

India Budget Synopsis

Budget - 2022

This document captures important changes proposed in the Finance Bill, 2022. This circulation has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact Singhi Chugh & Kumar, Chartered Accountants to discuss these matters in the context of your circumstances. Singhi Chugh & Kumar, Chartered Accountants, its partners, employees, and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based.

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FOREWORD

Within the shortest length of time of 90 minutes, the speech of the F/Y 2023 Budget was ended by the Honorable Finance Minister, and a Growth-oriented and Capex intensive budget was tabled in the house of the Parliament. By not giving away any subsidy or incentive and claiming to be a populist budget in the year of state elections, rather it focused on the creation of employment and demand in the Economy.

Having limited avenues of revenue generation in terms of Direct tax collection the focus going forward would be more in terms of buoyancy in the collections of GST to support the increase in the capital expenditure of INR 7.5 trillion budgeted for F/Y 2023. The reduced disinvestment target of INR. 65000 Cr gives limited support on the non-tax revenue front.

With a Nominal GDP growth of 11.1% and a real GDP growth of 8.5% as projected on a very conservative basis, there is considerable scope of the economy overshooting the projections and thereby giving some leeway to reduce the fiscal deficit target of 6.4%. This is with an underlying assumption that is no more business disruption due to the pandemic in the future.

The flipside of the Budget:

With a high fiscal deficit of 6.4% compared to conventional estimates and the consequent increase in the government borrowing program, there is an underlying fear of a spike in the interest rate in the entire economy. This is further aggravated due to the global environment, whereby central banks across the globe are hiking the interest rate and Crude oil prices are inching northward. Businesses will have to be prepared to face the situation of an increase in financing costs. The capital markets are also going to be subdued because of the spike in the government yield thereby narrowing the avenues of financing future investments.

Improvement in the tax-GDP ratio of the country is the only way forward for the Government to improve its finances and reduce its deficit.

In this backdrop inflation is the sole issue that needs the care and calibrated attention of the government along with the Central Bank, which if not addressed can derail the entire budget mathematics.

DIRECT TAXATION:

Going by the budget proposals there is no tinkering of the rates of taxation but having said that the Government has once again adopted the approach of retrospective amendment under the proposal thereby again giving a message of uncertainty in the area of taxation. This is not desirable from an Ease Doing of business perspective.

As a unique case in the country Virtual Digital Assets are proposed to be taxed by the department before it is regulated. The regulators are still in the process of drafting the regulations for digital assets.

The number of amendments also conveys the message that the law is not meeting the intent with which it was drafted. However, as they say, there is always a scope for improvements.

INDIRECT TAXATION:

With the budget proposal announcing several conditions for availing of Input Tax Credit (ITC) it again goes against the Government's intent of providing Ease of doing business. Businesses will face a lot of hardship in terms of the blockage of working capital and thereby constraining the availability of funds for future expansion.

However, all in all, the budget is high on Vision and now it's time to watch out for its execution which is the key to its success in delivering.

Till then let us digest based on our appetite, by reading the amendments as served on our plates.

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Returns of Income, Assessment & Appeals

Updated Returns

In addition to the existing provisions of filling an Original, Revised, belated return, or a failure to file a Tax Return, to ensure voluntary compliance, an Assessee (Taxpayer) now has provided with another option to file an **UPDATED RETURN** to **ONLY** give effect for any incomes that have not been declared

- File **within 24 months** from the end of the relevant AY with payment of **additional tax**
- Additional Tax to be paid

Particulars	Rate of Additional Tax
Upto 12 months	25% of aggregate tax and interest
Between 12 – 24 Months	50% of aggregate tax and interest

- **Updated return cannot be filed in the following cases –**
 - Where Updated Return is return of a loss, decreasing the tax liability or results in refund or increases the refund due from filed return.
 - Where Search has been initiated or survey has been conducted for the relevant AY or two years preceding the relevant AY.
 - Where Updated return **already filed** for the same relevant AY.
 - Where **Assessment/reassessment/revision/re-computation of income pending** or has been completed for the same AY.
 - Where Information is available with the AO under **specified laws (i.e. Money Laundering Act, Black money etc.) or India's tax treaty agreements** and same has been communicated.
- **Where Prosecution proceedings are initiated**

Appeals by Revenue on Identical Question of Law

To reduce tax litigation, where a question of law is common and where a decision of the jurisdictional High Court / Supreme Court is **PENDING**, either in a taxpayers case or any other case, it **has been proposed to defer filling an appeal, subject to taxpayers acceptance**

Refer Section 139(8A) and 140B of the Finance Bill, 2022.

Consequential amendments have also been proposed in Section 234A, 234B & 234C of

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Memorandum Explaining the Provision in the Finance Bill 2022

Pg. 15-21

(Applicable w.e.f. 01-04-2022)

Refer Section 158AB of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 76-78)

(Applicable w.e.f. 01-04-2022)

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Business Re-Organization - Amalgamation, Merger, De-Merger etc.

- Proceedings on the predecessor entity **shall be deemed to have been made on the successor**
- Modified returns can now be filed **by successor within 6 months from the end of the month when the order is issued**
- Power given to the AO/proper officer for giving the effect of orders passed by any competent authority (i.e. Authority under as defined U/s 5(1) of IBC, 2016,) and to **modify such notice of demands accordance with directions**

Refer Section 172A, 170A & 156A of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 30-31)

(Applicable w.e.f. 01-04-2022)

Refund of TDS on Foreign Payments

A new Section 239A has been proposed to ease the **process of refund of taxes borne & paid on Foreign Payments** by an Indian Taxpayer by Tax Grossing Up where such tax was not required to be paid, by filling a request with the Assessing Officer.

Refer Section 239A of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 30-61)

(Applicable w.e.f. 01-04-2022)

Date of issuing directions for **“Faceless proceedings before TPO/DRP & ITAT”** has now been **extended to 31st March 2024**

Refer Section 92CA, 144C & 253 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg.64,65)

(Applicable w.e.f. 01-04-2022)

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Faceless Assessments Procedures (FAS)

Existing procedure of the FAS has been amended to address the various legal and procedural problems being faced in the implementation of the scheme.

- Scheme will also be applicable to **reassessment proceedings**.
- 15 days' time limit fixed to file a reply to initial notice has been changed to **date specified in the notice**.
- **Chief commissioner approval is now not required for personal hearing through video conferencing/video telephony**.
- If at any stage of the proceedings, the Assessment Unit, having regard to the
 - **Nature and complexity** of the accounts,
 - **volume** of the accounts
 - **doubts about the correctness** of accounts
 - **multiplicity of transactions** in the accounts or **specialized nature of business activity** of the Assessee, and the **interests of the revenue**,

may refer the case to the PCIT at NaFAC to consider invoking Section 142(2A). Such PCIT may refer the case to the Jurisdictional PCCIT/PCIT/CCIT/CIT Officer, who in turn after the approval of the Board may transfer the case to the Jurisdictional AO and direct to invoke section 142(2A), if considered appropriate.

Rationalization of provisions relating to Assessment and Re-assessment

- **No approval may be** required by AO from specified authority for **issue of notice** if AO had passed the order u/s 148A(d) with prior approval
- **No approval** required by AO for conduct **inquiries u/s 148A**
- Scope of 'information' available with AO for reopening assessment broadened, the word **flagged** is proposed to be removed from Section 148, clause (i) of Explanation 1, Further, the information suggesting that income has escaped assessment has been proposed to include the following:
 - Information available under scheme for faceless collection of information
 - **Any audit objection** (previous CAG Audit objection) that the assessment has not been made in accordance with the provisions of this Act;
 - Exchange of information under tax treaties
 - Information which requires action in consequence of the order of a Tribunal or a Court.

Refer Section 144B of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg.65-73)

(Applicable w.e.f. 01-04-2022)

Refer Section 132A, 133(2) 147, 148, 149, 148 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 75-79)

(Applicable w.e.f. 01-04-2022)

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- Restrictions on re-opening assessments in search, survey, and requisition cases for three years, immediately preceding the year of search or survey, have been proposed to be removed retrospectively from 1 April 2021.
- Reassessment scope after three years up to 10 years has been proposed to be expanded to cases where AO has books and documents that reveal income escaping assessment is represented in the form of -
 - An Asset
 - Expenditure with respect to a transaction/event or occasion, or
 - An entry in books of accounts

amounting to INR 50 Lakhs or more

- Notice to be issued for every year where income has escaped assessment
- Reassessment orders to be passed with the approval of higher tax authorities only in the cases of survey, search, and similar action.
- Exclusion of period from the date of initiation of search till the date when search material is handed over to the jurisdictional AO for the purpose assessment/reassessment/ re-computation for the period of limitation. **This amendment is retrospectively applicable from 1st April 2021.**

Increase the Power of CIT(A) to levy penalty –

To uniform the power of CIT(A) with AO, **CIT(A)** is proposed to be empowered to levy penalties involving **undisclosed income in cases of search, unexplained cash credits/investment, or otherwise false entry**, etc. in the books of accounts.

Increase in Penalty u/s 272A from INR 100 per day to INR 500 per day –

- Delay in **Returns statement of TDS or TCS** or perquisite
- Delay in issue of **TDS certificates**
- Failure to provide for **inspection or copy of register** to authority
- Failure to **intimation to AO on discontinuance or dissolution** of business
- Failure to deduct the tax of an employee as directed by AO

Refer Section 271AAB, 271AAC, 271AAD of the Finance Bill, 2022. (Pg.87)

Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 79-80)

(Applicable w.e.f. 01-04-2022)

Refer Section 272A of the Finance Bill, 2022. (Pg.88)

Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 80)

(Applicable w.e.f. 01-04-2022)

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Liability of directors of private company -

- To make the title of the section **uniform** with **its provisions**, the word '**liquidation**' has been **removed from title** so that liability of directors is **not only restricted to the liquidation**
- Widened the definition of Tax due by including **fees** under the act

Increase in Revisionary powers -

Revisionary powers in respect of orders passed by the AO being erroneous prejudicial to revenue, to cover the **orders passed by the TPO**.

Revisionary powers include power to modify or cancel the order.

Powers to CBDT for relaxation in late fees -

Relaxation in late fees (delay in filing of ITR) of INR 5000/- to certain class of persons by issuing of special or general orders considering the genuine hardship.

Dispute Resolution Committee (DRC)

Power given to AO for giving effect to order passed by the DRC – Upon receipt of order of DRC, the AO shall pass an order of assessment, reassessment, or modify the order within a period of 1 month from the end of the month in which order received.

Refer Section 179, 263, 119, 245MA of the Finance Bill, 2022.

(Pg. 51, 79,85, 86,87)

Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 24,81, 105,106)

(Applicable w.e.f. 01-04-2022)

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Virtual Digital Assets (VDA)

Virtual Digital Asset is (VDA) is proposed to include **code or number or token** (not being Indian or foreign currency) generated through cryptographic means or otherwise and includes -

- **Cryptocurrency**
- **Non-fungible tokens.**
- **Other digital assets** are to be notified by the Central Government.

Taxation of Virtual Digital Assets

- From **F/Y 2022-23** Income on transfer of any Virtual Digital Asset at the rate of **30%.**
- **No basic exemption** limit allowed in respect of income from Transfer of VDA.
- **No deduction** in respect of **any expenditure** (other than cost of acquisition) or **allowance.**
- **Loss on sale** of Virtual Digital Asset shall **not be allowed** to be set off against **any other income.**
- **Carry forward of loss** is also **not** permitted.

Taxation Gifting of Virtual Digital

- **Gifting of Virtual Digital Asset** is also **taxable** in the **hand of the recipient.**

Refer Section 2(47A) of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 54-56)

(Applicable w.e.f. 01-04-2022)

Refer Section 115BBH of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 54-56)

(Applicable w.e.f. A/Y 01-04-2023)

(Applicable w.e.f. A/Y 01-04-2023)

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TDS on Payment on transfer of Virtual Digital Assets

- Deduction of **tax on payment for transfer** of virtual digital asset to a resident at the rate of **one per cent** of such sum.
- However, in case the payment for such transfer is—
 - i. **Wholly in kind** or in exchange of another virtual digital asset where there is **no part in cash**; or
 - ii. **Partly in cash and partly in kind** but the part in cash is not sufficient to meet the liability of **deduction of tax in respect of whole of such transfer**, the person before making the payment shall ensure that the tax has **been paid in respect of such consideration**.

Refer Section 194S of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

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(Applicable w.e.f. 01-07-2022)

Specified Person responsible for paying consideration on account of VDA	TDS Applicable only is Value of consideration
Individual or HUF carrying on business or profession where total sales does not exceed Rs. 1 crore for business and Rs. 50,00,000 for profession in FY immediately preceding the year in which VDA is transferred	Exceeds Rs. 50,000 during FY
Individual or HUF not having any income from business or profession	Exceeds Rs. 50,000 during FY
Other than above specified person	Exceeds Rs. 10,000 during FY

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Business & Profession

Clarification regarding Cess and Surcharge

In order make the intention of the legislation clear Health & Education Cess and Surcharge has been included in the definition of “tax” and shall not be deducted in computing total income of the business. **This is a retrospective amendment w.e.f. 01-04-2005**

Disallowance under Section 14A

It has been proposed that no expense to be allowed for deduction against exempt income, even if such Income has not accrued, arisen or received during the previous year.

Deduction on payment of Interest only on Actual Payment

Conversion of interest payable on which Section 43B is applicable into debenture or any instrument by which liability to pay is deferred to a future date, shall not be deemed to actually paid.

Proposed Amendments in case of Goodwill

Reduction of the amount of Goodwill of business and professional from block of asset shall taxable as per Section 50 of the Act.

Goodwill shall be not a depreciable asset

For the purpose of computing Capital Gains, purchase price of Goodwill shall be the Cost of Acquisition.

In case benefit of depreciation has been taken in any of previous year, then the same shall be reduced from the Purchase Cost, at the time of Computing Capital Gain.

Refer Section 40A of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 24-27)

(Applicable w.e.f. 01-04-2005)

Refer Section 14A of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

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(Applicable w.e.f. 01-04-2022)

Refer Section 43B of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 31-32)

(Applicable w.e.f. 01-04-2023)

Refer Section 50 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 107-108)

Applicable w.e.f. 01-04-2021 – Assessment Year 2021-22

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Set off of loss in search cases -

It has been proposed to amend Sec 79A, Set-off of brought forward loss or unabsorbed depreciation not allowed in case of Undisclosed Income for any previous year, **pursuant to Search & Survey**.

Withdrawal of concessional rate of taxation on dividend income

It has been proposed to withdraw **Concessional rate of 15%** on dividend received by Indian Company from Foreign Company, wherein it owns more than 26% of share.

Definition of Slump Sale

Scope of Slump Sale has been widened by substituting the word “sale” with the word “transfer”

Extension of date of incorporation for eligible start-ups

Time limit for Incorporation for being an eligible start-up has been extended to **31st March, 2023** from 31st March 2022.

Refer Section 79A of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 74-75)

(Applicable w.e.f. 01-04-2022)

Refer Section 115BBD of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

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(Applicable w.e.f. 01-04-2023)

Refer Section 50 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 108-109)

(Applicable w.e.f. 01-04-2021)

Refer Section 80-IAC of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

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(Applicable w.e.f. 01-04-2022)

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Extension of commencement of new manufacturing company under section 115BAB

Time Limit for commencement of manufacturing **extended** from **31st March, 2023 to 31st March, 2024.**

Refer Section 115BAB of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 41-42) (Applicable w.e.f 01-04-2022)

Change in rate of surcharge and AMT for Co-operative society

Rate of Alternate Minimum Tax to be paid by cooperative societies has been **reduced to 15%** from 18.5%.

Refer Section 115JC of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 42-43) (Applicable w.e.f 01-04-2023)

Surcharge rate reduced to **7% from 12%.**

Where the total income of the co-operative society (except resident co-operative society opting under section 115BAD) exceeds Rs. 1 crore but does not exceed Rs.10 crores

Amendment in Section 79 regarding strategic disinvestment of public sector companies.

In order to facilitate the strategic disinvestment of public sector companies, carry forward of losses shall not apply to erstwhile public sector company subject to the condition that the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, at least fifty-one per cent of the voting power of the erstwhile public sector company in aggregate.

Refer Section 79 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 48-49) (Applicable w.e.f 01-04-2022)

Widening the scope of reporting by producers of cinematograph films or persons engaged in specified activities

Event Management, Sports Event Management & various other performing arts shall now be liable to file a statement u/s 285B containing particulars of payment over INR 50,000/- to each person.

Refer Section 285B of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 53) (Applicable w.e.f 01-04-2022)

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Clarification regarding allowability of expenditure under section 37

Clarification regarding meaning of the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law”, has been issued, wherein the expression shall include and shall be deemed to have always included the expenditure incurred by an assessee,

- for any purpose which is an offence or which is prohibited by, any law for the time being in force, in India or outside India.
- to provide any benefit, in whatever form, to a person, whether or not carrying on a business or a profession, and acceptance of such benefit by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person.

Refer Section 37 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 32-39)

(Applicable w.e.f 01-04-2022)

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Charitable Trusts/ NGOs

Rationalization of provisions for exemption u/s 10(23C)(iv)/(v)/(vi)(via) [1st regime] and exemption u/s 12AA/12AB [2nd regime] by bringing consistency in the provisions of these 2 regimes. As a result, some consequential amendments are proposed in Section 10(23C) to bring it at par with the provisions of Section 12AA/12AB and other amendments in both the regimes to ensure effective monitoring & implementation and providing more clarity on some past issues.

Proposed amendments to align the certain provisions to bring both the exemption regimes at par

Amendment in Section 11

Taxability of unutilized accumulated income

Unutilized portion of income accumulated as per section 11(2) to be taxed in the last previous year itself i.e. in 5th year instead of 6th year

Amendments in Section 10(23C)

Conditions for accumulation of Income

To bring the provisions of section 10(23C) at par with the conditions of Section 11 for accumulation of income, amendments are proposed in section 10(23C) with respect to the following –

- procedure for determining the amount of application,
- specifying the conditions for the accumulation and
- prescribing the manner for accumulation,

non-compliance of which would make the income taxable in the year of non-compliance.

Provisions relating to payment to specified person

Restrictions have been imposed to pass on any unreasonable benefit to the trustee or any other specified person. It is proposed to consider the unreasonable benefit passed on to Trustee or the specified person as deemed income in the year in which it is applied.

Refer Section 10(23C), 11, 12A, 12AB and 13 of the Finance Bill, 2022.
(Pg. 22-36)

Wef Assessment Year 2023-24, Memorandum explaining provisions of Finance Bill
(Pg. 90-91)

Wef Assessment Year 2023-24, Memorandum explaining provisions of Finance Bill
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Wef Assessment Year 2023-24, Memorandum explaining provisions of Finance Bill
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Accreted Income

Provisions of sections 115TD, 115TE and 115TF relating to taxation of Accreted Income are proposed to be amended to make them applicable to trusts or institutions under Section 10(23C).

Filing of return by person claiming exemption

Institution or Trust shall furnish the return of income as per sec 139(4C).

Effective monitoring & implementation of both the regimes

Maintenance of books of Accounts

It is proposed to amend the sections to specifically provide for the maintenance of books of accounts in the prescribed form and manner by Trust and institutions if the total income of a trust or institution, without giving effect to the provisions of Section 10(23C) or Sections 11 and 12, exceeds the maximum amount which is not chargeable to tax.

Penalty for passing unreasonable benefits to trustee or specified persons

It is proposed to insert section 271AAE to provide for penalty on trusts or institution which is equal to 100% of the amount applied towards unreasonable benefits in case of first-time violation and 200% in case of any subsequent violation. Penalty proposed under this section is without prejudice to any other provision of the said Chapter.

Reference to PCIT/CIT for cancellation of registration/approval within prescribed time limits

It is proposed to make reference to PCIT or CIT to make enquiries to satisfy himself either to cancel or refuse to cancel the approval of institution on noticing **occurrence of one or more specified violations** during any previous year or has received a reference from the AO or Case has been selected as per risk management strategy of Board. The order to be passed **within 6 months from the end of the Quarter in which notice is issued**.

Further, "specified violation" is proposed to be defined as follows -

- application of income other than for objects for which the trust or institution is established
- having income from PGBP not incidental to objects of the Trust or non-maintenance of separate books of accounts in respect of incidental business activities
- application of income for private religious purposes which does not ensure for the benefit of the public (for regime 2 only)
- application of income for the benefit of a particular religious community (for regime 2 only)
- activity being carried out which are not genuine or not in accordance with conditions it was subject to

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Providing clarity in both regimes for the consistency in the application of law

Determination of Income in case of non-compliance of proviso to section 2(15)/Audit/ITR

- Taxable Income is proposed to be computed after allowing deduction of expenditure (other than capital expenditure) incurred in India, for its objects and not expended out of corpus/borrowings/amount already claimed as application or donation to others
- provisions of Section 40(a)(ia), 40A(3) and 40A(3A) shall apply to calculate the expenditure.
- No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provision of the Act.

Special Tax rate for certain incomes

It is proposed to insert **new section 115BBI** to tax certain incomes at the **special rate of 30% without deduction of any expenditure or adjustment of any loss**. Specified income includes the following -

- (a) Income accumulated or set apart in excess of 15%,
- (b) Deemed income u/s 11(1b) and section 11(3)
- (c) Investment of funds in an unspecified manner.
- (d) Income applied for the benefit of the interested person
- (e) Income applied outside India
- (f) Accumulated income not utilized for the purpose for which it is so accumulated or set apart

Irrespective of the amount of income applied, now the amount of default will be taxable @ 30%.

Voluntary contributions for the renovation and repair of temples, mosques, gurudwaras, churches etc.

Voluntary contributions received for the purpose of renovation or repair of such properties as notified under Section 80G(2)(b), may be treated by the Trust as corpus fund if it is applied for the purpose for which received, not applied for making donation to others, must be separately identifiable and invested in mode prescribed u/s 11(5). If the conditions are not satisfied, deemed income to be considered in the year of violation.

Application will be allowed only when its actually paid

Any amount paid shall be considered as application of income during the previous year in which such sum is actually paid by it irrespective of the previous year in which the liability to pay such sum was incurred according to the method of accounting regularly employed by it.

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Wef Assessment Year 2021-22, Memorandum explaining provisions of Finance Bill (Pg. 101-102)

Wef Assessment Year 2021-22, Memorandum explaining provisions of Finance Bill (Pg. 103)

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TDS/TCS

1. It is proposed to widen the scope of the sections 206AB by inclusion of sections – **194-IA, 194-IB, 194M, 194S** along with the existing ones – 192, 192A, 194B, 194BB, 194LBC, 194N.

2. TDS u/s 206AB/206CCA shall be –

- Twice the rate, or

- 5%



Whichever is **higher**, subject to the conditions mentioned below

Currently	w.e.f. 1 st April 2022
TDS return not filed for preceding 2 years .	TDS return not filed for Previous Year
Aggregate TDS/TCS (in PY) > 50,000	Aggregate TDS/TCS (in PY) > 50,000

3. TDS @ 1% is to be deducted on any sum paid to the transferor of an immovable property.

At Present



TDS is deducted on consideration so paid to the transferor

w.e.f. 1st April 2022



TDS to be deducted on the Stamp Duty Value

Note – If Consideration and Stamp Value < INR 50 Lakhs, TDS shall not be deducted.

4. W.e.f. 1st July 2022, TDS @ 10% is to be deducted on any benefit or perquisite arising from carrying out a business or profession subject to the following conditions –

- Such Benefit/Perquisite is provided to a **resident**
- Aggregate value of such benefit/perquisite does not exceed INR 20,000

Refer section 206AB and 206CCA of the Finance Bill, 2022
{pg. 83-84}
(Applicable w.e.f 01-04-2022)

Refer Section 194-IA of the Finance Bill, 2022
{pg.80}
(Applicable w.e.f 01-04-2022)

Refer Section 194R of Finance Bill, 2022
{pg. 80-81}
(Applicable w.e.f 01-07-2022)

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Other Miscellaneous Proposals

Surcharge on Long Term Capital Gains

- **Surcharge on long term capital gain (LTCG)** has been rationalized. Under the existing provision the surcharge applicable on LTCG arising on transfer of any long term assets can be **10%/15%/25%/37%** as the case may be, depending upon the income level of the tax payer. However, on long term capital gains arising from **listed equity shares** and equity oriented units the surcharge is **capped at 15%** even if the tax payer falls in **higher tax** bracket i.e. total income **exceeding INR 2 Cr.**
- It is **now proposed to cap the surcharge at 15%** on long term capital gain (section 112) on **other specified long terms assets** from existing graduated rates. However, the tax rate remains **unchanged at 20%**.
- The amendment would benefit the **venture capital investors** and **start up founders** and **ESOP holders**. Further the proposal will benefit only those with an income above **2CR.**

International Financial Service Center

While **several tax concessions** have been provided over the **past few years to units** located in International Financial Services Centre (IFSC), it is proposed to further **incentivize operations** from IFSC by providing the following **additional incentives w.e.f. A.Y. 2023-24:**

- **Sec. 10(4E)** has been proposed to be amended to extend the exemption to any income of a **non-resident from transfer** of offshore **derivative instruments** or over **the-counter derivatives entered into with** an Offshore Banking Unit of IFSC.
- **Sec. 10(4F)** has been proposed to be amended to extend the exemption to any **income of a non-resident** by way of **royalty or interest on account** of **lease of ship** in a PY, **paid by a unit** of an IFSC, if the unit has commenced operation on or **before 31-03- 2024.**

Refer Section 112 of the Finance Bill, 2022. (Pg. 110)

Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 4-6)

(Applicable w.e.f. 01-04-2022)

Refer Finance Bill, 2022. (Pg. 21-22)

Memorandum Explaining the Provision in the Finance Bill 2022 (Pg. 43-44)

(Applicable w.e.f. 01-04-2022)

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- **Sec. 10(4G)** has been proposed to be inserted to provide exemption to any income received by a **non-resident from portfolio of securities or financial products or funds, managed or administered** by any **portfolio manager** on behalf of **such non-resident**, in an account maintained with an Offshore Banking Unit, in any IFSC, to the extent such income accrues or **arises outside India and is not deemed to accrue or arise in India.**
- Provisions of **Sec. 56(2) (viib)** do not apply where the consideration for issue of shares as referred therein has been received by a **venture capital undertaking** from a specified fund. **Clause (aa) of Explanation to Sec. 56(2) (viib) has been proposed** to be amended to expand the definition of specified fund to also include **Category I or a Category II Alternative Investment Fund which is regulated under the IFSC Authority Act, 2019.**
- **Sec. 80LA(2)(d)** has been proposed to be amended to **extend 100% deduction.** While **several tax concessions** have been provided over the **past few years** to units located in International Financial Services Centre (IFSC), it is proposed to further **incentivise** operations from IFSC by providing some **additional incentives w.e.f. A.Y. 2023-24:**

NPS-State Government

- As per proposed amendment in section 80CCD, **state government employees** will be allowed the **higher 14% limit.** This change is retrospective which implies that **State Government employees can claim the higher deduction even for A/Y 2020-21 by filing a revised return.**

Annuity to disabled person

- Deduction u/s 80DD is now proposed to be available for schemes wherein payments are made during the lifetime of the assessee, if the assessee attains the **age of 60 years** and where payment to the scheme has been discontinued. Further, amount received as **annuity or lump sum by the dependent before death** which was **taxable earlier shall now be non-taxable.**

Refer Section 80CCD of the Finance Bill, 2022.
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(Pg. 44-45)

(Applicable w.e.f. 01-04-2020)

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Covid-19 Medical treatment and death compensation Exempt

Relief measures were announced via press statement on 25 June 2021 towards medical treatment expenditure and compensation received by family members in relation to death of an individual. These measures have now been introduced in the Act with effect from Assessment Year 2020-21 to provide clarity on various aspects.

Refer Section 80DD of the Finance Bill, 2022. (Pg. 42)

Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 45-46)

(Applicable w.e.f. 01-04-2023)

Exemption of Covid-19 related medical expenditure and Ex-gratia:

- Any sum received by a person/family member from his employer/any other person in respect of **any expenditure actually incurred** on his own/family's medical treatment, for **any illness related to Covid-19 is proposed not to be taxed as perquisite under section 17(2) or income u/s 56(2)(x) i.e. 01-04-2020.**
- **Received from Employer:**
Any sum of money received by a family member of the deceased employee on account of Covid -19 related **illness within 12 months** from the **date of the death** subject to certain conditions to be notified. There is **no limit on the amount of exemption.**
- **Received from any other person:**
Any sum of money received by a family members of the deceased individual on account of Covid-19 related illness from any other person up to a **limit of Rs. 10 lacs received within 12 months from the date of the death** subject to certain conditions to be notified.

Refer Finance Bill, 2022. (Pg. 37-39)

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(Applicable w.e.f. 01-04-2020)

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Bonus Stripping and dividend stripping

The Budget proposal intends to plug the loop hole on tax avoidance through **Bonus stripping and dividend stripping in the capital market.**

Bonus stripping provisions were earlier applicable to **Mutual funds** only and **Dividend stripping** was applicable to **securities and Mutual funds**. However, this has now been **extended to - shares and units of REITs, InvITs and AIF and securities.**

Section 94 of the Income Tax Act contains anti avoidance provision to deal with the transaction in **securities and units of Mutual funds.**

If the investor sells its original holdings acquired **three months before the record date or within nine months after the record date**, the **loss on sale would have to be ignored**. Such loss would now have to be **considered as a cost of acquisition of the bonus shares and deduction** would be available as and when **the bonus shares are sold.**

Refer Section 94 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

(Pg. 53-54)

(Applicable w.e.f. 01-04-2023)

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Withdrawal of Exemption under section 10 under agreements persons:

In the light of simplification of Indian Tax laws and phasing out of tax incentives and exemption, the following exemptions have been proposed to be **withdrawn w.e.f. AY 2023-24**:

- Exemption for income specified **u/s 10(8)** in the hands of an Individual who is assigned duties in India in connection with any co-operative technical assistance programmers and projects in accordance with an **agreement entered into by CG and the Government of foreign** state subject to specified conditions being fulfilled.
- Exemption for income specified **u/s 10(8A)** in the hands of a consultant engaged by the international organization (agency) for rendering technical services in India in connection with any technical assistance programme or project subject to specified conditions being fulfilled.
- Exemption for income specified **u/s 10(8B)** in the hands of an Individual being an employee of the consultant referred to in **Sec. 10(8A)** subject to specified conditions being fulfilled.
- Exemption for income specified **u/s 10(9)** in the hands of family members of any such Individual as referred in **Sec. 10(8), 10(8A) and 10(8B)** who accompanies such individual to India, subject to specified conditions being fulfilled.

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PROPOSAL ON GOODS AND SERVICES TAX

The GST reforms in this budget are an indication of tighter laws to come, especially governing return filing and input tax credit. In the year 2022, there has already seen two major amendments to the GST law, effective 1st January 2022:

- **ITC claims will be allowed only if it appears in GSTR-2B;** So, the taxpayers can no longer claim 5% provisional ITC under the CGST Rule 36(4) and ensure every ITC value claimed was reflected in GSTR-2B;
- **Recovery of Self-assessment** tax without providing opportunity of explaining Difference between GSTR-1 and GSTR-3B.

The proposals made in relation to GST Provisions in Budget 2022 are being highlighted hereunder:

➤ **Availing of input tax credit (itc)**

- A registered person can claim Input tax on the basis of **auto generated ITC in GSTR 2B;**
- There are also some additional conditions and restrictions specified to avail such credit such as:
 - Supply made by newly registered persons for a period as may be specified;
 - Default in payment of tax by a Supplier;
 - Supplier has not paid or short paid output tax;
 - Liability disclosed in GSTR1 exceeds GSTR 3B;
 - Excess credit claimed than the prescribed limit;
 - Any other prescribed class of persons
- A registered person now cannot claim **Provisional ITC;**
- Presently the time limit of availing of ITC is due date of furnishing of GSTR-3B for the month of September following the end of the financial year to which such invoice or debit note pertains, or furnishing of the relevant annual return, whichever is earlier;

Now the said time limit has been **increased till 30th November;**

Refer Section 99, 102-103, 105-106 of the Finance Bill, 2022.

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Memorandum Explaining the Provision in the Finance Bill 2022

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(Applicable w.e.f. 01-04-2022)

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- If ITC is availed but not utilized, then interest will not be levied. (*Amendment done retrospectively w.e.f. 01.07.2017*);
- The existing concept of two-way communication between the taxpayers i.e., between the supplier and the recipient for ITC and credit note has been done away with.

➤ RETURN

- **Filing of GSTR1 & GSTR3B have to be done in sequence.** A registered person shall not be allowed to file return if previous period return has not been furnished;
- Any **rectification of error in GSTR-1/ GSTR-3B is now permitted till 30th November** of next financial year which was earlier allowed till return of September month;
- **Issuance of Credit note** in relation to any supply has been *extended up to 30th day of November* against the existing deadline of return of September month of the following financial year;
- An option has been provided to the persons furnishing return under QRMP (Quarterly Return Filing and Monthly Payment of Taxes) scheme, to pay either the **self-assessed tax** or an amount that may be prescribed;
- The due date for filing return (GSTR 5) by non-resident taxable person is prescribed as 13th day of next month.

➤ CANCELLATION OF GST REGISTRATION

- Composition Tax Payer's Registration can be cancelled Suo- moto if they have not filed their GSTR-4 return beyond 3 months from the due date;
- A Registration of a person (other than composition tax payers) can be cancelled if has not furnished returns for such continuous tax period as may be prescribed.
- **This would affect the overall compliance requirement for the taxpayer as a suspension of the GST registration shall lead to the non-availability of E-way bills and ITC.**

Refer Section 101, 104, 107-108 and 111 of the Finance Bill, 2022.

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(Applicable w.e.f. 01-04-2022)

Refer Section 100 of the Finance Bill, 2022.

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(Applicable w.e.f. 01-04-2022)

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➤ PAYMENT/ADJUSTMENT OF TAX

- Power has been entrusted to the government to prescribed maximum proportion of input credit to be utilized available in electronic credit ledger;
- Transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the CGST Act or the IGST Act of a distinct person has been allowed.

➤ GST REFUND

- **Relevant date of filling of refund claim in respect of supplies made to SEZ unit or developer shall be due date of filling GSTR 3B for such supplies;**
- Time limit for claiming refund of tax paid on inward supplies of goods or services for a specialized agency like UNO, Consulate or Embassy of foreign as may be specified in Sec.55 of CGST Act, is prescribed as 2 years from the last day of the quarter in which the said supply was received;
- Specific forms and regulations shall be notified to seek a refund of the cash deposited over the required amount;
- Tax authorities has the power to withhold or recovery the tax refund claim in respect of all types of refund.

➤ INTEREST/LATE FEE

- Late fee for filling of GSTR 8 will be applicable in case of E commerce operator;
- A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding 18% instead of 24%. *(Amended retrospectively, with effect from the 1st day of July, 2017)*

Refer Section 109 of the Finance Bill, 2022.

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(Applicable w.e.f. 01-04-2022)

Refer Section 112 of the Finance Bill, 2022.

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(Applicable w.e.f. 01-04-2022)

Refer Section 110 of the Finance Bill, 2022.

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