Source

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 April 1, 2020.

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, @ 1% for a period of three months on shortfall with respect to due dates. The first proviso provides for relaxation if shortfall 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:

- the amount of capital gains;
- income of the nature referred to in sub-clause (ix) of clause (24) of section 2;
- 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;
- income of the nature referred to in sub-section (1) of section 115BBDA.

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 April 1, 2021 and will accordingly apply to the AY 2021-22 and subsequent AYs

Increase in prescribed limit of exemption

Sub-clause (iiiad) and (iiiae) of clause (23C) of section 10 of the Act

Clause (23C) of section 10 of the Act provides for exemption of income received:

- Sub-clause (iiiad) : on behalf of university or educational institution
- Sub-clause (iiiae) : on behalf of hospital or institution

as referred to in these respective sub-clauses. 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.

To provide benefit to small trust and institutions, proposed that:

- exemption shall be increased to INR 5 crore (INR 50 Million)
- 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 (iiiad) as well as from hospital or hospitals or institution or institutions as referred to in sub-clause (iiiae)

Increase in prescribed limit of exemption

VKC Insight:

The presently prescribed limit for these two sub-clauses is INR 1 crore (INR 10 Million) as per Rule 2BC of the Income-tax Rule. Rule 2BC was introduced by the IT (Eighteenth Amendment) Rules, 1998 w.e.f 12-10-1998. The cap of INR 1 crore therefore stood unaltered since 1998 and required revision since long. The amendment is a much-needed relief for small trusts and institutions.

Extended Due Date For Filing Return Of Income

Due date of filing of ITR by spouse under Portuguese Civil Code

It is proposed that the due date for the filing of original return of income be extended to **October 31** of the AY 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 of the Portuguese Civil Code applies to them.

Partner of firm liable to TP Audit

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 November 30 of the AY. Since the total income of such partner can be determined after the books of accounts of such firm have been finalized, it is proposed that the due date of such partner be extended to **November 30** of the AY.

Due Date For Filing of Belated/Revised Return Of Income Reduced

Belated ITRs and revision of ITRs

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 AY or before the completion of the assessment whichever is earlier.

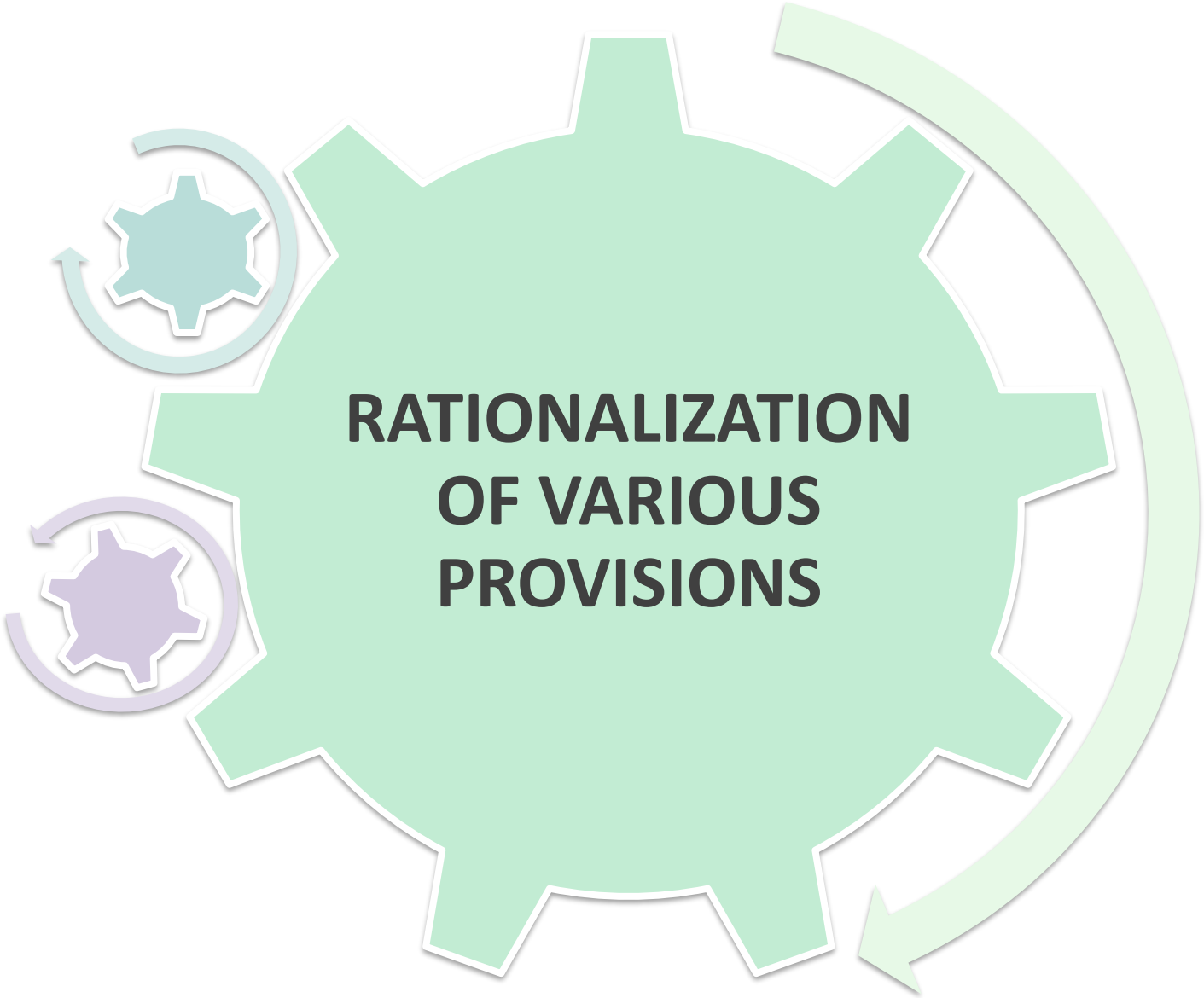
It is proposed that the last date for filing of belated or revised returns of income, as the case may be, be reduced by **3 months**. Thus, the **belated return** can now be filed **3 months before the end of the relevant AY** and in case of **revised returns 3 months before the end of the relevant AY or before the completion of the assessment, whichever is earlier**.

Notice of defect u/s 139(9)

Section 139(9) lays down the procedure for curing a defective return. It provides that in case a return of income is found to be defective, a period of 15 days or more will be provided to the assessee 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.

In view of representations and grievance received, requesting that the conditions given in the said Explanation may be relaxed in genuine cases, 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 April 1, 2021 and will accordingly apply to the AY 2021-22 and subsequent AYs


RATIONALIZATION
OF VARIOUS
PROVISIONS

Disallowance of Payment After Due Date

Clause (va) of sub-section (1) of Section 36 of the Act was inserted to the Act vide Finance Act 1987 as a measure of penalizing employers who exploit employee‘s contributions.

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

- 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
- 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 April 1, 2021 and will accordingly apply to the AY 2021-22 and subsequent AYs.

Dispute Resolution Committee

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:

- The Central Government shall constitute one or more Dispute Resolution Committee (DRC).
- 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.
- Only those disputes where the **returned income is INR 50 lac** (INR 5 Million) or less (if there is a return) and the aggregate amount of **variation proposed in specified order is INR 10 lac** (INR 1 Million) **or less** shall be eligible to be considered by the DRC.
- 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.

Dispute Resolution Committee

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

This amendment will take effect from April 1, 2021

Constitution of Board for Advance Ruling

In order to avoid 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. The AAR pronounces rulings on the applications of the non-resident/residents and such rulings are binding both on the applicants and the tax department. 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 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.

It is proposed to constitute a Board of Advance Ruling.

Consequent 13 amendments have been brought into the Act to give effect to the proposal by the Bill.

Constitution of Board for Advance Ruling

VKC Insight:

Comparative analysis of old scheme AAR and proposed board:

	Authority for Advance Rulings	Board for Advance Rulings
Constituents	AAR consists of a Chairman and various Vice-Chairman, revenue members and law members. Persons eligible : • Chairman - Retired judges of the Supreme Court, retired CJ/retired judge of an HC • Vice-Chairman - Retired judges of an HC	2 members, each being an officer not below the rank of Chief Commissioner.
Appeal against order passed	Existing 245RR: No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 245Q.	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.

Constitution of Board for Advance Ruling

VKC Insight:

	Authority for Advance Rulings	Board for Advance Rulings
Binding Nature	Rulings are binding both on the applicants and the Tax department.	Advance rulings of the Board shall not be binding on the applicant or the Department
Composition	Judicial members are appointed as members	Board to have members from within department: 2 members, each being an officer not below the rank of Chief Commissioner.

Income Escaping Assessment & Search Assessment

The Bill proposes a completely new procedure of assessment. 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. Key features:

- 153A and 153C to apply to only search initiated u/s 132 or books of accounts, other documents or any assets requisitioned on or before March 31, 2021.
- Assessments where search is initiated under section 132 or requisition is made under 132A, after March 31, 2021, shall be under the new procedure.
- Section 147 proposes to allow the AO to assess or reassess or re-compute any income escaping assessment for any AY (called relevant AY). Notice u/s 148, can be issued only when there is information with the AO suggesting escapement of income from tax. Prior approval of specified authority is also required to be obtained.

  Proposed that any information flagged for the relevant AY 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.

Income Escaping Assessment & Search Assessment

- **Objection by CAG of India** shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.
- Further, in search, survey or requisition cases initiated or made or conducted, on or after April 1, 2021, it **shall be deemed** that the AO has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee **for preceding 3 AYs**
- New **Section 148A** proposes that before issuance of notice the AO shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, AO shall decide, by passing an order, whether it is a fit case for issue of notice u/s 148 and serve a copy of such order along with such notice on assessee, **obtaining the approval of specified authority at specified stages**. **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.**
- The time limitation for issuance of notice u/s 148 is proposed to be provided in sec 149 and is as below:
  - in normal cases, no notice shall be issued if 3 years have elapsed from the end of the relevant AY (unless in few specific cases)

Income Escaping Assessment & Search Assessment

- in specific cases where the AO has in his possession evidence which reveal that **income** escaping assessment, represented in the form of asset, amounts to or is likely to amount to **INR 50 lac** (INR 5 Million) or more, notice can be issued beyond the period of 3 year but not beyond the period of 10 years from the end of the relevant AY.

- 148 notice cannot be issued at any time in a case for relevant AY beginning on or before April 1, 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.
- Time allowed for providing opportunity of being heard or where notice u/s 148 are stayed by an order or injunction of any court, shall be excluded.
- Once assessment or reassessment or re-computation has started the AO 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 April 1, 2021.

Other Rationalization provisions

Allowing prescribed authority to issue notice under section 142(1)(i):

Section 142 of the Act provides for conduct of inquiry before assessment. Clause (i) of sub-section (1) of the said section empowers only the AO to serve notice to an assessee, who has not submitted a return of income, requiring him to file return of income. Under the conscious policy of making all the processes under the Act fully faceless and in order to enable centralized issuance of notices etc. in an automated manner, it is proposed to amend these provisions **to empower the prescribed income-tax authority besides the AO** to issue notice under the said clause. **This amendment will take effect from April 1, 2021.**

Provision for Faceless Proceedings before 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 taxpayers.

Other Rationalization provisions

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 utilization of resources.

This amendment will take effect from April 1, 2021.

VKC Insight:

Clause 78 of the Bill seeks to amend the section 255 of the Income-tax Act relating to procedure of Appellate Tribunal. Pertinent to note that format of Form 36 was revised in 2018 and in June 2020, it was announced that ITAT's appeal E-filing portal was ready for launch and awaiting compliance under the mandatory security audit. The E-filing portal is yet to be implemented. ITATs function under aegis of the Ministry of Law and Justice and not under control of the Ministry of Finance to ensure independence of Tribunals who are the highest appellate forums to entertain questions of fact. ***Making disposal of appeals by ITAT will accelerate dynamic jurisdiction of the appellate system.***

Other Rationalization provisions

VKC Insight:

Pertinent to note that right of filing rebuttal to the objections of NeAC/AO against admission of additional ground of appeal & additional evidence by the appellant has not been provided in the Faceless Appeal Scheme, 2020. Personal hearings were far more effective and meaningful, specially in view of the fact that the Tribunal is the last appellate authority adjudicating questions of facts. Electronic uploading of a 1000 page written submission paperbook , which the adjudicating authority may or may not read, may become prejudicial to the interest of the assessee.

Proposed amendment if implemented carefully and successfully, will prove a big game changer for the legal tax practice and timely adjudication of ITAT appeals.

Income-tax Settlement Commission discontinued

It is proposed to discontinue 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 February 1, 2021.
- No application for settlement of cases shall be made on or after Feb 1, 2021.
- All applications filed, not declared invalid & in respect of which no order under section 245D(4) was issued on or before January 31, 2021 shall be treated as pending applications.
- Where in respect of an application, an order, which was required to be passed on or before January 31, 2021 to declare an application invalid but such order has not been passed, such application shall be deemed to be valid & pending
- CG shall constitute one or more Interim Board for Settlement, as may be necessary, for settlement of pending applications
- assessee may withdraw his application within a period of 3 months from the date of commencement of the Finance Act, 2021 and intimate the AO. If withdrawn, proceedings will abate and case disposed of on date of withdrawal
- if not withdrawn, application would be deemed as receipt on the date on which such application is allotted or transferred to the Interim Board.

Income-tax Settlement Commission discontinued

- where time-limit for amending any order or filing of rectification application under section 245(6B) expires on or after February 1, 2021, in computing period of limitation, period commencing from February 1, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded to a minimum of 60 days.
- The Board may, allot or transfer, any pending application from one Interim Board to another Interim Board.

These amendments will take effect from February 1, 2021.

Reduction of time limit for completing assessment

Clause 41 of the Bill seeks to amend Section 153, containing provisions in respect of time-limit for completion of assessment, re-assessment, and re-computation under the Act. The time limit for completion of assessment proceedings under sections 143 or 144 of the Act was reduced to 18 months for AY 2018-19 and 12 months for AY 2019-20 and subsequent AYs vide the Finance Act, 2017.

It is proposed to further reduce this time limit by three months. Thus, with effect from April 1, 2021, **the time for completing of assessment would be 9 months from end of the AY in which the income was first assessable,** for AY 2021-22 and subsequent AYs.

Amendments to Charitable Trusts & Institutions

To provide clarity on corpus donations, treatment of borrowings and set-off of loses of previous years, the bill proposes:

- Application out of corpus shall not be considered as application for charitable or religious purposes. However, when it is invested or deposited back, into one or more of the forms or modes specified in Sec 11(5) **maintained specifically for such corpus from PY income**, **such amount shall be allowed as application in PY in which it is deposited back to corpus to extent of such deposit or investment**.
- 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 PY, such repayment shall be allowed as application in the PY in which it is repaid to the extent of such repayment.
- To clarify in both sec 10(23C) & 11 that for the computation of income required to be applied or accumulated during the PY, no set off or deduction or allowance of any excess application, of any of the year preceding the PY, shall be allowed.
- 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.

Amendments to Charitable Trusts & Institutions

VKC Insight:

Prior to this amendment, as per circular no. 100 of 24-01-1973, repayment of loan is application of income. Further, there are judicial precedents which have also held that repayment will be allowed as application. However, if asset acquired was through borrowed capital, some taxpayers claimed acquisition of asset as application, while others as repayment of borrowed fund as application in the past.

While the Budget mandates removal of acquisition cost from CAPEX financed via loans & borrowings and allowability of repayment of loan from application, how transition from old approach followed in the past to this new approach will happen, needs clarity.

***Pertinent to note that amendment is prospective, being applicable from AY 2022-23.** However, whether this necessitates the herculean task of recasting and reworking of previous financial statements or application of repayment of loans will prospectively be allowed from the amendment coming into force (irrespective of whether taken as application in PYs) needs clarity.*

Amendments to Charitable Trusts & Institutions

VKC Insight:

Set-off of excess application in an year with shortfall in subsequent years had been upheld by the Madras and Gujarat High Courts. Noteworthy that there is no explicit provision under the Act enabling a trust for such set-off and there is no corresponding disclosure in the Income-tax return form ITR 7 as well.

In absence of any express provision in the Act to allow set off and with the intent to overrule such judicial precedents, the current amendment of non-allowability of set-off of excess application in one year against the shortfall of application in subsequent years is brought in.

Pertinent to note the tax compliances that charitable trusts and institutions need to take cognizance of viz. fresh registrations under section 12A and 80G to be applied within the compliance window of 01-04-21 to 30-06-21. Furthermore, the institutions are to submit a donor wise annual return of donations received from the ongoing year onwards – 3 month compliance window opens from April 1, 2021. Both these changes were applicable from the current AY but deferred in view of the COVID-19 pandemic.

Taxation of Proceeds of High Premium ULIP

Section 10(10D) provides for exemption for sum received under an LIP, including bonus on such policy, where premium payable for any of the years during the terms of the policy does not exceed 10% of actual capital sum assured.

Under the existing provisions, there is no cap on the amount of annual premium being paid. In view of HNIs misusing exemption provision by investing in ULIP with huge premium, the bill proposes to insert w.e.f AY 2021-22:

- Explanation 3 to clause (10D) to define ULIP as an LIP having components of both investment and insurance and is linked to a unit as defined in clause (ee) of regulation (3) of the IRDA (Unit Linked Insurance Products) Regulations, 19
- insert fourth proviso to clause (10D) of section 10 to provide that exemption under this clause shall not apply with respect to any **ULIP issued on or after February 1, 2021**, if the amount of premium payable for any of the previous year during the term of the policy **exceeds INR 2.50 lac**
- 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 INR 2.50 lac**, for any of the previous years during the term of any of the policy.

Taxation of Proceeds of High Premium ULIP

- 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.
- to provide that a ULIP, to which exemption under clause (10D) 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**.
  - Provide for the deemed taxation of profit and gains from redemption of ULIP as **capital gains- new sec 45(1B)** – prescribing relevant rules
  - Include such ULIPs 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.**

Taxation of Proceeds of High Premium ULIP

VKC Insight:

Some issues that need deeper probe and clarification from the Minitry:

- *The amendment proposes to Include ULIPs (to which exemption under clause (10D) does not apply) in the definition of equity oriented fund in section 112A so as to provide them same treatment as unit of equity oriented fund. Will all non-qualifying ULIPs be taxed as 'equity oriented funds', say 'debt based ULIPs'?*
- *Clarity on taxation for joint ULIPs? Whether in hands of first name-holder or proportionate taxation?*
- *Under existing provisions, if premia paid exceeds 10% of sum assured, then proceeds are taxed at applicable slab rate (10% to 30%) under heard IOS. With proposed amendment, such ULIPs, if premia exceeds 2.50 lac, will be taxed at 10%/15% u/s 112A/111A respectively. Clarification required.*
- *Further clarity required on fifth proviso. For eg. if 4 ULIPs purchased on/after Feb 1, 2021, and total premia of 3 of these ULIPs in aggregate does not exceed 2.50 lac, despite (say) 4th ULIP being of 4 lac premia, will exemption still be available for the remaining 3 ULIPs since premia is below 2.50 lac in aggregate?*

The Provision of Slump Sale.

Section 50B of the Act contains special provision for computation of capital gains in case of slump sale. Sec 2(42C) defines "slump sale" to mean 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.

Hon'ble SC in Artex Manufacturing Company [(1997), 227 ITR 260] held that sale of business on a going concern for a **lump-sum non-monetary consideration** was transfer through sale, since slump price was determined by the value on the basis of itemized assets, though this price was absent in the agreement.

Similarly, Hon'ble SC in the case of Dhampur Sugar Mills [(2006) 147 STC 57] held that a dealer who took a sugar mill on long term lease for an agreed amount of license fee and in satisfaction therefore, 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.

The Bill proposes w.e.f AY 2021-22, to amend scope of term "**slump sale**" by amending section 2(42C) **so that all types of "transfer" as defined therein are included within its scope.**

The Provision of Slump Sale.

VKC Insight:

Slump sale, governed by section 50B, provides for sale by transfer of one or more undertakings for lump sum consideration being values assigned to individual assets and liabilities. The above clarification comes in consonance with judicial precedents distinguishing transfer of assets and indirect itemized sale of assets from slump sale. Some aspects still requiring clarity and adjudicated by appellate forums in case of dispute with department, are as under:

- *Where liabilities are more than value of assets, will net worth be zero or negative?*
- *Can defunct assets or properties can be left out from calculation of net worth?*
- *Will actual asset be reduced by depreciation even if not claimed by assessee?*
- *Are deeming provisions of 50C, 43CA, 56(2)(x) applicable in case of slump sale?*

In slump sale transactions, CG earned by seller is taxable. As corollary, buyer claimed dep on higher consideration discharged, which does not result in any tax leakage. The amendment however, does not differentiate a taxable from a non-taxable transaction.

Dissolution/Reconstitution of Specified Entity

Transfer of capital asset to partner on dissolution or reconstitution

To combat uncertainty regarding recording of revalued or self-generated assets in books, it is proposed to substitute the existing section 45(4) with a new sub-section (4) and also insert a new sub-section (4A) w.e.f AY 2021-22. New proposed sub-section (4) of section 45 of the Act applies in a case where a specified person who receives during the PY 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,

- profit & gains arising from **receipt** of such capital asset by 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 PY in which the capital asset was received by the specified person.
- for sec 48, FMV of asset on date of such receipt shall be deemed to be the full value of the consideration received or accruing.

Dissolution/Reconstitution of Specified Entity

- balance in 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.

Proposed 45(4A) applies:

- where specified person receives **money or other asset** at the time of dissolution **or reconstitution** of the specified entity, 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.
- profits or gains arising from receipt by the specified person shall be chargeable to income-tax as **income of the specified entity** under “CG"
- Same shall be deemed to be the income of such specified entity of the PY in which the money or other asset was received by the specified person.

For the purposes of section 48 of the Act:

- **value of money or FMV 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

Dissolution/Reconstitution of Specified Entity

- the balance in capital account of specified person in books of accounts of specified entity at time of its dissolution or reconstitution its COA.

The balance in capital account is to be calculated without taking into account, the increase due to revaluation of any asset or self-generated goodwill/ 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 PY;
- "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.

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, (with prior approval as specified) may provisionally attach any property of assessee to protect interest of revenue. Such attachment is valid for 6 months. Further, section allows assessee to furnish a bank guarantee of the value of property so attached, for revocation of the provisional attachment, invoked on failure to pay tax demand on time.

The anti-abuse provision, section **271AAD** was inserted to impose penalty on a person/ person causing such person to make a false entry or omit an entry from his books of accounts. Upon initiation of such penalty proceedings, it is highly likely that the taxpayer may also evade the payment of such penalty, if imposed.

In order to protect the interest of revenue, it is proposed to amend the provision of section 281B of the Act to enable the AO to exercise 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 INR 2 crore** (INR 20 Million).
This amendment will take effect from April 1, 2021.

The Provision for Equalisation levy

Clause (50) of section 10 provides for 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 April 1, 2021 and chargeable to Equalisation Levy under that Chapter.

The Bill proposes 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**:
  - Acceptance of offer for sale;

The Provision for Equalisation levy

  - Placing the purchase order;
  - Acceptance of the Purchase order;
  - Payment of consideration; or
  - 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:
  - consideration **for sale of goods irrespective of whether the e-commerce operator owns the goods; and**
  - 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 April 1, 2020.

It is also proposed to amend section 10(50) of the Act w.e.f April 1, 2021:

- provide that section 10(50) will apply for the e-commerce supply or services made or provided or facilitated on or after April 1, 2020.
- clarify that exemption under section 10(50) will not apply for royalty or FTS taxable under Act as per agreement notified by CG (u/s 90 or 90A of the Act.
- 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 Finance Act, 2016.

The Provision for Equalisation levy

VKC Insight:

Retrospective amendments in Equalisation Levy (EL) have expanded its scope to almost all digital transactions. With FTS/Royalty not falling with its scope and covered under the exemption in section 10(50), such transactions will continue to be taxable under section 9(1)(vi) as read with applicable article in relevant DTAA.

Clarification that the income-tax exemption in Section 10(50) would apply from FY 2020-21 is a beneficial change. However, it would have been beneficial if such issues are settled by way of a circular/ notification/ press release earlier in the year rather than in annual budgets since there have been roving queries around this issue throughout the year.

Now, for EL already paid where exemption applied previously, whether credit of EL paid or refund of the same will be granted? This needs to be clarified.

*The amendment has further broadened the scope by bringing **any transactions with a cross-border element within ambit of EL**.*

- *Whether an internal portal accessible to a company for placing a procurement order would qualify as electronic platform?*

The Provision for Equalisation levy

VKC Insight:

- *Whether a transaction of physical purchase of goods in such case would also be subjected to EL?*
- *If it is merely a physical transaction in goods or service, is the digital or electronic mode of payment enough to bring it within the ambit of EL?*

As revenue and user thresholds are yet to be notified, significant economic presence provisions is not yet operative. Once the thresholds are notified, especially for transactions with non-treaty countries, the inter-play between EL and SEP provisions will have to be examined.

Depreciation on Goodwill

The bill proposes, that goodwill of a business or profession will not be considered as a depreciable asset. Hon'ble Supreme Court in the case Smiff Securities Limited [(2012)348 ITR 302 (SC)] stands overruled. 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 subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the AY 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

Therefore, it has been proposed w.e.f AY 21-22 to:

- amend 2(11) to exclude goodwill from "block of asset"
- Amend 32(1)(ii) to provide goodwill as non-depreciable asset
- amend Explanation 3 to 32(1) to exclude goodwill as an asset
- amend section 50 to provide that in a case where goodwill of a business or profession formed part of a block of asset for the AY beginning on April 1, 2020 and depreciation has been claimed, WDV of that block of asset and STCG, if any, shall be determined in the manner as may be prescribed.

Depreciation on Goodwill

- amend section 55 by substituting 55(2)(a) to provide that 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:
  - 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
  - in the case falling under 49(1)(i) to (v) 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
  - in any other case, shall be taken to be Nil
- 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 u/s 49(1)(i) to (iv) and any deduction on account of depreciation u/s 32 has been obtained by the assessee in any PY preceding the PY relevant to AY commencing on or after April 1, 2021, then cost of acquisition will be purchase price as reduced by the depreciation so obtained by assessee before the PY relevant to AY commencing on April 1, 2021.

Depreciation on Goodwill

VKC Insight:

It is worthwhile to note that the accounting standards take into account the appointed date of court scheme transactions into consideration for accounting purposes. In case of Ind-AS the scheme conclusion date is considered. There is ambiguity in relation to scheme concluded in FY 2020-21 or ongoing scheme, having an appointed date prior to the date from which this amendment comes into force. It may be possible to claim goodwill in FY 19-20 considering validity of appointed date under income-tax.

Whether goodwill in the amendment includes other specific intangibles, like brand name, trademark, customer base etc. needs further clarification.

Depreciation on Goodwill

VKC Insight:

Sale of busines takes place in two manners

(1) Asset Sale

(2) Slump Sale

In asset sale, goodwill (other than purchased) may be ignored for computation of CG. One may think that this will result in cash outflow without corresponding tax benefits. However, in case of slump sale, net worth is considered as cost base for computing cost of acquisition. Since goodwill is proposed to be non-depreciable, its actual cost will be considered. In such a case, goodwill generated even on tax neutral transactions will increase the cost base and reduce capital gains. Proposed amendments are therefore unlikely to impact capital gains on such transactions. As to how the advance tax obligations for entities getting impacted retrospectively by this ruling for ongoing FY will work out, needs clarification.

Furthermore, clarification needs to be issued with respect to manner in which goodwill can be prorated to cost of asset sold partially out of acquired undertaking.

Amendments to 143(1) and 143(2)

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:

- Amend 143(1)(a)(iv), 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.
- Amend 143(1)(a)(v) so as to give consequential effect to amendment carried out in section 80AC vide Finance Act, 2018.
- 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 **9 months from the end of the FY 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 6 months to 3 months from the end of the FY in which the return is furnished with effect from April 1, 2021.**

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 July 1, 2021.

As the said Adjudicating Authority under PBPT Act is proposed to commence the discharging of functions from July 1, 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 July 1, 2021 and ending on September 29, 2021, the time limit for passing such order shall stand extended to September 30, 2021.

This amendment will take effect from July 1, 2021.

Presumptive taxation – Section 44ADA

The provisions of presumptive taxation under section 44ADA when introduced via Finance Act 2016, were made applicable to Individual, HUF and partnership firm but not an LLP as defined under clause (n) of sub-section (1) of section 2 of LLP 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 LLP Act, 2008.

This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-22 and subsequent AYs.

Other Amendments

Definition of the term "Liable to tax" :

Proposed to insert 2(29A) w.e.f AY 2021-22, to define the term "liable to tax" in relation to a person to mean 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.

Income Declaration Scheme (IDS) amendment:

The Income Declaration Scheme, 2016 (the Scheme) provided an opportunity to taxpayers to offer to tax undisclosed incomes & assets. Taxes paid under the Scheme were non-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 June 1, 2016.

TDS On Purchase of Goods

It is proposed to provide for TDS by person responsible for paying any sum to any resident for purchase of goods **@ 0.1% on buyer** (whose total sales, gross receipts or turnover from the business carried on by him exceed **INR 10 crore** (INR 100 Million) during the FY immediately preceding the FY in which the purchase of goods is carried out), **w.e.f. 01-07-2021.**

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 INR 50 lac** (INR 5 Million) in the PY. It is also proposed to provide that the provisions of this section shall not apply to:

- a transaction on which tax is deductible under any provision of the Act; and
- 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.

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. Further, provisions of Sec 206AA are being amended to provide that where PAN is not provided, the TDS shall be at the rate of 5%.

TDS On Purchase of Goods

VKC Insight:

Under the new proposed section 194Q, TDS @ 0.1% to be deducted by a buyer with sales/gross receipts or turnover from business exceeding INR 10 crore, if purchase of goods by him from the seller is more than INR 50 lacs in aggregate in the PY. Whereas this new provision will increase compliance burden on the assessee, introspection is required as to whether the section needs to be made applicable on all purchases ***or only the cash purchases.*** *As we move towards a more digitalized India where bent post demonetization has been towards a cash-less economy, increasing compliance burden on cash-free transactions does not seem a prudent move.*

Provisions of Section 194Q and 206C(1H) are mutually exclusive. Pertinent to note that whereas vide Circular No. 17 of 2020, it was notified that sale consideration threshold of 50 lacs for Sec 206C(1H) will be considered on sales effected from 01-04-2020 (and not from 01-10-2020). However, since TCS is applicable on receipt, tax would be applicable on receipts post 01-10-2020, even if in relation to prior sales. Similar clarification for Sec 194Q is also expected.

TDS On Purchase of Goods

VKC Insight:

Since Income-tax Act nowhere describes the word 'goods', reliance may have to be placed on its meaning as in the Sale of Goods Act, 1930. Section 2(7) of the Act defines goods to inter alia, mean every kind of movable property other than actionable claims and money and includes stocks and shares.

Definition of Goods provided in CGST Act, 2017 is more specific and may not be resorted to in case of present amendment.

Clarifications need to be issued:

- *whether adjustment of sales return, discount etc would be given needs further clarification.*
- *whether the section would cover exchange of goods*
- *whether lower deduction tax certificate can be obtained*
- *whether purchases by all branches cumulatively need to be considered for the threshold limit*
- *in case seller is non-resident, compliance under provisions of sec. 195 and not 194Q will apply.* ***If both parties are non-resident, transaction will be extra-territorial in nature, outside the ambit of provisions of Sec 194Q.***

TDS On Purchase of Goods

VKC Insight:

A comparative chart of provisions of the new section 194-Q with 206C(1H) is as under:

Particulars		194Q	206C(1H)
		Proposed TDS Section	Existing TCS Section
	Section applicable from	01-07-2021	01-10-2020
	Applicable on	Purchase of goods	Sale of goods
	Compliance by	Buyer (whose sales/turnover exceed INR 10 cr. in immd. preceding PY)	Seller (whose sales/turnover exceed INR 10 cr. in immd. preceding PY)
	On Payments to	Resident Seller	Resident Seller
	Tax on which amount	Purchases exceeding INR 50 lacs	Sales exceeding INR 50 lac
	Trigger event-1	0.1% of sale consideration	0.1% of sale consideration
	Trigger event-2	At time of payment or credit, whichever is earlier	At time of receipt of amount

TDS On Purchase of Goods

VKC Insight:

Particulars		194Q	206C(1H)
		Proposed TDS Section	Existing TCS Section
	Exceptions	Transactions subject to TDS under any other section Tax collected under provisions of 206C, other than 206(1H)	• Exports/ Imports • All motor vehicles • Fuel supplied to non-resident airlines at airports in India • If 194Q applies • Other goods/ services covered in other sub-sections of 206C
	Rate of tax	TCS only on amount in excess of 50 lac	TCS only on amount in excess of 50 lac
	Rate if PAN/Aadhaar of buyer not available	5%	1%
		Tax needs to be deposited by 7th of succeeding month	Tax needs to be deposited by 7th of succeeding month

TDS On Purchase of Goods

VKC Insight:

Particulars		194Q	206C(1H)
		Proposed TDS Section	Existing TCS Section
	Compliances – Deposit	Quarterly returns in Form 26Q to be furnished by 15th of month succeeding the quarter, and 16A certificate to be furnished to seller by buyer	Quarterly returns in Form 27EQ to be furnished by 15th of month succeeding the quarter, and 27D certificate to be furnished to buyer by seller
	Compliances – Returns	01-07-2021	01-10-2020

TDS On Purchase of Goods

VKC Insight:

Case/ Date	Buyer Turnover	Seller Turnover	Trans. Value	Receipt by Seller	Section	TDS/TCS	Justification
Case-1							
01-07-21	08 cr	05 cr	10 lacs	-	NA	NA	Both Turnovers below limit
Case-2							
15-07-21	08 cr	15 cr	20 lacs	-	NA	NA	One turnover below limit + Transaction value is below 40 lacs
16-07-21	08 cr	15 cr	10 lacs	60 lacs	NA	NA	Though received > 50 lacs, cumulative sales < 50 lacs
17-07-21	08 cr	15 cr	20 lacs	80 lacs	206C(1H)	3,000 *(80-50 x 0.1%)*	Cumulative sales > 50 lacs; & TCS applicable on receipt, incl. advance
Case-3							
18-07-21	08 cr	15 cr	80 lacs	-	206C(1H)	0	Though 206C(1H) is applicable, no TCS since no sum **received** ag. sale of 80 lacs
Case-4							
01-07-21	18 cr	15 cr	90 lacs	60 lacs	194Q	4,000 *(90-50 x 0.1%)*	TDS on earlier of payment/credit;

TDS/TCS on Non-Filer at Higher Rates

It is proposed to insert new sections 206AB as a special provision providing for higher rate for TDS for the non-filers of income-tax return. Features:

- Not applicable on TDS u/s 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 5%**

Similarly, proposed to insert a section 206CCA as a special provision for providing for higher rate of TCS for non-filers of ITRs. This section 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 5%**

If the provision of section 206AA/206CC 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 206AA/206CC.

TDS/TCS on Non-Filer at Higher Rates

The specified person is a person who has not filed the returns of income for both of the two AYs relevant to the two PYs which are immediately before the PY 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 AYs. There is another condition that **aggregate of tax deducted at source and tax collected at source in his case is INR 50,000 or more in each of these two PYs.** Specified person shall not include a non-resident who does not have a PE in India w.e.f. July 1, 2021.

VKC Insight:

There are some major challenges in the proposed amendment.

- *How to determine deductee/collectee has filed its ITR for the past 2 yrs?*
- *Is a declaration required to be obtained?*
- *What would be the legal standing of the declaration obtained?*
- *Though the sections spell out the government's resolve to promote tax return filing, the overall compliance burden increases*

Taxability of interest on various funds

To restrict employees from contributing huge amounts to provident funds and to bring the interest accrued/received on such contributions to tax, 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 PY 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 INR 2.5 lac (INR 0.25 Million) in a PY in that fund, on or after April 1, 2021, computed in such manner as may be prescribed.

VKC Insight:

The earlier Exempt-Exempt-Exempt module as applicable to PF funds has now been made conditional to threshold limit. Pertinent to note that interest portion attributable to contributions, in excess of INR 2.50 lacs will now be taxable.

- *Accordingly, if a taxpayer contributed 3 lacs, interest on contribution of 3 lacs worked out to 25,000 and proportionate interest on 2.50 lacs worked out to 20,000; interest of 5,000 will now become taxable in hands of the taxpayer.*

Certain other clarifications awaited on queries emanating from this amendment:

- *Does the amendment include all PF/PPF/GPF accounts?*

Taxability of interest on various funds

VKC Insight:

- *Interest on PPF account is exempt u/s 10(11). However, there is limit of investment of 1.50 lacs p.a. in PPF accounts. Is interest on all PF accounts taken in aggregate taxable? which would include PPF account? Or since the amendment refers to aggregate contributions in excess of 2.50 lacs in '**that fund**', will only contributions in excess of 2.50 lacs in funds individually be aggregated?*
- *Head of income under which the same will be taxed depends on the type of contribution? If PPF is covered, then PPF will get taxed under IOS, whereas RPF will be taxable under the head Salaries?*
- *Will interest on contributions made to accounts of minor/major child exceeding 2.50 lacs will also be taxed?*

*Pertinent to note that Finance Act 2020 had made amendments to make **employer** contributions made to PF/EPF accounts in excess of 7.50 lacs taxable as perquisites in hands of the employees. Interest component on the same was also provided to be included in the employees incomes. In such scenario a clarification is expected for the prescribed method of interest taxability to avoid double taxation of interest incomes.*

Taxability of interest on various funds

VKC Insight:

- *Section 80CCD provides for deduction against contribution for pension funds.*
  - *As per sec 80CCD(1), deduction for deposit to pension fund made by taxpayer is allowed. The same is limited to*
    - *10% of salary for an employee and*
    - *20% of GTI for an individual.*
    - *Deduction is limited to the overall cap of 1.50 lacs under Section 80C, as prescribed by Section 80CCE*
  - *As per sec 80CCD(1B), deduction for deposit to pension fund made by taxpayer is allowed. The same is limited to INR 50,000*
  - *As per sec 80CCD(2), deduction for deposit to pension fund made by employer is allowed. The same is limited to*
    - *14% of salary, where employer is CG*
    - *10% of salary, in case of other employers*

Provision of 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 INR 1 crore (INR 10 Million) in any PY. In case of a person carrying on profession he is required to get his accounts audited, if his gross receipt in profession exceeds, INR 50 lac (INR 5 Million) in any PY. 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 INR 1 crore (INR 10 Million) to **INR 5 crore** (INR 50 Million) in cases where:

- aggregate of all receipts in **cash during the PY does not exceed 5% of such receipt and**
- aggregate of all payments in **cash during the PY does not exceed 5% of such payment.**

In order to incentivize 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 INR 5 crore (INR 50 Million) to INR 10 crore (INR 100 Million) in cases listed above.

This amendment will take effect from April 1, 2021 and will accordingly apply for the AY 2021-22 and subsequent AYs.

Withholding tax provisions on FIIs

Section 196D of the Act provides for deduction of tax on income of FII from securities as referred to in section 115AD(1)(a) (other than interest referred in section 194LD of the Act) at the rate of 20%. Since the said section provides for TDS at a specific rate indicated therein, benefit of DTAA is not taken.

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 section 2(37A), allows benefit of DTAA. This principle has also been upheld by **Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012**).

It is proposed to insert a proviso to 196D(1) to provide that in case of a payee to whom an agreement referred to in section 90(1) or section 90A(1) applies and such payee has furnished the TRC, **then TDS @ 20% or rate or rates of income-tax provided in such agreement for such income, whichever is lower shall apply. This amendment will take effect from April 1, 2021.**

Provisions of Minimum Alternate Tax

To ensure Section 115JB provides 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 APA** entered with taxpayer under section 92CC, w.e.f AY 2021-22 it is proposed to:

- provide that in cases where past year income is included in books of account during the PY on account of an APA or a secondary adjustment, the AO shall, on an application by assessee, recompute book profit of past year(s) and tax payable, in prescribed manner. Further, limitation period of 4 years under sec. 154 to be reckoned from end of FY in which said application is received by AO.
- provide similar treatment to dividend as already there for capital gains on transfer of securities, interest, royalty and FTS in calculating book profit, 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.

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. In order to rationalize the provision of this clause and to remove the difficulties in meeting some of the conditions, the followings amendments are proposed in the Bill w.e.f AY 21-22:

- Allowing **Alternate Investment Fund (AIF)** to invest up to 50% in non-eligible investments
- Allow investment through holding company.
- Allow investment in NBFC- IDF/IFC (non-banking finance company-infrastructure debt fund/Infrastructure finance company).
- Take loan or borrowings by SWF/Pension Fund
- Undertake commercial activity
- Provision for liability to tax where income is exempt in foreign country
- The central government to prescribe rules for the method of calculation.

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Sources:

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