MPC & CO LLP
CHARTERED ACCOUNTANTS

UNION BUDGET
2021-2022

An Analysis
2021

FOREWORD

Dear Reader,

We refer to our preliminary report on the Indian Budget for the Financial Year 2021-22 which was presented on behalf of the Government of India by the Finance Minister, Mrs. Nirmala Sitharaman on February 01, 2021. As reported therein, several new proposals and amendments were proposed in the tax regulations.

Representations were made by various Institutions, Chambers of Commerce, in respect of certain major proposals.

Taking the same into account and making few corrections in the Budget proposals, certain amendments were introduced by the Finance Minister on the proposals in the Budget in the Indian Parliament which approved the same on March 23, 2021. Thereafter, the President of India gave his assent on March 28, 2021 on such Budget proposals.

We present in this Special Corporate Update encapsulating important changes as enacted in the tax regulations as well as in the Companies Act, 2013, for your information.

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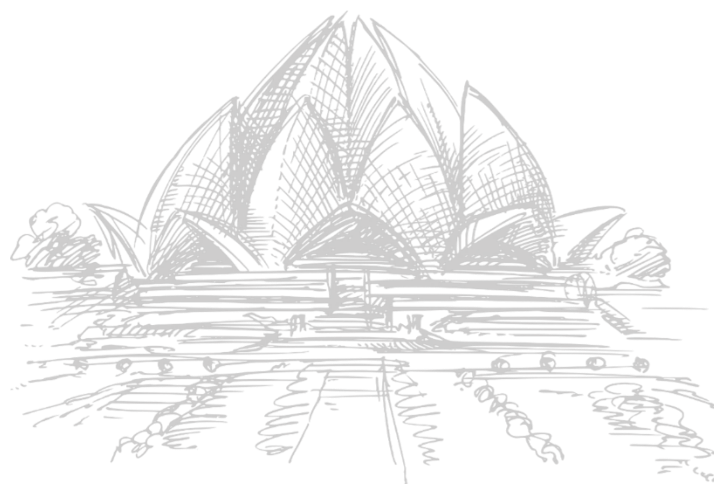

DIRECT TAX

Snapshot of Rates of Tax

No change in rates of taxation have been made in the Finance Act, 2021 ("Finance Act"). A snapshot of the rates of tax applicable for Assessment Year 2021-22 and Assessment Year 2022-23 in respect of individuals and companies has been provided at Appendix A and Appendix B, respectively.

International Taxation

Clarifications under the Equalisation Levy Regime

The Equalisation Levy regime was first introduced by the Finance Act, 2016, which provided for taxation of Non-residents for provision of certain digital advertisement services. By the Finance Act, 2020, the scope of equalisation levy was further expanded to specify 'e-commerce supply or services', which were subjected to equalisation levy of 2%. A Non-Resident e-commerce operator not having a Permanent Establishment ('PE') and income connected to such PE was made responsible to pay the Equalisation Levy of 2%.

An e-commerce operator was defined as a non-resident who owns, operates or maintains a digital or electronic facility or platform for online sale of goods or online provision of services.

It was generally felt that the scope of equalisation levy on e-commerce was drafted in a manner which could lead to unintended taxation. In order to provide some clarity, the following amendments have been made:

(1) It has now been clarified that this provision shall not apply to income which is chargeable to tax as 'Royalty' or 'Fee for technical services' under separate provisions of the Income-tax Act, 1961 ("Act") or the tax treaty.

(2) An Explanation has been inserted to widen the scope, which provides that the following 'online' activities shall be 'included' in the definition of 'online sale of goods' and 'online provision of services':

- acceptance of offer for sale; or
- placing of purchase order; or
- acceptance of the purchase order; or
- payment of consideration; or
- supply of goods or provision of services, partly or wholly;'

Accordingly, where a non-resident falling within the definition of an e-commerce operator, undertakes any of the aforesaid online activities, it shall be chargeable to equalisation levy.

In the Finance Act, it has also been clarified that even where the e-commerce operator has only facilitated online sale of goods (without actually owning them), equalization levy shall be chargeable on the 'entire' consideration. This position may lead to hardship where the e-commerce operator is only earning a commission on such sales/ services being provided by a third party.

Further, while passing the Finance Bill, 2021, the Government has carved out an exception to charge of equalisation levy, in cases where the goods sold are owned by an Indian resident or services are provided by an Indian Resident. Further, an exception has also been made if such goods are sold/ services are provided by a Non-resident having a PE in India and such sales/ services are effectively connected with such Permanent Establishment in

India.

The aforesaid clarifications shall be applicable retrospectively from April 01, 2020, i.e. in respect of consideration received in respect of e-commerce transactions made on or after April 01, 2020.

Insertion of the definition of the term 'Liable to tax'

The expression 'liable to tax' assumes great significance in the arena of international taxation, especially in the context of interpretation of tax treaties. More recently, this expression has been employed in the Indian Income Tax Act itself, in terms of the amended residency rules (Section 6) brought about by the Finance Act, 2020.

In terms of the amendment by the Finance Act, 2020, Indian citizens shall be deemed to be tax residents of India, in case they are not liable to tax in any country, if their Indian sourced income exceeds INR 1.5 million.

By the Finance Act, the expression 'liable to tax' has been defined. In terms of the definition, 'liable to tax' shall mean that a liability to tax on such person 'exists' under the Income tax laws of a country (country in reference to which, 'liability to tax' is examined). It is clarified that even if a specific exemption from Income tax has been provided (despite the liability to tax), such person shall be regarded as 'liable to tax' in such country. Accordingly, if an Indian citizen living abroad is not actually paying tax in such country due to a specific waiver/ exemption, while being liable to Income tax under the laws of that country, he shall not be treated as a resident of India, under the deeming provisions of amended Section 6 of the Income tax Act.

Under tax treaties, the aforesaid expression is relevant while determining the residence of persons, especially, stateless individuals, to examine the claim of relief under such tax treaties. For application of tax treaties, it is essential that a person should be a resident of at least one of the treaty partners. Such residence is usually determined on the basis of the 'liability to tax' of such person in a Contracting State. The scope of the expression 'liable to tax' is often viewed as contentious and is a litigious matter.

The insertion of the definition of 'liable to tax' in the Indian domestic law shall serve as a definition of this expression used in India's tax treaties as well.

The aforesaid amendment shall be applicable from AY 2021-22 onwards and as such will be applicable from the financial year beginning from April 01, 2020.

Domestic Taxation

No Depreciation on Goodwill on Business or Profession

As per Section 32 of the Act, intangible assets such as know-how, patents, copyrights, trademarks, licenses etc. are eligible for depreciation at 25% on written down value. Whilst goodwill has not been specifically defined or included within the scope of intangible assets for the purpose of claim of depreciation, the Supreme Court of India in its decision in *Smifs Securities Ltd. [2012] 348 ITR 302*, had allowed the depreciation on amount paid for goodwill in an acquisition or reorganization of business.

In the Finance Act, amendments have been made to neutralize the principle laid down in the aforesaid decision of the Supreme Court.

As per such amendment, goodwill has been excluded from the scope of 'intangible assets' eligible for depreciation claim. Furthermore, in respect of amount of goodwill already included in the existing

'block of assets' (on which depreciation has been already obtained), the block of assets shall now not include the value of goodwill.

This amendment would have a significant impact in business acquisition transactions, wherein, the aspect of intangible assets, particularly goodwill, plays a significant role. The withdrawal of depreciation allowance on such goodwill may have a detrimental effect on such transactions.

Furthermore, consequent to such amendments, special rules shall be prescribed for computation of capital gains and adjustment of Written Down Value, in respect of transfer of whole of a block of assets, where goodwill forms part of the block of assets. For this purpose, necessary amendments have been made in Section 50 of the Act.

For the purpose of computation of capital gains tax at the time of sale of goodwill on which depreciation has already been claimed, as per amendment to Section 55, purchase price of goodwill shall be reduced by the depreciation already claimed. Thus, to the extent of the depreciation obtained by the taxpayer, the taxpayer shall be liable to pay additional capital gains tax, if the sale consideration exceeds such reduced purchase price.

This amendment shall take effect from Assessment Year 2021-22, i.e. financial year starting from April 01, 2020. As such, this amendment is retrospective in application and would apply to transactions which have already been undertaken from April 01, 2020.

Restriction on deduction of employee's contribution to provident fund unless paid by the due date

As per section 2(24)(x) of the Act, any sum received by the assessee from his employees as contributions to any provident fund or other funds for the welfare of such employees is considered as income. Section 36(1)(va) provides deduction of such sum, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date to deposit such sum in the relevant fund.

The High Court of Delhi in the decision of *CIT v AIMIL Ltd [2010] 321 ITR 508*, held that the deduction of employee's share in provident fund or other welfare funds is allowed to the employer even if such sum is deposited late but before the due date of filing return of income. Various other High Court judgments followed the said decision and deduction was allowed to the employer.

It has now been clarified that employee's contribution to provident fund shall not be allowable unless the employer has made the said payments on or before the due date prescribed under the relevant laws, thus overruling the decisions of High Courts. In this regard, amendments have been made to section 43B and Section 36(1)(va) of the Act.

These amendments shall take effect from Assessment Year 2021-22 and thus apply for the financial year beginning from April 01, 2020.

Dividends earned by Foreign Companies to be Excluded from MAT Provisions

Under the provisions of Minimum Alternate Tax ("MAT") under section 115JB, interest, royalty and fee for technical services (FTS) is required to be excluded from the computation of 'Book Profit' of a foreign company, if such income is taxable at a rate lower than the rate prescribed for MAT purposes (which is currently 15% plus applicable surcharge and cess). Furthermore, the corresponding expenses are also required to be excluded from such computation.

Earlier, the Finance Act, 2020 had made a significant amendment whereby the burden of taxation of dividends was shifted to the recipient of dividend. In this connection, the Finance Act has now provided that in the case of a foreign company, the dividend income shall also be reduced and the expenses relatable to such dividend income shall be added back to the book profit, where such dividend is otherwise taxable at a rate lower than 15%.

This amendment shall apply from AY 2021-22, i.e. in respect of income generated from April 01, 2020 onwards.

Adjustment of Past Year' Book Profit under MAT in certain cases

Under the Indian transfer pricing regulations, Advance Pricing Agreement ("APA") scheme enables entering into an agreement between the taxpayer and the tax authorities for determination of the arm's length price of the international transactions with Associated Enterprises. Such scheme also has a roll back feature, i.e. applicability of the APA to earlier years.

The erstwhile provisions of MAT did not lay down any mechanism for adjustment of book profits on which MAT is payable where past year income is included in the book profit of the current year on account of giving effect to the APA as entered into or due to secondary adjustments. The Finance Act has introduced such mechanism for adjustment of book profits of past years and resultant tax payable, if any, in the case of a foreign company, which is required to be recomputed on account of APA. For such purpose, the taxpayer shall be required to move an application for rectification with the tax officer, to facilitate such recomputation of book profits and tax payable, if any. However, it has also been provided that such provisions shall be applicable only if the assessee has not utilized MAT credit in any subsequent year. Furthermore, no interest shall be paid on refunds on account of application of these provisions.

This amendment shall apply from AY 2021-22 and as such apply for financial year beginning from April 01, 2020.

Changes in Taxation of Capital Gains on Sale of Undertaking on Slump Sale Basis

Under erstwhile laws, special provisions are enshrined which prescribe the manner of taxation in case of a Slump Sale. A slump sale is defined as a 'transfer' of an undertaking as a result of sale for a lump sum consideration without values being assigned to individual assets or liabilities in such sale.

Disputes with tax authorities often arose on the aspect whether other forms of transfer (such as exchange) of an undertaking apart from a conventional sale, would also attract provisions of slump sale. The Courts held that only a transaction of sale would be covered under this provision.

The definition of slump sale in section 2(42C) has now been amended. In terms of such amendment, transfer of an undertaking under any of the modes of transfer as referred to in sec 2(47) shall be characterized as a 'slump sale' and thus, expands the definition of the term 'Slump Sale'.

Furthermore, it has also been provided that the full value of consideration for the purpose of computation of capital gains tax in a slump sale transaction shall be the Fair Market Value ("FMV") of the asset. The method for determining the FMV shall be prescribed in due course. Also, for the purpose of computing the net worth of the undertaking, the value of self-generated goodwill shall be considered to be nil.

This amendment shall be effective from AY

2021-22 onwards and shall apply to transactions effected from April 01, 2020.

Limited Period Relaxation on Imputed Stamp Valuation on Sale of Residential units

Under the provisions of the Act, where land or building is sold or purchased below the value prescribed by the Government for payment of stamp duty, for the purpose of computing tax in the hands of the buyer for the benefit obtained in buying at a lesser value [under Section 56(2)(x)] as well as the seller for computing tax on capital gains [under Section 43CA], the stamp value is deemed to be the full value of consideration. However, a tolerance band of 10% had been provided.

On account of the pandemic, real estate companies have witnessed sluggish demand and resultantly, have large amounts of unsold inventory, causing significant financial strain on such companies. In order to boost the real estate sector and assist in liquidation of such assets, the tolerance band has been increased to 20% for the sale of residential units where consideration does not exceed INR 20 Million between November 12, 2020 to June 30, 2021.

As such, if the stamp value of such residential units doesn't exceed 120% of their sale price, the actual sale price shall be considered for the purpose of computing taxable profits in the hands of the real estate companies, rather than the imputed stamp value. Similarly, no artificial imputation shall be made in the hands of the buyer of such stock.

The amendment is only applicable to residential units sold as stock in trade and shall apply to first time allotment of residential units. As such, the enhanced tolerance band shall not be available to resale of residential units. Further, the consideration received or accruing as a result of such transfer should not exceed INR 2 crore (INR 20 million).

Amendment in capital gain rules in case of dissolution or reconstitution of Specified Entities

Under the erstwhile provisions of the Act [Section 45(4)], Capital gains arising on account of transfer of capital asset by taxable entities like Body of Individuals (BOI) or Association of Persons (AOP) to its partners/ members at the time of dissolution were chargeable to capital gains in the hands of the aforesaid entities. For this purpose, the Fair Market Value (FMV) of the asset as on the date of transfer is considered to be full value of consideration for the purpose of capital gains tax.

The Finance Act has made certain amendments to the aforesaid scheme of taxation, where capital assets, money as well as stock in trade, are transferred to partners/ members of the aforesaid specified entities in case of dissolution/ reconstitution of such Specified Entities.

Firstly, a new Section 9B has been inserted, wherein, it has been provided that where a specified entity transfers a capital asset or stock in trade to its partners/ members on its dissolution or reconstitution, such specified entity shall be liable to tax in the year of receipt of such capital asset/ stock in trade. Such taxation shall be made in accordance with the provisions of the Income tax law, i.e., either as capital gains or business income, as the case may be.

Secondly, the erstwhile capital gains tax provisions dealing with receipt of capital assets by partners/ members on reconstitution have been revamped. Under the amended law, where money or capital asset is received by a partner/ member upon reconstitution of the specified entity, capital gains shall be the excess of value of money or capital asset or both over the

balance in the capital account of the partners/ members.

The aforesaid amendments are applicable from AY 2021-22 and as such, shall be applicable in the financial year beginning April 01, 2020.

Personal Taxation

ULIPs to be taxed on Maturity

Any sum received under a Unit Linked Insurance Policy (ULIP) issued on or after February 01, 2021, where individual or aggregate premium of such policies exceeds INR 2.50 lakh (INR 0.25 million) in any year during the term of such policies, shall not be exempt under Section 10(10D). Accordingly, gain arising on redemption/ maturity of such policies shall be charged to capital gains tax under section 45(1B) (except when sum is received on the death of a person) in the year in which such amount is received. The capital gain shall be calculated in such manner as may be prescribed.

For this purpose, the same have been included in the definition of 'equity oriented fund' and therefore, the treatment prescribed under section 111A (for short term capital gains) and section 112A (for long term gains) shall apply.

These amendments shall be applicable from AY 2021-22.

Eligibility to Claim LTC in view of pandemic related travel restrictions

On account of the pandemic, employees were not able to avail value of leave travel concession or assistance ("LTC") exemption due to travel restrictions. In order to facilitate availing exemption of LTC, it has been provided that for financial year 2020-21, LTC allowance received or due shall be exempt if the employee satisfies certain conditions which shall be prescribed under the Rules. The Government has already indicated through a Press Release that for claiming LTC exemption, the employee would be inter alia required to incur certain expenditure in goods and services procured from a GST registered vendor and where such goods and services are exigible to GST tax of a rate not less than 12%.

Taxation of Interest on Provident Fund in certain cases

Receipt from provident fund (to which PF Act applies or set up by the Government or recognized PF) is exempt under Section 10(11) and 10(12), including the accrued interest. It has now been provided that where a person contributes more than INR 250 Thousand during a year (on or after April 01, 2021), the 'interest' on such excess contribution shall be taxable. The rules for computing such taxable income shall be notified.

Furthermore, in cases where the employer does not contribute any amount, the aforesaid limit of INR 250 Thousand shall stand increased to INR 500 Thousand.

This amendment shall be applicable from AY 2022-23.

Extension of Scheme for deduction of interest on housing loan

To incentivise purchase of affordable residential house property, the Government has extended the sunset clause under section 80EEA. As per section 80EEA, interest on housing loans sanctioned during the period April 01, 2019 and March 31, 2021 is available as a deduction up to INR 150,000. The period of sanctioning of loan has been extended to March 31, 2022 from March 31, 2021.

This proposal is effective from AY 2022-23.

Rules for taxation of retirement benefits

in foreign countries

Resident Individuals who opened retirement benefit accounts in a foreign country (at a time when such individual was a resident of such country and non resident in India) often face hardship at the time of taxation of the income from such accounts. While the foreign country may tax the income at the time of withdrawal (i.e. receipt basis), India may tax the same on accrual basis.

On account of the aforesaid difference in the method of taxation, the resident individual may face difficulties in claiming tax credit/ exemption for doubly taxed income etc. In order to address these concerns, the Government has introduced a new Section 89A, wherein, detailed rules shall be laid down to provide the manner of taxation of such income.

This amendment shall be applicable from AY 2022-23.

Relaxation from return filing requirements for specified senior citizens

A new provision under section 194P has been inserted in terms of which, specified senior citizens (atleast 75 years old) shall be exempted from filing tax returns, if the specified conditions are fulfilled.

Such specified senior citizen should be a pensioner and must not have any income apart from bank interest from an account maintained in the same bank in which such pension is received. Furthermore, such person is required to furnish a declaration which shall be prescribed in due course.

In this case, the bank shall be required to take the aforesaid income into account and deduct tax at source at normal rates applicable for senior citizens, after considering the deduction allowable under chapter VIA or rebate under section 87A, if any.

This amendment shall be effective from April 01, 2021.

Incentive Schemes

Incentive schemes for IFSCs

Under the provisions of Section 9A of the Act, certain Offshore eligible investment funds do not constitute taxable presence in India on account of its Indian fund manager, if the prescribed conditions are satisfied. In order to promote International Financial Services Centre (“IFSC”), some of these conditions (to be notified) have been relaxed if the fund manager is located in an IFSC and has commenced operations on or before March 31, 2024.

Furthermore, in order to further promote IFSC, a new clause (4F) to Section 10 has been inserted, to exempt any income of a non-resident by way of royalty or interest on account of lease of an aircraft paid by a unit of IFSC, if the unit has commenced operations on or before March 31, 2024.

Extension of Incentive schemes for start ups

Under Section 80-IAC, profit linked deduction is available to ‘eligible Start Ups’, wherein, 100% of the profits can be claimed as a deduction for any three consecutive years out of the period of 10 years since the year in which the start up is incorporated. This profit linked incentive is subject to various conditions, such as restriction of formation by splitting up or reconstruction, restriction on use of pre-used machinery etc.

Furthermore, such deduction was available only to start ups that were incorporated till March 31, 2021. The government has now extended the benefit of such profit linked deduction to start ups incorporated by March 31, 2022.

This amendment is effective from AY 2021-22.

Furthermore, the sunset clause for investments in start-ups for claiming capital gains exemption under Section 54GB has been extended to March 31, 2022 from the earlier time limit of March 31, 2021.

Profit Linked Deduction extended to Rental Housing Projects

Under Section 80-IBA, profit linked deduction is available to assessees engaged in the business of developing and building housing projects, subject to satisfaction of various conditions. In order to avail such deduction, inter alia, the project is required to be approved by the competent authority after June 01, 2016 but before March 31, 2021. The benefit of such deduction has been extended to projects approved until March 31, 2022.

Furthermore, the scope of such profit linked deduction has also been extended to assessees engaged in the business of developing and building rental housing projects.

This provision is effective from AY 2022-23.

Charitable Institutions

Rationalization of exemption provisions for charitable institutions

As per section 11(1)(d) of the Act, corpus donations are not considered as taxable income of the trust or institution. For other donations, trust or institution is required to apply 85% of its income in order to claim income-tax exemption. The income not applied for charitable or religious purposes and accumulated or set apart for application, is required to be invested or deposited in the modes prescribed under section 11(5).

The Finance Act has made certain changes to further rationalize the aforesaid provisions as under:

- It has now been provided that corpus donation will also have to be invested in the modes prescribed under section 11(5).

- Application out of corpus donation shall not be considered as application of income for charitable or religious purposes. That is, application of income (other than corpus) cannot be made out of corpus funds. However, when the amount out of the income of a financial year is invested or re-deposited (in the modes prescribed under section 11(5)) towards corpus, the same shall be treated as application for charitable or religious purposes in such financial year.

- Application from any loan or borrowing shall not be treated as application of income for charitable or religious purposes. However, such loan or borrowing shall be treated as application for charitable or religious purposes in the year in which the loan or borrowing is repaid from the income of that year.

- Excess application of income in any earlier year shall not be considered for the purpose of computation of application of income during the relevant year.

- The aforesaid changes have also been made applicable to university and institutions claiming similar exemption under section 10(23C) of the Act.

These amendments shall be applicable from AY 2022-23.

Withholding Tax

Exemption from TDS to business trust on dividend paid by SPV

Dividends received by a business trust were accorded pass through status by the Finance Act, 2020, with effect from AY 2021-22, on account of the shift in the burden of taxation from the distributing company to the shareholder.

It has been clarified that such dividends credited or paid to business trust by a special purpose vehicle will not be liable to withholding tax under Section 194.

This provision is effective with retrospective effect from April 01, 2020 (Financial Year 2020-21).

No withholding on income from infrastructure debt funds relating to Zero Coupon Bonds

The withholding of taxes under section 194A has been exempted in respect of income paid or payable by infrastructure debt fund in relation to Zero Coupon Bonds.

This amendment is effective from April 01, 2021.

Deduction of tax at source (TDS) on payment for purchase of goods

A new Section 194Q has been introduced to provide for withholding of tax where a buyer buys goods from a 'resident' seller, the value of which or the aggregate in a tax year exceeds INR 5 Million. The rate of withholding tax shall be 0.1% on the amount which exceeds INR 5 Million.

For the purposes of this provision, a buyer shall be a person whose annual turnover/ gross receipts exceeds INR 100 Million in the immediately preceding financial year. The Government shall also specify the persons upon whom such provisions would not apply. There is no specific exemption to a non-resident buyer under these provisions. As such, unless a clarification is issued by the Government exempting non-resident buyers from the scope of this provision, it appears that these withholding tax provisions shall also apply to such non resident buyers.

This however will not be applicable to a transaction where tax is deductible under any other provision/ collectible under section 206C, except section 206C(1H) of Income tax Act on Sale of Goods. In case of overlap between 206C(1H) and provisions of the section 194Q, the provisions of Section 194Q shall prevail.

An amendment has also been made to section 206AA of the Income tax Act to provide for a higher withholding tax rate of 5%, if the seller does not provide its PAN to the buyer.

This provision shall be applicable from July 01, 2021.

TDS (Tax deduction at source)/ TCS (Tax collection at source) in case of Non Filers

The Finance Act has introduced a new section 206AB and section 206CCA in order to discourage the practice of default in filing of tax returns. Under these provisions, tax shall be deducted or collected at twice the specified rates or 5%, whichever is higher. Such higher rate shall be triggered if the specified person, (i.e. recipient in case of TDS and payer in case of TCS) has not filed its tax returns for both of the last two assessment years preceding the year in which shall tax is required to be deducted/ collected, and the due date for filing the tax return has already expired.

Section 206AB shall be applicable where the provisions of tax deducted at source (withholding tax) are applicable. However, this provision shall not apply where tax is required to be deducted in specified cases, such as payment of salaries, provident funds, cash withdrawals etc.

Similarly, Section 206CA shall apply in case where the provisions of tax collected at source are applicable.
It may be mentioned that under the existing provisions of the Act, a higher penal rate of tax has been specified where the deductee/ collectee does not furnish its PAN to the deductor/ collector (Section 206AA for TDS cases and 206CC for TCS cases). In case the rates applicable under Section 206AA or 206CC are higher than the rates determined under the corresponding new Sections, such higher rates under Section 206AA or 206CC shall continue to apply.

Furthermore, in order to restrict the applicability of the new provisions to high value transactions, a monetary threshold has been provided for applicability of the new provisions. As such, where the aggregate amount of TDS 'and' TCS in each of the two prior years is less than INR 50 thousand, such provisions shall not be applicable.

The aforesaid provisions shall not apply to specified persons who are non-residents not having a Permanent Establishment in India.

The aforesaid amendments shall take effect from July 01, 2021.

TDS on Income of FIIs from securities

As per section 196D, TDS on Income of FIIs from securities [as referred in 115AD(1)(a) not being interest referred to in 194LD] is applicable at 20%. In a recent judgment by the Supreme Court, it was held that the benefit of lower rate of tax provided in the DTAA cannot be given at the stage of withholding of tax, where the section provides for deduction of tax at a specific rate.

Now it has been provided that where DTAA provisions apply, tax shall be deducted at the rate of 20% or rates provided in such DTAA, whichever is lower, provided the payee furnishes a tax residency certificate.

Such amendment shall be effective from April 01, 2021.

Dispute Resolution Mechanism

Discontinuance of Settlement Commission

A landmark amendment made in the Finance Act is the discontinuance of the Settlement Commission with effect from February 01, 2021. Settlement Commission was an institution, where an assessee, who had not made a full and true disclosure of his taxable income to the tax authorities, could approach the Settlement Commission to have its case settled and seek waiver from penalties and prosecution.

No application can now be made before the erstwhile Settlement Commission on or after February 01, 2021. However, the Government has set up an 'Interim Board' which shall dispose off pending applications filed before February 01, 2021. The Interim Board shall consist of three revenue officers, each of the rank of Chief Commissioner.

The Interim Board shall exercise powers and perform functions of the erstwhile Settlement Commission, such as provisional attachment, exclusive jurisdiction over the case, inspection of reports, rectification etc.

It may be highlighted that for a person who had filed an application before February 01, 2021 which is pending for disposal, such person has an option to withdraw such application within three months from the date of commencement of the Finance Act, 2021. In case the person does not withdraw its application within the stipulated time, the application shall be disposed off by the Interim Board.

Where the assessee does withdraw the

application, the assessing officer is required to be intimated. Upon such withdrawal, the assessing officer shall dispose off the case in a manner as if no application to the Settlement Commission was ever made. It is pertinent to mention that while doing so, the assessing officer shall be debarred from using material that the assessee had supplied along with its application to the Settlement Commission or material gathered or evidence recorded by the Settlement Commission during the course of its proceedings.

The Government may also make a scheme by which such Interim Board shall discharge its functions in a faceless manner.

Constitution of Dispute Resolution Committee

With a view to reduce tax litigation in the country, the Government has introduced a parallel Dispute Resolution Scheme for small and medium sized taxpayers, vide insertion of a new Section 245MA. Under this scheme, the Government may set up one or more Dispute Resolution Committees ("DRC").

DRC shall have the power to reduce or waive any penalty imposable or grant immunity from prosecution.

The scheme shall be open to taxpayers whose total returned income does not exceed INR 5 Million and the aggregate value of variations made or proposed in the specified orders does not exceed INR 1 Million.

However, an assessee would not be entitled for benefit of this scheme if there is detention, prosecution or conviction under various laws as specified in such scheme.

The Government shall prescribe detailed rules in this regard and may also introduce a scheme for dispute resolution in a faceless manner.

The new Section 245MA shall be applicable from April 01, 2021.

Replacement of Authority for Advance Ruling with 'Board for Advance Rulings'

Under the scheme of the Indian income tax law, an advance ruling mechanism exists, wherein specified tax assessees may seek a ruling on a tax issue on a proposed transaction or a transaction already undertaken. This system is somewhat similar to the 'private ruling' mechanism that exists under tax laws of various countries. While this institution was primarily applicable in the realm of international taxation, the same was extended to resident applicants where the tax liability in question was at least INR 1 Billion.

The existing 'Authority for Advance Ruling' ("AAR") is constituted by retired judges of the High Court/ Supreme Court, law members and revenue officers.

In recent times, it has been felt that AAR has not been able to discharge its functions in a timely manner, due to non-appointment of eligible members, resulting in a huge backlog of pending cases.

In a major development, the Finance Act has replaced the Authority for Advance Ruling with a 'Board for Advance Ruling'. Under this scheme, the Government shall have the power to constitute more than one Board for Advance Ruling, which shall comprise entirely of revenue officers, not below the rank of Chief Commissioners. As such, by virtue of this amendment, the control of this institution shall be retained by the revenue authority. It has also been provided that the proceedings before the Board for Advance Rulings shall be conducted in a faceless manner, with dynamic jurisdiction.

The scheme is expected to impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible.

Under the erstwhile provisions, the ruling of the Authority for Advance Ruling is binding on the assessee as well as the tax department in respect of the transaction/ proposed transaction in respect of which the ruling was sought. As such, the assessee or the tax department had no statutory right to file an appeal against a ruling of the AAR. The only remedy available to such applicant was to file a writ petition with the High Court/ Supreme Court under the Constitution of India.

However, under the new provisions, the ruling shall not be binding on the assessee or the tax department and the aggrieved party will have a right to prefer an appeal to the High Court in the prescribed manner.

The date on which the existing AAR shall be replaced by the new Board for Advance Rulings shall be notified in due course.

Faceless Scheme Extended for Income-tax Appellate Tribunal

Over the past few years, the Government has made radical changes in the manner in which interaction of tax assessee and revenue authorities are conducted, by introduction of faceless schemes. Under such schemes, assessments, appeals, penalty matters etc shall be conducted in a faceless manner through modern digital means.

One of the key changes made in the Finance Act is the extension of faceless appellate scheme to the proceedings of the Income-tax Appellate Tribunal ('Tax Tribunal').

The Income-tax Appellate Tribunal is an independent body which adjudicates appellate matters arising from orders of the Commissioner (Appeals), Dispute Resolution Panel, Commissioner etc. The Income-tax Appellate Tribunal functions in the same manner as a Civil Court, wherein, matters are heard with physical appearance in an open court. Furthermore, arguments are primarily made in oral form, which are sometimes supported by summarized written submissions or synopses.

There are numerous benches of the Tax Tribunal in the country to facilitate disposal of appellate matters.

Under the amended provisions, the Central Government shall be empowered to notify a faceless scheme for the functioning of the Tax Tribunal, wherein, the physical interface between the members of the Tax Tribunal and litigants shall be eliminated. The objective of such scheme is to impart greater accountability, transparency and efficiency in the functioning of the Tax Tribunal, while optimising the resources.

Thus, upon roll out of such scheme, the Tax Tribunal shall operate in a virtual manner, wherein, the identity of members of the Tax Tribunal shall be unknown to the litigants. Therefore, it appears that the traditional manner of physical appearance and oral arguments in the Tax Tribunal may either be done away with or reserved only for certain matters.

Moreover, the concept of dynamic jurisdiction (as is present in all other faceless schemes introduced by the Government) shall be extended to the Tax Tribunal. As such, a bench of the Tax Tribunal may be constituted of members of different cities.

Procedural Provisions

Rationalization of Reassessments on ground of Income Escaping Assessment Procedure and Search Cases

The erstwhile provisions of Income tax law (Section 147 to Section 149) empower tax authorities to reopen tax assessments of the past assessment years for reassessments up to six years (sixteen years in very specific circumstances). Such powers could have been exercised only if the tax officer has 'reason to believe' that income has escaped assessment.

Similarly, post search investigation assessments were hitherto governed by a separate set of provisions (Section 153A to Section 153C). Under these provisions, post search assessment is undertaken for a block of six years.

The Finance Act has completely reformed the provisions relating to making reassessments on the ground of income escaping assessment with a view to reduce litigation. The Finance Act seeks to introduce more checks and balances, supervisory control and curtail the power of the tax officers to reopen very old cases and bring the provisions pertaining to post search assessment procedure within the ambit of the new income escaping provisions, where the search has been conducted or books/ documents/ assets are requisitioned on or after April 01, 2021.

The key features of the new income escaping assessment provisions are as under:

1. The earlier time limits of 4 years/ 6 years/ 16 years for opening/ reopening cases shall be replaced by the following two-fold time limit:
    - Up to three years from the end of the relevant assessment year in regular cases;
    - Not more than ten years from the end of relevant assessment year in serious tax fraud cases. Such power is restricted to situations where the income that has escaped assessment is not less than INR 5 Million and is represented in the form of an 'asset' (which includes land and building, shares, securities, loans and advances, deposits in bank account). Furthermore, it is necessary that the tax officer must be in possession of books of accounts, documents or evidence that reveals such escapement of income. This condition as such would restrict power of tax officer to issue notice for reassessment only in limited cases.
    - Grandfathering provisions have been introduced to ensure that the tax authorities do not scrutinize any prior year tax return under the enhanced time limit of 10 years, which hitherto, was barred by limitation period under the earlier timelines.
2. A tax officer shall be empowered to issue a notice before initiating such proceedings, only if it has 'information' which suggests that income has escaped assessment'. Such information is restricted to the following areas, except in the case of search and survey:
    - Information flagged in the case of the assessee in accordance with the risk management strategy that shall be formulated by the CBDT. The source of such information is likely to be data gathered by the tax authorities from different agencies

and persons (such as annual information statement and statement of financial transactions). The flagging would largely be done by computer based system.

- Final objection received from the Comptroller and Auditor General of India ('**CAG**') in respect of an assessee.

3. Under new Section 148A, prior to issuance of a notice, it would be necessary for the tax officer to pass a preliminary order to decide whether it is a fit case for initiating income escaping proceedings. For such purpose, the tax officer may conduct enquiries, if required and is duty bound to give an opportunity to the assessee to explain why such proceedings must be initiated.

In order to ensure fairness of the process, it has been provided that the aforesaid procedure shall be followed only after prior sanction of specified higher income tax authorities.

These provisions shall be applicable from April 01, 2021.

Reduction in Time Limits for Conducting Assessments

The Government had reduced the time limit for completion of regular assessments in a phased manner. As per earlier provisions, the time limit for completion of tax assessments for the A.Y. 2019-20 is 12 months from the end of the assessment year (i.e. March 31, 2021). Such deadline has been extended by 6 months till September 30, 2021 on account of the operational difficulties faced due to the ongoing pandemic.

The Finance Act has further reduced the timelines for completion of tax assessment from 12 months to 9 months, from the A.Y. 2021-22 onwards. As such, the timeline for completion of assessment for Assessment Year 2021-22 shall be December 31, 2022.

The objective is to improve the efficiency and efficacy of the tax department due to computerization of processes under the Indian Income-tax Act.

Amendments relating to Tax Audit and Presumptive Scheme

In order to ease compliance burden, the monetary threshold for undergoing Tax Audit for a person carrying on business has been relaxed from INR 50 Million to INR 100 Million. However, this shall be applicable only to those assessees, in case of whom, at least 95% of receipts and payments are through modes other than cash.

It has also been provided that in case of payments/ receipts by way of a cheque or a bank draft which is not 'account payee', the same shall be deemed as a transaction in cash.

This amendment shall be applicable from AY 2021-22 onwards.

Furthermore, under Section 44ADA, a presumptive scheme of taxation is provided for residents engaged in specified professions. It has been clarified that such scheme is not applicable to Limited Liability Partnerships. This amendment shall be applicable from AY 2021-22 onwards.

Amendments in Return Filing Procedure

Under the erstwhile provisions of section 139, a belated return (i.e. a return filed beyond the due date prescribed under law) or a revised return could be filed by the end of the relevant assessment year or before completion of assessment, whichever is earlier. Thus, under the erstwhile provisions, if a company's due date for filing a tax return for AY 2021-22 (Financial Year 2020-21) is November 30, 2021, a

belated return or a revised return could be filed latest by March 31, 2022 (end of assessment year).

The Finance Act has amended the aforesaid time to three months prior to the end of the assessment year or before the completion of assessment, whichever is earlier. Thus, under this amendment, a belated return or a revised return can be filed only by December 31, 2021 instead of March 31, 2022 as per the earlier timeline. Consequential amendments have also been made to Section 234F, which stipulated a late filing fee, where a return was filed after December 31 but on or before March 31 of the subsequent year.

This amendment shall be applicable to all classes of taxpayers and shall take effect from April 01, 2021.

In case of taxpayers where the provisions of transfer pricing are applicable, the due date for filing tax return is 30th November following the end of financial year. It has also been provided that where such due date is applicable for firms (including LLPs), such due date shall also be applicable for its partners with effect from April 01, 2021.

Relaxation in the Conditions for Treating a return as Defective Return

Section 139(9) of the Act lists the conditions under which a return of income shall be considered to be defective. The aforesaid conditions have resulted in difficulties for both the taxpayer and tax authorities in genuine cases too. Therefore, the CBDT has been empowered to notify that any of the specified conditions in section 139(9) shall not apply for a class of assessees or shall apply with such modifications, as may be specified in such notification.

This amendment shall be applicable from April 01, 2021.

Changes relating to Processing of Returns

Section 143(1) provides for time limit for processing of returns of a financial year, by the tax administration. The erstwhile provision states that no intimation for processing of return shall be sent after the expiry of one year from the end of the financial year in which the return is filed.

The aforesaid time-limit has now been reduced to 9 months. This amendment shall be applicable from April 01, 2021.

Reduction of time period to issue notice for Scrutiny Assessment

Under the erstwhile provisions, notice selecting a return for scrutiny examination can be served by a tax officer till the expiry of six months from the end of the financial year in which the return is furnished.

The aforesaid period has now been reduced to 3 months. This amendment shall be applicable from April 01, 2021.

Interest in delay/ shortfall in depositing of advance tax not applicable to dividend income

It has been provided that where there has been a delay/ shortfall in deposit of advance tax on account of failure to estimate or under estimate dividend income, the provisions of levy of interest under section 234C shall not be applicable to the extent of such shortfall, if advance tax is paid on such amount as part of the remaining instalments which are due or where no such instalments are due, by the 31st day of March of the financial year.

However, this provision shall not be applicable on deemed dividend as defined under Section 2(22)(e) of the Act.

This provision shall be applicable from AY

2021-22 onwards.

Other Amendments

Disinvestment of Public Sector (majority Government owned) Companies

Amendments have been made to the definition of 'demerger' to consider reconstruction or splitting up of a public sector company into separate companies as demerger in order to facilitate tax neutral demerger of such companies (subject to prescribed conditions). This amendment has been brought in line with the intent of the government of strategic disinvestment of Government owned public companies. This amendment shall be applicable from AY 2021-22.

Also, in terms of Section 72A of the Act, in case of an amalgamation between public sector companies engaged in the business of operation of aircrafts, accumulated loss and unabsorbed depreciation of the amalgamating company is allowable in the hands of the amalgamating company. The Finance Act has extended such benefit to all public sector companies, irrespective of the nature of business.

Furthermore, such benefit has also been extended to erstwhile public sector companies, in case of an amalgamation of such erstwhile public companies with other companies. For this purpose, erstwhile public sector companies have been defined to be such public companies which have been earlier disinvested by the Government by way of strategic disinvestment, i.e. where the shareholding of the Government is reduced below 51% and control is transferred to the buyer.

This amendment shall be applicable from AY 2021-22.

The Finance Act has also provided that transfer of capital asset by a public sector company to a notified public sector company or Central/ State Government, under a Government approved plan, shall be tax neutral. This amendment shall be applicable from AY 2022-23.

Provisional Attachment in case of fake invoices, false entries etc.

By the Finance Act, 2020, a penal provision was introduced (Section 271AAD) to counter the practice of usage of fake invoices, false/ omitted entries in books of accounts etc. In terms of such provision, a penalty equal to the aggregate amount of such false entry/ omitted entry could be imposed.

In order to prevent such persons from evading payment of such high penalties and to protect the interest of the revenue, the tax authorities have been empowered to provisionally attach the property of such persons. For this purpose, the provisions of Section 281B (provisional attachment) have been amended, with effect from April 01, 2021.

INDIRECT TAX

Goods and Service Tax Law

In the Finance Act, the following changes have been made:

- Availment of Input Tax Credit ("ITC") based on GSTR 2A/2B: Section 16(2)(aa) inserted to provide that ITC on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in its GSTR-1.

- Taxpayer's can now claim ITC based on GSTR 2A/2B only. One-to-One co-relation on invoice level and regular follow-ups with Vendors would become the need of the hour. Purchase Orders and Contracts need to include

appropriate indemnities and warranties.

- GSTR 9C (GST Audit Report) no longer required to be filed by Taxpayers: Section 35(5) to be omitted, thus removing the mandatory requirement of getting annual accounts audited by Chartered Accountants/ Cost Accountants.

- Taxpayers would no longer be required to file GSTR 9C through their Chartered Accountants/ Cost Accountants, thus reducing the compliance burden. Going forward, GSTR 9, i.e., Annual return would include a self-certified reconciliation statement by the Taxpayer.

- Interest to be charged on net cash liability with effect from July 01, 2017: Section 50 to be amended retrospectively with effect from July 01, 2017, so as to charge interest on net cash liability, i.e. tax payable on outward supplies less input tax credit, instead of earlier gross tax liability, i.e. tax payable on outward supplies.

- Stricter penalties upon Detention and Seizure of goods during transit: Penalty as high as 200% of tax amount or 50% of value of goods, whichever is higher, shall be levied in case of detention and seizure of goods during transit under Section 129.

- Taxpayer must ensure that the movement of goods is accompanied by all the proper documents including E-Waybills and Invoices.

- Amendments with respect to Zero Rated Supplies: Section 16 of Integrated GST Act has been amended so as to provide that:

  - Any supply to SEZ or SEZ developers would be considered as Zero-Rated supply only when the said supply is for authorized operations;

  - Taxpayers engaged in export of Goods, shall, in case of non-realisation of sale proceeds within the time prescribed under the Foreign Exchange Management Act, be required to return the refund;

  - Refund in case of Zero-Rated supply (Export) with payment of IGST to be allowed only in case of certain notified class of taxpayers or notified type of supplies;

The aforesaid amendments are effective from the date of publication in the official Gazette, which is March 28, 2021.

Customs Law

Under Customs law, the following changes have been made by the Finance Act:

- Change in Tax rate: In order to promote the ‘Make in India’ initiative, the Government has brought change in the Basic Customs Duty tax rate of certain items with effect from February 02, 2021. For example, Electronics & Electrical components, Raw cotton/Silk, Metal Scraps, parts of machineries etc.

- Agriculture Infrastructure & Development Cess: A new cess known as the Agriculture Infrastructure and Development Cess (AIDC) has been levied with effect from February 02, 2021 for the purposes of financing the agriculture infrastructure and other development expenditure, as follows:

  - As duty of customs, on import of goods specified in the First Schedule to the Customs Tariff Act, into India, at the rate not exceeding

the rate of customs duty as specified in the said Schedule, and

- As an additional duty of excise, on excisable goods specified in the Seventh Schedule, at the rate specified in the said Schedule.

CORPORATE LAW

Amendments in Companies Act

Revision in the definition of "Small Company" under the Act

The Ministry of Corporate Affairs (MCA), vide Notification dated February 01, 2021, has amended the definition of Small Company by enhancing the threshold limits of paid-up capital and turnover.
The increased limits are as under:

- Paid-up Capital: Not exceeding INR 20 Million, as against earlier limit of INR 5 Million.

- Turnover: Not exceeding INR 200 Million, as against earlier limit of INR 20 Million.

Appendix A

Applicable Tax Rates for Individuals (Normal Provisions) for Assessment Year 2021-22 and 2022-23 (Other than Optional Scheme Under Section 115BAC):

Income tax slabs	Age less than 60 years	Age of 60 years or more	Age of 80 years or more
Up to INR 250,000	Nil	Nil	Nil
INR 250,000 to INR 300,000	5% of income in excess of INR 250,000	Nil	Nil
INR 300,000 to INR 500,000	INR 2,500 + 5% of income in excess of INR 300,000	5% of income in excess of INR 300,000	Nil
INR 500,000 to INR 1,000,000	INR 12,500 + 20% of income in excess of INR 500,000	INR 10,000 + 20% of income in excess of INR 500,000	20% of income in excess of INR 500,000
Above INR 1,000,000	INR 112,500 + 30% of income in excess of INR 1,000,000	INR 110,000 + 30% of income in excess of INR 1,000,000	INR 100,000 + 30% of income in excess of INR 1,000,000

Note: The aforesaid rates of tax are subject to additional surcharge (as per following table) as well as cess of 4%

Rates of Surcharge

Particulars	Rates of Surcharge
Where taxable income is less than INR 5 Million	Nil
Where taxable income exceeds INR 5 Million but does not exceed INR 10 Million	10%
Where taxable income exceeds INR 10 Million but does not exceed INR 20 Million	15%
Where taxable income exceeds INR 20 Million but does not exceed INR 50 Million (excluding dividend, income under Section 111A and Section 112A)	25%
Where taxable income exceeds INR 50 Million (excluding dividend, income under Section 111A and Section 112A)	37%
Where taxable income includes dividend or income under Section 111A (Short term capital gain on equity) and Section 112A (Long term capital gain on equity) and such taxable income after inclusion of such dividend income, income under Section 111A and Section 112A exceeds INR 20 Million	15% on such dividend, income under Section 111A and Section 112A
Where taxable income exceeds INR 20 Million or 50 Million and also includes dividend income, income under Section 111A and Section 112A in addition	25% or 37% as aforesaid. 15% on dividend, income under Section 111A and Section 112A

Appendix B

Summary of Tax Rates for Corporates for the Assessment Year 2021-22 and 2022-23:

Particulars	Tax Rates
Domestic Companies:	
Tax Rate for Assessment Year 2021-22 where turnover for Financial Year 2018-19 is up to INR 4 Billion Tax Rate for Assessment Year 2022-23 where turnover for Financial Year 2019-20 is up to INR 4 Billion	25%
Tax Rate for Assessment Year 2021-22 where turnover for Financial Year 2018-19 is more than INR 4 Billion Tax Rate for Assessment Year 2022-23 where turnover for Financial Year 2019-20 is more than INR 4 Billion	30%
Domestic manufacturing companies opting for Concessional taxation under Section 115BA	25%
Domestic companies opting for Concessional taxation under Section 115BAA	22%
New manufacturing companies opting for Concessional taxation under Section 115BAB	15%
Foreign Companies	40%

Note: The a*foresaid rates of tax are subject to additional surcharge (as per following table) as well as cess of 4%*

Rates of Surcharge

Particulars	Rates of Surcharge
Domestic Companies (not opting for concessional taxation under Section 115BAA and Section 115BAB)	
Where taxable income is upto INR 10 Million	Nil
Where taxable income exceeds INR 10 Million but does not exceed INR 100 Million	7%
Where taxable income exceeds INR 100 Million	12%
Companies opting for Concessional taxation under sec 115BAA	10%
Companies opting for Concessional taxation under sec 115BAB	10%
Foreign Companies	
Where taxable income is upto INR 10 Million	Nil
Where taxable income exceeds INR 10 Million but does not exceed INR 100 Million	2%
Where taxable income exceeds INR 100 Million	5%

About Us

MPC & CO LLP established on 1st May 2015 duly approved by the Institute of Chartered Accountants of India was promoted and launched by Mohinder Puri & Co, Chartered Accountants, a medium sized multi-disciplinary firm established in the year 1954.

The Firm is led by eminent and highly experience partners complemented by a team of multi disciplinary professionals. The Firm offers a diverse range of professional services to their clients, besides core competencies of audit and taxation.

We have been providing advise and support to domestic and international clients in diverse sectors on audit, accounting, taxation, including Goods and Service Tax, and regulatory matters. Built on a strong commitment to client service, the Firm acts as a One Stop Advisor offering expertise and hands on support. We pride ourselves on our quality and integrity to drive the growth of our clients

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