



| Search |

| Seizure |

| Arrest |

in GST

| CA Satish Saraf | Hyderabad |

Agenda

Section
67,69,129,130
& 132 of CGST
Act, 2017

Rules
139, 140 & 141
of CGST Rules,
2017

Forms
GST INS-01,
GST INS-02,
GST INS-03,
GST INS-04 &
GST INS-05

Sections

S No	Section	Particulars
1	67	Power of inspection, search and seizure
2	69	Power to arrest
3	129	Detention, seizure and release of goods and conveyances in transit
4	130	Confiscation of goods or conveyances and levy of penalty
5	132	Punishment for certain offences

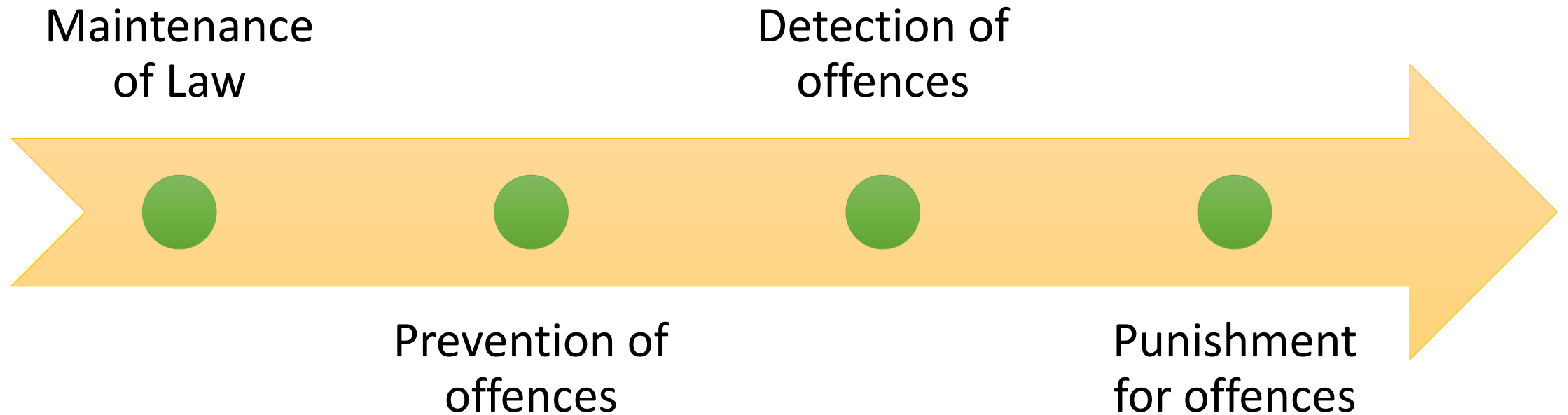
Rules

S No	Rule	Particulars
1	139	Inspection, search and seizure
2	140	Bond and security for release of seized goods
3	141	Procedure in respect of seized goods

Forms

S No	Form	Particulars
1	GST INS-01	Authorization for inspection or search
2	GST INS-02	Order of seizure
3	GST INS-03	Order of prohibition
4	GST INS-04	Bond for release of goods seized
5	GST INS-05	Order of release of goods /things of perishable or hazardous nature

Generally, any Law is..



Inspection

Section 67(1) of CGST Act, 2017

Who can conduct

- Proper Officer
- Not below the rank of Joint Commissioner

When to conduct

- Has Reasons to believe

Upon whom

- Taxable person or
- Transporter of Goods, or
- Owner or operator of Godown etc.

Where to inspect

- Any place of business of

Purpose to conduct

Evade the tax under the Act

- Suppression of transaction – supply of goods or services
- Suppression of stock on hand
- Claim of ITC in excess of entitlement, or
- indulged in contravention of Act or Rules

Transporter or Owner or operator of Godown Etc.

- Escaped the payment of tax
- Likely to cause evasion of tax

Search

Section 67(2) of CGST Act, 2017

Who can conduct

- Proper Officer not below the rank of Joint Commissioner
- Can JC can delegate the power to other officer

When to conduct

- In pursuance of Inspection conducted U/s. 67(1) Or otherwise
- Has reasons to believe that (in every reply must challenge RtB)
 - Are secreted in any place, which are
 - Goods liable for confiscation
 - Documents or books or things relevant for proceedings under this act

Who can search & seize

- Any Authorized officer or himself (JC)

Search & Seize – Goods, Documents, Books or things

Search

Legal & Illegal
search – it's
consequence

Search timings

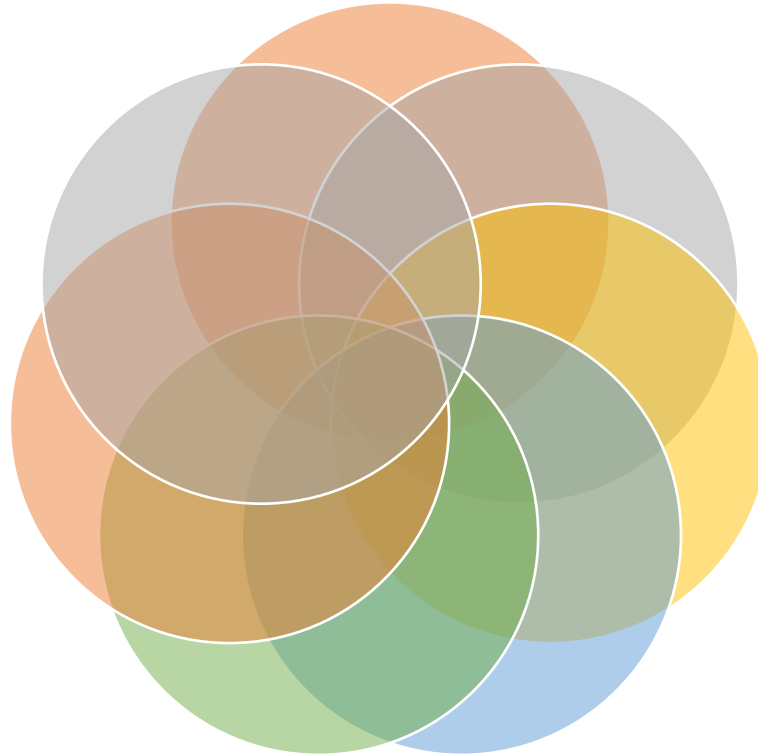
Reason to
suspect

Panchanama

Whether **cash**
is **thing** or not –
MP-HC-Indore
Bench

What is
document

What is
incriminating
material



Documents, books and things – not relied upon.

Seal or Break open – where access is denied.

No notice is issued within six months from date of seize of goods

- What has to be done – extension of time limit

Disposal of certain goods due to their nature.

- Preparation of inventory of goods disposed

Applicability of CRPC for GST Proceedings – as far as may be applicable

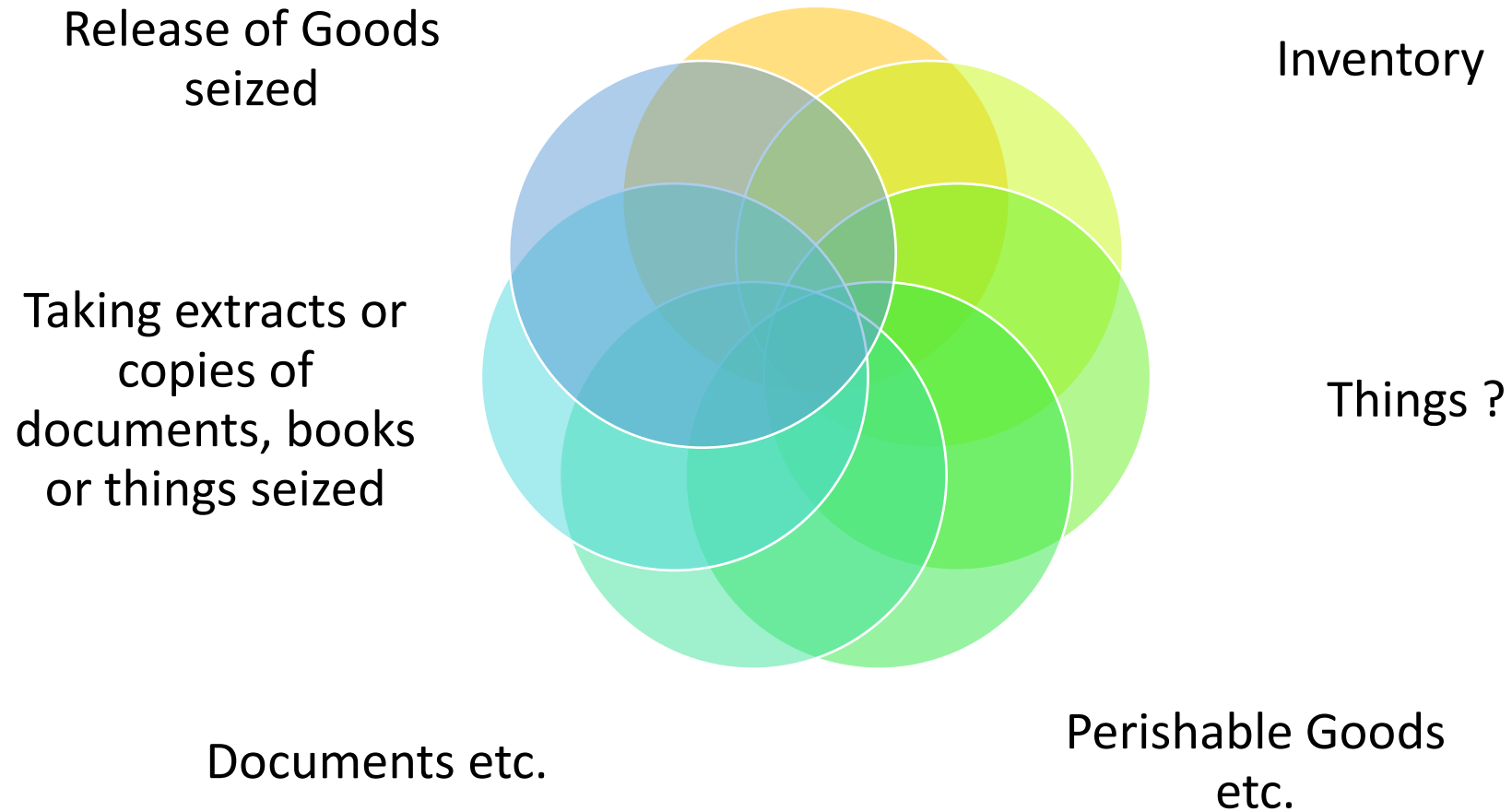
Power to retain documents, Books, records, registers

Authorized officer to purchase or take to check issue of Tax Invoice etc.,

Search

Seizure

Section 67(2) / 129
/ 130 of CGST Act,
2017



Arrest

Section 69 RW Section 132 of CGST Act, 2017

Who can authorize arrest

- Commissioner of CGST

When can arrest

- Has reasons to believe that a person has committed an offence
- Specified in Section 132(1)(a), (b), (c), (d)
- Which are punishable under 132(1)(i) / (ii) & 132(2)

When to produce before Magistrate

- Offence U/s. 132(5)
- Informing the person arrested – grounds of arrest
- Within 24 Hours from the time of arrest.

Arrest

Other offences specified in Section 132

- Offence specified under 132(4)
 - Arrest and grant of bail, or
 - Arrest and forwarded to custody of Magistrate

Offences not specified in Section 132(1)

- No Arrest
- Prosecution proceedings

Punishment in all cases as specified U/s. 132.

- Six months to 5 years with fine

Anticipatory Bail is permitted?

“Causes to commit and retain the benefit arising out of”

Circular on Arrest – ST –
Circular No:
201/11/2016, Dt: 30-09-
2016.

Thank you

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CPE SEMINAR – ICAI - HYDERABAD

07th Feb, 2021

BUDGET 2021

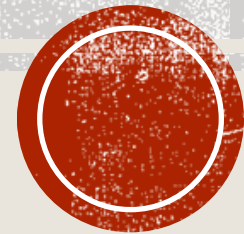
Direct Tax Proposals



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TAX INCENTIVES



EXEMPTION FOR LEAVE TRAVEL CONCESSION CASH SCHEME (SECTION 10)

- CLAUSE 5

Existing Provision:

- Section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India.

New insertion to the existing Provision:

- Second proviso to section 10(5) - The **value in lieu of** any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions to be prescribed.
- It is also proposed to clarify by way of an Explanation that where an individual claims and is allowed exemption for prescribed expenditure, no exemption shall be allowed for same prescribed expenditure to any other individual.

EXEMPTION FOR LEAVE TRAVEL CONCESSION CASH SCHEME (SECTION 10)

- CLAUSE 5

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

- The employee exercises an option for the deemed LTC fare in lieu of the applicable LTC in the Block year 2018-21
- specified expenditure means expenditure incurred by an individual or a member of his family during the specified period on goods or services which are liable to tax at an aggregate rate of twelve per cent or above under various GST laws and goods are purchased or services procured from GST registered vendors/service providers;
- specified period means from 12th October, 2020 to 31st March, 2021;
- the amount of exemption shall not exceed thirty-six thousand rupees per person or one-third of specified expenditure, whichever is less;
- the payment to GST registered vendor/service provider is made by an account payee cheque or account payee bank draft, or use of ECS through a bank account or through such other electronic mode as prescribed under Rule 6ABBA and tax invoice is obtained from such vendor/service provider;
- If the amount received by, or due to an individual as per the terms of his employment, from his employer in relation to himself and his family, for the LTC is more than what is allowable to such person under the above discussed provisions, the exemption would be available only to the extent of exemption admissible under above listed provisions.

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

INCENTIVES FOR AFFORDABLE HOUSING PROJECT AND INTRODUCING AFFORDABLE RENTAL HOUSING (SECTION-80IBA) - CLAUSE 26

Existing Provision:

- where the gross total income of an assessee includes any profits and gains derived from the business of developing and building **affordable housing project**, there shall, subject to certain conditions specified therein, be allowed a deduction of 100% of the profits and gains derived from such business.
- One of the conditions is that the project is approved by the competent authority after the 1st day of June 2016 but on or before the 31st day of March 2021.

Proposed Provision:

- It is proposed to allow deduction under section 80-IBA of the Act also to such **rental housing project** which is notified by the Central Government in the Official Gazette and fulfils such conditions as specified in the said notification.
- Further, it is also proposed that the outer time limit for 31st March 2021 in this section for getting the affordable housing project approved be extended to 31st March 2022 and same to be provided for the proposed affordable rental housing project.

wef from 1st April, 2022 and will apply to AY 2022-23 and subsequent AY's

TAX INCENTIVES FOR UNITS LOCATED IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC) - [CLAUSES 4,5,15, 17, 21, 23 AND 30]

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

TAX INCENTIVES FOR UNITS LOCATED IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC) - [CLAUSES 4,5,15, 17, 21, 23 AND 30]

- It is also proposed to insert section 10(4E) of the Act so as to exempt any income accrued or arisen to, or received by a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of International Financial Services Centre which commenced operations on or before the 31st day of March, 2024 and fulfils prescribed conditions.
- It is also proposed to insert section 10(4F) of the Act so as to exempt any income of a non-resident by way of royalty on account of lease of an aircraft in a previous year paid by a unit of an International Financial Services Centre, if the unit is eligible for deduction under section 80LA for that previous year and has commenced operation on or before the 31st March, 2024.
- It is also proposed to insert section 10(23FF) of the Act so as to exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of transfer of share of a company resident in India by the resultant fund and such shares were transferred from the original fund to the resultant fund in relocation, if capital gains on such shares were not chargeable to tax had that relocation not taken place.
- It is also proposed to insert new clauses in section 47 to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as transfer for capital gain tax purpose. It is also proposed to provide another clause to provide that any transfer by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund shall not be treated as transfer for the purpose of capital gains.
- “Original Fund”, “Relocation” and “Resultant fund” have been defined and Consequential amendments shall be proposed in section 49, 56 and 79 of the Act on account of such relocation.

TAX INCENTIVES FOR UNITS LOCATED IN INTERNATIONAL FINANCIAL SERVICES CENTRE (IFSC) - [CLAUSES 4,5,15, 17, 21, 23 AND 30]

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

- provide that deduction under said section is also available to a unit of IFSC if it is registered under the IFSC Authority Act, 2019.
- provide that the income arising from transfer of an asset, being an aircraft or aircraft engine which was leased by a unit referred to in clause (c) of sub-section (2) of said section to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100% deduction subject to condition that the unit has commenced operation on or before the 31st March 2024.
- It is proposed to amend section 115AD to make the provision of this section applicable to investment division of an offshore banking unit in the same manner as it applies to specified fund to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the Securities and exchange Board of India (Foreign Portfolio investors) Regulations, 2019 made under the Securities And Exchange Board of India Act, 1992 (15 of 1992), calculated in the prescribed manner.

wef 1st April, 2022 and will accordingly apply to the assessment year 2022-23 and subsequent AY's.

ISSUANCE OF ZERO COUPON BOND BY INFRASTRUCTURE DEBT FUND

- [CLAUSE 3 & 45]

- In order to enable infrastructure debt fund to issue zero coupon bond necessary amendments are proposed in section 2(48) of the Act. Rules 2F and 8B of Income-tax Rules shall be amended subsequently after the Finance Bill 2021 is enacted.
- Consequential amendment has also been proposed to include infrastructure debt fund in section 194A(3)(x) of the Act which will take effect from 1st April, 2021.

wef 1st April, 2022 and will apply to AY 2022-23 and subsequent AYs

TAX NEUTRAL CONVERSION OF URBAN COOPERATIVE BANK INTO BANKING COMPANY

- CLAUSES 13 & 15

- It is proposed to expand the scope of business reorganization to include conversion of a primary co-operative bank to a banking company and the deductions available under section 44DB of the Act shall also be made applicable in relation to such conversion of primary co-operative bank to the banking company.
- it is also proposed that transfer of a capital asset by the primary co-operative bank to the banking company as a result of conversion shall not be treated as transfer under section 47 of the Act.
- Consequently, the allotment of shares of the converted banking company to the shareholders of the predecessor primary co-operative bank shall not be treated as transfer under the said section of the Act.
- Necessary amendments to this effect have been proposed in section 44DB and in clause (vica) and clause (vicb) of section 47 of the Act.
- **wef 1st April, 2021 and will apply to AY 2021-22 and subsequent AYs.**

FACILITATING STRATEGIC DISINVESTMENT OF PUBLIC COMPANY

[CLAUSES 13 AND 15]

Existing Provision:

- Section 2(19AA) of the Act defines that “demerger” in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company on satisfaction of conditions prescribed in the said clause.
- section 72A(1) of the Act provides that the accumulated loss and unabsorbed depreciation of the amalgamating company or companies shall be deemed to be the accumulated losses and unabsorbed depreciation of the amalgamated company or companies in specified cases and subject to the conditions specified in the said section.

Proposed Provision:

- It is proposed to insert Explanation 6 to section 2(19AA) to clarify that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if
- such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- the resultant company is a public sector company on the appointed date indicated in the scheme approved by the Government or any other body authorised under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf; and fulfils such other conditions as may be notified.

wef 1st April, 2022 and will apply to AY 2022-23 and subsequent AYs

EXTENSION OF DATE OF SANCTION OF LOAN FOR AFFORDABLE RESIDENTIAL HOUSE PROPERTY – (SECTION 80EEA)

- CLAUSE 24

Existing Provision:

- Section 80EEA of the Act provides a deduction in respect of interest on loan taken for a residential house property up to 1,50,000.
- To avail this benefit one of the conditions is that the loan is to be sanctioned anywhere between 1st April, 2019 and 31st March, 2021.

Proposed Provision:

- It is proposed to amend the provision of Section 80EEA of the Act to extend the outer date for sanction of loan i.e. from 31st March 2021 to 31st March 2022.

wef 1st April, 2022 and will apply to AY 2022-23 and subsequent AYs

EXTENSION OF DATE OF INCORPORATION FOR ELIGIBLE START UP FOR EXEMPTION AND FOR INVESTMENT IN ELIGIBLE START-UP (SECTION 80-IAC)

-CLAUSE 25

Existing Provision:

Section 80-IAC of the Act provides for a deduction of an amount equal to 100% of profits and gains derived from an eligible business by an eligible start-up for 3 consecutive AYs out of 10 years at the option of the assessee.

To eligible for the said benefit one of the condition is that the eligible start up is required to be incorporated on or after 1st April, 2016 but before 1st April, 2021.

Proposed Provision:

It is proposed to amend the provisions of section 80-IAC of the Act to extend the outer date of incorporation to before 1st April, 2022.

wef 1st April, 2021

EXTENSION OF DATE OF INCORPORATION FOR ELIGIBLE START UP FOR EXEMPTION AND FOR INVESTMENT IN ELIGIBLE START-UP (SECTION 54GB)

-CLAUSE 19

Existing Provision:

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

Proposed Provision:

- It is proposed to amend the provisions of section 54-GB of the Act to extend the outer date of transfer of residential property from 31st March 2021 to 31st March, 2022

wef 1st April, 2021

**REMOVING
DIFFICULTIES FACED BY
TAXPAYERS**



INCREASE IN SAFE HARBOUR LIMIT OF 10% FOR HOME BUYERS AND REAL ESTATE DEVELOPERS SELLING SUCH RESIDENTIAL UNITS: -CLAUSE 10 & 21

Existing Provision:

- For the purpose of **section 43CA**, where the consideration declared to be received or accruing as a result of the transfer of land or building or both, **iGeneral Electric Pension Trust [TS-37-AAR-2005]**s less than the value adopted or assessed or assessable by any authority of a State Government (i.e. “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration.
- **Section 56(2)(x)** of the Act, inter alia, provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property **exceeds ten per cent** of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head —Income from other sources”.

w.e.f 1st April, 2021

INCREASE IN SAFE HARBOUR LIMIT OF 10% FOR HOME BUYERS AND REAL ESTATE DEVELOPERS SELLING SUCH RESIDENTIAL UNITS: -CLAUSE 10 & 21

Proposed Provision:

- It is proposed to increase the safe harbour threshold from existing 10% to 20% under section 43CA of the Act, if the following conditions are satisfied:-
 - The transfer of residential unit takes place during the period from 12th November, 2020 to 30th June, 2021
 - The transfer is by way of first time allotment of the residential unit to any person
 - The consideration received or accruing as a result of such transfer does not exceed two crore rupee.
- Also it is proposed that circle rate shall be deemed as sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20% in Section 56(2)(x).

Case laws:- Relevant Rulings

- Welfare Properties P. Ltd [TS-743-ITAT-2019(Mum)]
- Faber Construction [TS-165-ITAT-2020(Mum)]
- Zain Constructions [TS-600-SC-2019]
- Rajprabha Developers Pvt. Ltd [TS-530-ITAT-2019(Mum)]

w.e.f 1st April, 2021

RELAXATION FOR CERTAIN CATEGORY OF SENIOR CITIZEN FROM FILING RETURN OF INCOME-TAX:

- CLAUSE 47

- Relief is provided to **senior citizen** who need not to file return of income if following conditions are satisfied-
 - He is resident in India and aged **75 years or above**
 - He received pension income from specified bank as notified and no other income. In addition, he may have interest income from the same bank in which he is receiving his pension income.
 - He shall be required to furnish a **declaration** to the specified bank as notified enabling banks to compute the income after chapter VI-A deductions and rebate u/s 87A and deduct tax accordingly.

w.e.f 1st April, 2021

RATIONALISATION OF PROVISIONS RELATED TO SOVEREIGN WEALTH FUND (SWF) AND PF:

- CLAUSE 5

Existing Provision:

- At present through Finance bill 2020, **section 10(23F)** provides exemption to specified persons from the income in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India.

Proposed Provision:

- Through Finance Bill 2021, it is proposed to amend the following subject to certain conditions-
 - Allowing Alternate Investment Fund (AIF) to invest up to **50% from 100%** in non-eligible investments
 - Investment through holding company
 - Investment in NBFC- IDF/IFC (non-banking finance company-infrastructure debt fund/Infrastructure finance company)
 - Loan or borrowings by SWF/Pension Fund
 - Commercial activity
 - Liable to Tax
 - Rules to prescribe the method of calculation

w.e.f 1st April, 2021

ADDRESSING MISMATCH IN TAXATION OF INCOME FROM NOTIFIED OVERSEAS RETIREMENT FUND:

- CLAUSE 28

Existing Provision:

- At present the withdrawal from retirement funds by residents who had opened such fund when they are NRI and resident in foreign countries may be taxed on receipt basis in such foreign countries, while on accrual basis in India.

Proposed Provision:

- It is proposed to introduce a new Sec. 89A in order to delineate the mismatch in year of taxability of withdrawal from retirement funds by residents who had opened such funds when they were non-resident in India and resident in foreign countries where such withdrawals may be taxed on receipt basis in foreign countries and on accrual basis in India.
- It is proposed to insert a new **section 89A** to provide that the income of a specified person from specified account shall be taxed in the manner and in the year as prescribed by the CG.

w.e.f 1st April, 2022

RATIONALISATION OF PROVISIONS OF MINIMUM ALTERNATE TAX (MAT):

- CLAUSE 31

Existing Provision:

- Computation of book profit u/s. 115JB does not provide for any adjustment for additional income in cases where past year income is included in books of account of current year on account of an APA entered u/s. 92CC or a secondary adjustment u/s.92CE

Proposed Provision:

- It is proposed to insert Sub-sec (2D) to Sec.115JB to provide that the AO shall, on an application made by the assessee, recompute the book profit of the past year(s) and tax payable, if any, during the previous year, in the prescribed manner.
- The amendment also clarifies that the period of four years specified in Sec. 154(7) shall be reckoned from the end of the financial year in which the said application is received by the AO.
- Considering that **dividend income** is no longer exempt in the hands of the shareholders, the said income and the related expenditure is no longer to be reduced and added back for arrival of book profits u/s. 115JB. It is accordingly proposed that dividend income earned by foreign companies on their investments in India and the expense claimed in respect thereof are reduced and added back (by way of amendment to clause (fb) and clause (iid) to Explanation 1 to Se.c 115JB), while computing book profit in case of foreign companies where such income is taxed at lower than MAT rate due to DTAA.

EXEMPTION OF TDS ON PAYMENT OF DIVIDEND TO BUSINESS TRUST IN WHOSE HAND DIVIDEND IS EXEMPT:

-CLAUSE 44

Existing Provision:

- **Section 194** of the Act provides for deduction of tax at source (TDS) on payment of dividends to a resident. The second proviso to this section provides that the provisions of this section shall not apply to such income credited or paid to certain insurance companies or insurers.

Proposed Provision:

- It is proposed to amend section 194(2) in order to provide exemption to such income credited or paid to a **business trust by a special purpose vehicle or payment of dividend to any other person** as may be notified where earlier exemption is applicable only to such income credited or paid to certain insurance companies or insurers.

w.e.f 1st April, 2020 retrospectively

RATIONALISATION OF THE PROVISION CONCERNING WITHHOLDING ON PAYMENT MADE TO FIIS:

- CLAUSE 49

Existing Provision:

- **Section 196D** of the Act provides for deduction of tax on income of FII from securities referred in section 115AD(1)(a) at the rate of 20%.
- Since the said section provides for TDS at a specific rate indicated therein, the deduction is to be made at that rate and the benefit of agreement under section 90 or section 90A of the Act cannot be given at the time of tax deduction.

Proposed Provision:

- It is proposed to insert a proviso to **section 196D(1)** to provide that in case of a payee to whom an agreement referred to in section 90 (1) or section 90A(1) applies and such payee has furnished the tax residency certificate referred to in section 90(4) or section 90A(4) of the Act, then the tax shall be deducted at the **rate of 20% or** rate or rates of income-tax provided in **such agreement** for such income, whichever is **lower**.

w.e.f 1st April, 2021

RATIONALIZATION OF TAX AUDIT PROVISIONS IN CERTAIN CASES:

- CLAUSE 11

Existing Provision:

- Under **section 44AB** of the Act, the threshold limit for a person to audit his accounts carrying on business was increased from **one crore rupees to five crore rupees** in cases where,-
 - (i) aggregate of all receipts and payments in cash during the previous year **does not exceed five per cent** of such receipt or payment respectively;

Proposed Provision:

- To increase the threshold from five crore rupees to **ten crore rupees**.

w.e.f 1st April, 2021

ADVANCE TAX INSTALMENT FOR DIVIDEND INCOME:

- CLAUSE 53

Existing Provision:

- **Section 234C** shall not charged in the following cases-
 - Capital gains
 - Income in the nature of section 2(24)(ix) of the Act
 - Income under the head "PGBP" where income arises or accrues first time
 - Income in the nature of section 115BBDA(1)

Proposed Provision:

- To include **dividend income** other than deemed dividend as per section 2(22)(e) of the Act in the above list.

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

RAISING OF PRESCRIBED LIMIT FOR EXEMPTION SECTION 10(23C)(IIIAE) AND (IIIAE) OF THE ACT:

- CLAUSE 5

Existing Provision:

- Exemption is provided for the income received by any person, where aggregate receipts from university or universities or educational institution or institutions as referred to in 10(23C)(iiia) as well as from hospital or hospitals or institution or institutions as referred to in 10(23C)(iiiae) is upto Rs 1 crore.

Proposed Provision:

- It is proposed to increase the threshold of aggregate receipts to Rs 5 crore.

w.e.f 1st April, 2022

EXTENDING DUE DATE FOR FILING RETURN OF INCOME IN SOME CASES:

- CLAUSE 32

Existing Provision:

- Section 139 of the Act contains provisions in respect of the filing of return of income for different persons or class of persons. Section 5A of the Act provides for taxation of spouses governed by Portuguese Civil Code. On account of this provision any income earned by a partner of a firm whose accounts are required to be audited shall be apportioned between the spouses and included in their total income, if the section 5A applies to them.
- The **relaxation** for the due date of partners which are aligned with the due date of the firm is **not there** for spouse of such **partner to whom section 5A** of the Act applies.

Proposed Provision:

- It is proposed that the due date for the filing of original return of income be extended to **31st October** of the assessment year in case of **spouse of a partner of a firm** whose accounts are required to be audited under this Act or under any other law for the time being in force, if the provisions of **section 5A** applies to them.
- Further, **in the case of a firm** which is required file form 3CEB, as per section 92E of the Act, due date for filing return of partner of such firm be extended to **30th November** of the assessment year.

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

REDUCING TIME TO FILE BELATED RETURN AND TO REVISE ORIGINAL RETURN AND TO REMOVE DIFFICULTY IN CASES OF DEFECTIVE RETURNS: - CLAUSE 32

Existing Provision:

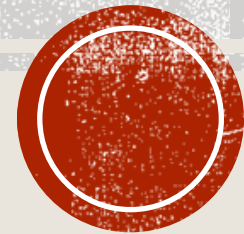
- Section 139(4) and section 139(5) of the Act contain provisions relating to the filing of belated and revised returns of income respectively. The belated or revised returns under said sections respectively at present could be filed before the end of the assessment year or before the completion of the assessment whichever is earlier.
- Section 139(9) of the Act lays down the procedure for curing a defective return. The Explanation to the subsection lists the conditions in which a certain return of income shall be considered to be defective.

Proposed Provision:

- It is proposed that the last date for filing of belated return or revised return to be **reduced by 3 months** i.e. now can be filed within 9 months from the end of the relevant Financial year or before the completion of the assessment, whichever is earlier.
- As there are number of conditions which render a return invalid or defective, it is proposed that a **proviso will be inserted** to the Explanation empowering the Board to specify, vide notification that any of the conditions shall not apply for a class of assessee or shall apply with such modifications, as maybe specified i.e. by genuine reasons.

w.e.f 1st April, 2021

RATIONALISATION OF VARIOUS PROVISIONS



**AMENDMENT OF SECTION 36(1) (VA) AND SECTION 43B OF THE ACT –
DISALLOWANCE TO EMPLOYER OF EMPLOYEE CONTRIBUTION TO VARIOUS FUNDS.
- [CLAUSE 8 AND CLAUSE 9]**

Existing

- The employee contribution to various welfare funds received by employer will be allowed as deduction if the employer deposits the amount within due date of the relevant funds.
- As some of the courts have applied the provision of section 43B on employee contribution u/s 36 (1)(va) as well. Whether the due date is to be considered is as per the relevant fund or as per section 43B, has been a litigative issue.

Proposed

- Explanation is added to the 36(1)(va) to clarify that section 43B does not apply and deemed to never have been applied for the purposes of determining the 'due date' under this clause.
- Also, Explanation 5 is added to section 43B that the provisions of the said section do not apply and deemed to never have been applied to a sum received by the assessee from any of his employees to which provisions of section 2(24)(x) applies, i.e. employee's contribution to various funds.

w.e.f 1st April, 2021 and will accordingly apply in relation to the AY 2021-22 and subsequent AY's.

**AMENDMENT OF SECTION 36(1) (VA) AND SECTION 43B OF THE ACT –
DISALLOWANCE TO EMPLOYER OF EMPLOYEE CONTRIBUTION TO VARIOUS FUNDS.
- [CLAUSE 8 AND CLAUSE 9]**

Case Laws - Overruled

- Vinay Cement Ltd [TS-5004-SC-2007-O]
- Alom Extrusions Ltd. [TS-31-SC-2009]
- Essae Teraoka Pvt. Ltd.[TS-71-HC-2014(KAR)]
- Spectrum Consultants India Pvt. Ltd [TS-684-HC- 2013(KAR)]
- Ghatge Patil Transports Ltd. [TS-637-HC-2014(BOM)]
- Hindustan Organics Chemicals Ltd [TS-423-HC- 2014(BOM)]
- Jaipur Vidyut Vitran Nigam Ltd.[TS-16-HC-2014(RAJ)]

Case laws - Confirmed

- Merchem Ltd [TS-543-HC-2015(KER)]
- Popular Vehicles & Services Pvt.Ltd. [TS-378- HC-2018(KER)]
- Gujarat State Road Transport Corporation [TS-681- HC-2013(GUJ)]
- Checkmate Facility And Electronic Solutions Pvt Ltd [TS-7436-HC 2018(GUJARAT)-O]

w.e.f 1st April, 2021 and will accordingly apply in relation to the AY 2021-22 and subsequent AY's.

CONSTITUTION OF DISPUTE RESOLUTION COMMITTEE FOR SMALL AND MEDIUM TAXPAYERS- **SECTION 245MA.** -[CLAUSE 66]

Proposed:

To introduce new scheme in a new section 245MA with the following features

- One or more Dispute Resolution Committee (DRC) shall be constituted to resolve disputes where the **returned income is fifty lakh rupee or less** and the **aggregate disputed amount is ten lakh rupees or less**. The assessee would have an option to opt for or not opt for the dispute resolution through the DRC.
- The assessee shall **not eligible** to opt for the above scheme if the specified order is
 - based on a search initiated under section 132 or
 - requisition made under section 132A or
 - a survey initiated under 133A or
 - information received under an agreement referred to in section 90 or section 90A, of the Act, or
 - if there is detention, prosecution or conviction under various laws as specified in the proposed section
- The DRC shall have the powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution for any offence under this Act in case of a person whose dispute is resolved under this provision.
- Central Government may notify in the Official Gazette the implementation of the scheme. However, no such direction shall be issued after the 31st day of March, 2023.

w.e.f 1st April, 2021

CONSTITUTION OF THE BOARD FOR ADVANCE RULING. -[CLAUSES 67 TO 77]

Existing:

- Authority for Advance Rulings (AAR) constituted under Chapter XIX-B consists of a Chairman and various Vice-Chairman, revenue members and law members. A bench cannot function if the post of Chairman or Vice-Chairman is vacant.

Proposed:

- Authority for Advance Rulings shall cease to operate from notified date and **Board for Advance Rulings** shall be constituted.
- Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner.
- Advance rulings of such Board shall **not be binding** on the applicant or the Department.
- To insert new section 245W - The applicant or the Department may **appeal** against the ruling or order passed by the Board **before the High Court within 60 days** from the date of communication of such ruling or order. On showing sufficient cause, **further 30 days** shall be provided for filing of appeal.
- Amendments are proposed to be made to the various provisions of the Chapter to this effect.

w.e.f 1st April, 2021

REOPENING OF ASSESSMENTS UNDER SECTION 147 [CLAUSE 35 TO 40, 42 & 43]

Existing:

- Section 147 allows the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year. A notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment.

Proposed:

- that following information shall be considered as information which suggests that income chargeable to tax has escaped assessment.
 - ❑ any information which has been flagged in the case of the assessee in accordance with the risk management strategy formulated by the Board or
 - ❑ final objection raised by the C&AG of India to the effect that the assessment has not been in accordance with the provisions of the Act

w.e.f 1st April, 2021

REOPENING OF ASSESSMENTS UNDER SECTION 153A, 153B, 153C AND 153D [CLAUSE 35 TO 40, 42 & 43]

Proposed:

- The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.
- Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure of reassessment as explained above u/s 148A.
- **w.e.f 1st April, 2021**

REOPENING OF ASSESSMENTS UNDER SECTION 147. [CLAUSE 35 TO 40, 42 & 43]

Proposed:

- To insert new section 148A of the Act which provides that before issuance of notice u/s 148 the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. The AO has to obtain approval of specified authority before conducting such enquiries.
- Specified Authority
 - ❖ Time elapsed is <3yrs or 3yrs from the end of R.A.Y - Principal Commissioner or Principal Director or Commissioner or Director
 - ❖ Time elapsed >3yrs from the end of R.A.Y - Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.
 - ❖ After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.
- **w.e.f. 1st April, 2021**

AMENDMENT IN TIME PERIOD FOR ISSUE OF NOTICE UNDER SECTION 148 [CLAUSE 43 & 44]

Existing:

- Where the income chargeable to tax escaping assessment exceeds Rs,1,00,000, the notice under this section can be issued within six years from the end of relevant assessment year.

Proposed:

- Now it is proposed to amend the “six” years to “three” years.
- In cases where, assessing officer has evidence that the income escaping assessment, is likely to be fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year.

w.e.f. 1st April, 2021

ISSUE NOTICE UNDER CLAUSE (1) OF SUB-SECTION (1) OF SECTION 142 [CLAUSE 33]

Existing:

- Section 142 of the Act provides for conduct of inquiry before assessment. The said section gives the Assessing Officer the authority to issue notice to an assessee, who has not submitted a return of income, asking for submission of return.

Proposed:

- Now it is proposed to amend the provisions of the said section to empower the prescribed income-tax authority besides the Assessing Officer to issue notice under the said clause.

w.e.f. 1st April, 2021

PROVISION FOR FACELESS PROCEEDINGS BEFORE THE INCOME-TAX APPELLATE TRIBUNAL (ITAT) – INTRODUCING SECTION 255 [CLAUSE 78]

Proposed:

- It is proposed to notify a scheme for faceless ITAT appeal procedure in line with faceless assessment procedures so as to impart greater efficiency, transparency and Accountability.
- It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme to direct the implementation as may be specified in the notification. Such directions are to be issued on or before 31st March, 2023.

w.e.f. 1st April, 2021

DISCONTINUANCE OF INCOME-TAX SETTLEMENT COMMISSION [CLAUSE 54 TO 65]

Proposed:

- It is proposed to discontinue Income-tax Settlement Commission (ITSC) from 1st February, 2021.
 - All applications that were filed and not declared invalid and in respect of which no order was issued on or before the 31st January, 2021 shall be treated as pending applications.
 - Interim Board for Settlement (interim board) will be constituted for settlement of pending applications, consisting of three members, each being an officer of the rank of Chief Commissioner, as may be nominated by the Board. If the Members of the Interim Board differ in opinion on any point, the point shall be decided according to the opinion of majority.
 - All the functions and powers shall vest with interim board. In computing any time limits for order or applications, the period commencing from 1st February, 2021 and ending on the end of the month in which the Interim Board is constituted shall be excluded and the remaining period shall be extended to sixty days, if less than sixty days.
- continued

w.e.f. 1st February, 2021

DISCONTINUANCE OF INCOME-TAX SETTLEMENT COMMISSION [CLAUSE 54 TO 65]

Proposed:

- The applicant may withdraw such application within a period of three months from the date of commencement of the Finance Act, 2021 and intimate the Assessing Officer, in the prescribed manner about such withdrawal.
- Pending application shall be deemed to have been received by the Interim Board on the date on which such application is allotted or transferred to the Interim Board.
- The central government may issue scheme for settlement of pending applications by the Interim by eliminating the interface between the Interim Board and the assessee in the course of proceedings to the extent technologically feasible. i.e. faceless settlement procedure.

w.e.f. 1st February, 2021

REDUCTION OF TIME LIMIT FOR COMPLETION OF ASSESSMENT

SECTION 153

[CLAUSE 41]

Existing:

- Section 153 provides the time limit for completion of assessment, reassessment and re-computation of 12 months from AY 2019-20 onwards.

Proposed:

- Now it is proposed to amend the provisions and reduce the time limit by three months to 9 months from the end of the assessment year when the income was first assessable from AY 2021-22 onwards.

w.e.f. 1st April, 2021

PROVISION OF CHARITABLE TRUST AND INSTITUTIONS TO ELIMINATE POSSIBILITY OF DOUBLE DEDUCTION WHILE CALCULATING APPLICATION OR ACCUMULATION [CLAUSE 5 & 6]

Existing:

- Corpus donations received by trusts, institutions, funds etc. are exempt u/s 10(23c) and u/s 11(1)(d). Hence, Corpus donations shall not be included in the total income of the trust.
- Some of these entities claim corpus donations as exempt income and **also claim the application from such donations under mandatory application of 85% of total income**. Thus these entities getting double deduction.
- Also Charitable trust and Institutions take loans or borrowings and make application for charitable or religious purposes out of the proceeds of loans and borrowings. Such loans or borrowings when repaid, are again claimed as application. This results in unintended double deduction.
- Both the above situations, at times, also result in paper loss which is claimed by the assessee as carry forward resulting in unintended short application (less than 85%) in the subsequent years.

Proposed:

- To provide that **application out of corpus shall not be considered as application** for charitable or religious purposes for the purposes of third proviso of 10(23C) and 11(1)(a) & 11(1)(b).
- Voluntary contributions made for corpus fund shall be invested or deposited in one or more of the forms or modes specified in 11(5) maintained specifically for such corpus. And such amount shall be allowed as application in the previous year in which it is deposited back to corpus to the extent of such deposit or investment.

PROVISION OF CHARITABLE TRUST AND INSTITUTIONS TO ELIMINATE POSSIBILITY OF DOUBLE DEDUCTION WHILE CALCULATING APPLICATION OR ACCUMULATION [CLAUSE 5 &6]

Proposed:

- **Application from loans and borrowings** -shall not be considered as application for charitable or religious purposes . Only when such **loans repaid** from the income of the previous year, **shall be allowed as application.**
- To insert explanation 2 under sec 12AB that **no set off or deduction or allowance of any excess application**, of any of the year preceding the previous year, shall be allowed.

Case laws:- Confirmed

- **Medical Relief Society of South Kanara** [TS-621-ITAT-2019(Bang)]
- **Peoples Education Society** [TS-243-ITAT-2017(Bang)]

w.e.f. 1st April, 2022 and accordingly applies from AY 2022-23 and subsequent AY's

TAXATION OF PROCEEDS OF HIGH PREMIUM UNIT LINKED INSURANCE POLICY (ULIP) [CLAUSE 3,5,4 AND 19]

Existing:

- Clause 10D of section 10 provides exemption for the amount received under a life insurance policy, including the bonus allocated on such policy where the premium payable for any of the years during the terms of the policy does not exceed 10% of the actual capital sum assured.
- There is no limit on the maximum amount of annual premium being paid by a person during the term of the policy.

Proposed:

- Insert Explanation 3 - Define ULIP as a life insurance policy which has components of both investment and insurance and is linked to a unit.
- Insert 4th proviso - The exemption under this clause shall not apply to any ULIP issued on or after 1st February, 2021, if the premium payable exceeds Rs.2,50,000 for any of the previous year during the term of the policy.
- Insert 5th proviso – If the premium is payable by a person for more than one ULIPs, issued on or after 1st February, 2021, exemption will be available only w.r.t. such policies where the aggregate premium does not exceed Rs.2,50,000 for any of the previous years during the term of the policy.

TAXATION OF PROCEEDS OF HIGH PREMIUM UNIT LINKED INSURANCE POLICY (ULIP)

[CLAUSE 3,5,14 AND 29]

- Insert 6th proviso – The provisions of 4th and 5th proviso shall not apply to any sum received on the death of a person
- Insert 7th proviso – Enable CBDT to issue guidelines with the approval of CG for the purpose of removing the difficulty and to lay every guideline issued by the Board before each House of Parliament and to make it binding on the income-tax authorities and the assessee.
- ULIP will be considered as a capital asset under clause 14 of section 2 of the Act where the exemption under clause 10D of section 10 of the Act does not apply on account of the applicability of 4th and 5th proviso.
- Insert section 45(1B) - Deemed taxation of profits and gains from the redemption of ULIP as Capital Gains where the exemption under clause 10D of section 10 of the Act does not apply on account of the applicability of 4th and 5th proviso.
- Include ULIPs in the definition of equity oriented fund in section 112A so as to provide them same treatment as unit of equity oriented fund. Thus provisions of section 111A and 112A would apply on sale/redemption of such ULIPs.

w.e.f. 1st April, 2021 and will apply to AY 2021-22 and subsequent AYs

SLUMP SALE UNDER SECTION 50B, SECTION 2(42C) AND SECTION 2(47) [CLAUSE 3]

Existing:

- Section 2 (42C) of the Act defines —'slump sale' to mean the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities in such cases. This has been interpreted by some courts that other means of transfer like exchange, relinquishment etc, are excluded.
- Several litigations have been concluded on this issue and a transfer which —'in effect and substance' is by way of sale is also currently covered in the definition of slump sale under section 50C of the Act as interpreted by various courts.

Proposed:

- To amend the scope of the definition of the term —slump sale by amending the provision of section 2(42C) of the Act so that all types of —transfer as defined in section 2(47) of the Act are included within its scope.

Case laws:- Overruled

- Bharat Bijlee Ltd. [TS-270-HC-2014(BOM)]
- UTV Software Communications Ltd. [TS-770-ITAT- 2015(Mum)]
- Zinger Investments Pvt. Ltd. [TS-437-ITAT- 2013(HYD)]

Case laws:- Confirmed

- Areva T & D India Ltd [TS-458-HC-2020(MAD)]

w.e.f. 1st April, 2021 and shall accordingly apply to the assessment year 2021-22 and subsequent assessment years.

**PROVISION OF CAPITAL GAINS ON TRANSFER OF CAPITAL ASSET TO PARTNER ON
DISSOLUTION OR RECONSTITUTION – SECTION 45(4) AND SECTION 48
[CLAUSE 14 AND 16]**

Existing:

- The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or other association of persons or body of individuals of the previous year in which the said transfer takes place.
- the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration for the purposes of section 48.
- Uncertainty existed regarding applicability to a situation where assets are revalued or self generated assets and payment is made to partner or member which is in excess of his capital contribution.

w.e.f. 1st April, 2021

**PROVISION OF CAPITAL GAINS ON TRANSFER OF CAPITAL ASSET TO PARTNER ON
DISSOLUTION OR RECONSTITUTION – SECTION 45(4) AND SECTION 48
[CLAUSE 14 AND 16]**

Proposed:

- **Amending section 48** –the fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration. The balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account increase in the capital account of the specified person due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.

Case laws:- Overruled

- **Electroplast Engineers** [TS-168-HC-2019(BOM)]
- **Dynamic Enterprises** [TS-556-HC-2013(KAR)]

Case laws:- Confirmed

- **Savitri Kadur** [TS-257-ITAT-2019(Bang)]

w.e.f. 1st April, 2021

**NEW PROVISION - SPECIFIED PERSON RECEIVING ANY MONEY OR OTHER ASSET ON
DISSOLUTION OR RECONSTITUTION OF SPECIFIED ENTITY– SECTION 45(4A)
[CLAUSE 14 AND 16]**

Proposed:

- Where the specified person at the time of dissolution or reconstitution of the specified entity receives any money or other asset during the previous year and such money or other asset is in excess of the balance in the capital account of such specified person in the books of accounts of the specified entity at the time of its dissolution or reconstitution, then the profits and gains arising from such receipt shall be chargeable to tax under the head 'Capital Gains' and shall be deemed to be the income of the specified entity for the previous year in which the receipt took place.

w.e.f. 1st April, 2021

PROVISIONAL ATTACHMENT IN FAKE INVOICE CASES

[CLAUSE 79]

Existing:

- Sec 281B of the Act- Assessing Officer may provisionally attach any property of the assessee, if necessary, in order to protect the interest of revenue. This can be done only with prior approval of Pr. Chief Commissioner or Pr Director General or Chief Commissioner or Director General or Principal Commissioner or Principal Director or Commissioner or Director, of Income-tax. Such provisional attachment is valid for a period of 6 months.
- Section 271AAD of the Act was inserted vide the Finance Act, 2020 to impose penalty on a person or a person who causes such person to make a false entry or omit an entry from his books of accounts.

Proposed:

- To amend the provision of section 281B of the Act to enable the AO to exercise the powers under this section during the pendency of proceedings for imposition of penalty under section 271AAD of the Act, if the amount or aggregate of amounts of penalty imposable is likely to exceed two crore rupees.

RATIONALISATION OF THE PROVISIONS OF EQUALISATION LEVY: [CLAUSE 159]

- **Section 153 of Finance Act, 2020** specifies that Equalisation Levy u/s 165A is to be levied at the rate of 2% of the consideration amount received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it.

- Certain clarifications/amendments are given w.r.t the provisions relating to e-commerce operator levy.
 - Consideration received or receivable for specified services and consideration received or receivable for e-commerce supply or services shall not include consideration which are taxable as royalty or fees for technical services in India.
 - Definition of e-commerce supply or service, “online sale of goods” and “online provision of services” shall include one or more of the following activities taking place online:
 - (a) Acceptance of offer for sale (b) Placing the purchase order (c) Acceptance of the Purchase order;
 - (d) Payment of consideration; or (e) Supply of goods or provision of services, partly or wholly
 - Consideration received or receivable from e-commerce supply or services shall include the consideration for sale of goods irrespective of whether the e-commerce operator owns the goods; and also the consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator.

RATIONALISATION OF THE PROVISIONS OF EQUALISATION LEVY: [CLAUSE 5]

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

w.e.f 1st April, 2021 and apply accordingly to the AY 2021-22 and subsequent AYs

DEPRECIATION ON GOODWILL

[CLAUSES 7, 18 AND 20]

Existing:

- Cost of acquisition of the goodwill u/s 55 defined to mean the purchase price if it is acquired by purchase. In other cases it is nil except when it is covered by sub-clauses (i) to (iv) of sub-section (1) of section 49.
- However Goodwill of a business or a profession has not been specifically provided as an asset either in the definition u/s 2(11) of the Act or in section 32 of the Act. But in the case Smiff Securities Limited [(2012)348 ITR 302 (SC)], Goodwill of a business or profession is considered as depreciable asset u/s 32 of the Act.
- Based on the above case Law, the actual calculation of depreciation on goodwill is carried out in accordance with various provisions of the Act.
- In general, Goodwill is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value.

Proposed:

- that goodwill of a business or profession will not be considered as a depreciable asset. In a case where goodwill is purchased by an assessee, It will be continued to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

DEPRECIATION ON GOODWILL

[CLAUSES 7, 18 AND 20]

Proposed:

- To amend section 2(11) of the Act to provide that block of asset' shall **not include goodwill of a business or profession**;
- To amend 32(1)(ii) of the Act to provide that **goodwill of a business or profession shall not be considered as an asset and therefore not eligible for depreciation**. Further, it is also proposed to amend Explanation 3 to sec 32(1) to provide that **goodwill of a business or profession shall not be considered as an asset**.
- To amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the AY beginning on the 01.04.2020 and depreciation has been obtained by the assessee under the Act, the WDV of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.
- To amend sec 55 (2) by substituting clause (a) to provide that in relation to a capital asset, being goodwill of a business or profession, or tenancy rights, or stage carriage permits, or loom hours,—
 - (i) in the case of acquisition of such asset by purchase from a previous owner - purchase price; and
 - (ii) in the case falling under sub-clause (i) to (iv) of section 49(1) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and**
 - (iii) in any other case, shall be taken to be *nil*

DEPRECIATION ON GOODWILL

[CLAUSES 7, 18 AND 20]

Proposed:

- provide that in case of goodwill of business or profession acquired by way of purchase from a previous owner and any deduction on depreciation u/s 32 of the Act has been obtained by the assessee in any previous year preceding the P.Y 2020-21 ,

then **cost of acquisition = Purchase Price - Depreciation so obtained by the assessee before the PY 2020-21.**

w.e.f 1st April, 2021 and will accordingly apply to AY 2021-22 and subsequent AY's

Case Laws :- Overruled

- **Smifs Securities Ltd.** [TS-639-SC-2012] –Overruled

RATIONALISATION OF THE PROVISION RELATING TO PROCESSING OF RETURNED INCOME AND ISSUANCE OF NOTICE UNDER SECTION 143(2) OF THE ACT [CLAUSE 34]

Existing:

- Section 143(1)(a) of the Act provides that at the time of processing of return of income made u/s 139, or in response to a notice u/s 142(1), the total income or loss shall be computed after making the adjustments specified in clauses (i) to (vi) therein.
- Second proviso to Section 143(1) that intimation under this sub-section shall be sent within the expiry of one year from the end of the financial year in which the return is made.
- Proviso to Section 143(2) says that notice under this section shall be sent within 6 months from the end of the financial year in which the return is furnished.

Proposed:

- To amend following sub clauses under 143(1)(a) of the Act while computing the total income
 - Sub clause (iv)-to allow for the adjustment on account of increase in income indicated in the audit report but not taken into account in computing the total income.
 - Sub-clause (v) - to give consequential effect to amendment carried out in Sec 80 AC vide Finance Act, 2018.
- To amend the section 143 to reduce the **time limit**
 - for sending intimation u/s 143(1) of the Act from **1 year to 9 months**.
 - for issue of notice u/s 143(2) of the Act from **6 months to 3 months**

With effect from 1st April, 2021

ADJUDICATING AUTHORITY UNDER THE PBPT [“THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS”] ACT [CLAUSES 142 TO 147]

Existing:

- Sec 71 of PBPT Act provides that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the PBPT Act, Adjudicating Authority appointed u/s 6(1) and Appellate Tribunal established under section 25 of the Prevention of Money-Laundering Act, 2002 [“PMLA”] can discharge functions of Adjudicating authority and Appellate Tribunal under PBPT Act respectively.

Proposed:

- To provide that Competent Authority constituted under 5(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPT Act w.e.f 1st July, 2021
- Period of limitation of passing order u/s 26(7) of the PBPT Act which expires during the period from 01/07/2021 to 29/09/2021 shall stand extended to 30th September, 2021.

With effect from 1st July, 2021

RATIONALISATION OF THE PROVISION OF PRESUMPTIVE TAXATION FOR PROFESSIONALS U/S 44ADA

[CLAUSE 12]

- Section 44ADA (1) provides that in case of an assessee, being a resident in India engaged in a profession referred to 44AA(1) and whose total gross receipts \leq 50 lakh rupees in a P.Y, a sum equal to 50% of the total gross receipts of the assessee in the P.Y on account of such profession, or as the case may be, a sum higher than the aforesaid sum, shall be deemed to be the profits and gains of such profession chargeable to tax.

Existing:

- The provisions of section 44ADA of the Act were made applicable to individual, HUF and partnership firm but not a Limited Liability Partnership (LLP) as defined under section 2(1)(n) of LLP Act, 2008.

Proposed:

- To give clarity of position of law, amend section 44ADA (1) to provide that the section shall apply to an assessee, being an individual, HUF or partnership firm, **not being an LLP as defined under section 2(1)(n) of LLP Act, 2008.**

With effect from 1st April, 2021

CLARIFICATION REGARDING THE SCOPE OF VIVAD SE VISHWAS ACT, 2020 ["VSV"] [CLAUSE 160]

Proposed:

- As the VsV was enacted for the resolution of disputed tax and not for the taxes covered by an order in pursuance to the settlement of a case before Income Tax settlement commission. Such cases are covered under ITSC (whether they have attained finality or not) have always been, therefore, intended to be outside the purview of VsV.
- It is proposed to amend the provisions of VsV to clarify the original legislative intent for which the definitions of —"appellant" in section 2(1)(a), "disputed tax" in section 2(1)(j) and "tax arrear" in section 2(1)(o), of the VsV will not cover the ITSC cases.

w.e.f 17th March, 2020 retrospectively

DEFINITION OF THE TERM —LIABLE TO TAX

[CLAUSE 3]

Proposed:

- It is proposed to insert section 2(29A) of the Act providing definition to the term “liable to tax” meaning ‘in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to imposition of such tax liability, an exemption has been provided’.

Case laws:- Confirmed

- Green Emirate Shipping & Travels [TS-18-ITAT- 2005(Mum)]
- Martrade Gulf Logistics FZCO-UAE [TS-575-ITAT- 2017(Rjt)]
- Bhagwan T. Shivlani [TS-5262-ITAT-2012(MUMBAI)- O]

Case laws:- Overruled

- General Electric Pension Trust [TS-37-AAR-2005]

With effect from 1st April, 2021

**AMENDMENT IN SECTION 191 OF THE FINANCE ACT, 2016 IN RELATION TO INCOME
DECLARATION SCHEME [CLAUSE 159]**

Existing:

- Section 191 of the Act, provides that any amount of tax, surcharge and penalty paid in pursuance of a declaration made under the Scheme shall not be refundable.
- A proviso was inserted in section 191 vide Finance (No. 2) Act, 2019 empowering the Board to specify a class of persons to whom such tax paid in excess shall be refundable.

Proposed :

- to amend the proviso of section 191 of the Finance Act, 2016, so as to provide that the excess amount refundable will be without payment of any interest.

w.e.f 1st June, 2016 retrospectively

SECTION 194Q- TDS ON PURCHASE OF GOODS [CLAUSE 48 AND 50]

Proposed:

- To insert section **194Q** which provides that **TDS @0.1%** is deductible by person responsible for paying any sum to any resident for **purchase of goods**, if following conditions are fulfilled
 - the **total sales, gross receipts or turnover of the buyer > 10Cr** during preceding FY.
 - And the aggregate value of **purchase of goods exceeds Rs.50,00,000/-** during preceding FY
- This section shall not apply if TDS or TCS is required to be carried out under any other provision of section 206C other than transaction to which section 206C(1H) applies.
- If on a transaction, TCS u/s 206C(1H) applies as well as TDS under this section applies, then on that transaction only TDS under this section shall be carried out.
- Inserting second proviso to section 206AA that where PAN is not provided, the rate of TDS for this section shall be five per cent.
- **With effect from 1st July, 2021**

TDS & TCS AT HIGHER RATES FOR NON FILERS OF RETURN – INSERTING SECTION 206AB & 206CCA

[CLAUSE 46, 51 AND 52]

Proposed:

- Section 206AB of the Act would apply on any sum or income or amount paid, or payable or credited, by a person **to a specified person**. The proposed TDS rate is higher of
 - **twice the rate specified in the relevant provision of the Act; or**
 - **twice the rate or rates in force; or**
 - **the rate of five per cent**
- This section shall not apply where the tax is required to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.
- Section 206CCA of the Act would apply on any sum or amount received by a person **from a specified person**. The proposed TCS rate in this section is higher of the followings rates:-
 - a) **twice the rate specified in the relevant provision of the Act; or**
 - b) **the rate of five percent.**

TDS & TCS AT HIGHER RATES FOR NON FILERS OF RETURN – INSERTING SECTION 206AB & 206CCA

[CLAUSE 46, 51 AND 52]

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

“SPECIFIED PERSON” MEANS

- The specified person is a person
 - I. who has not filed the returns of income for 2 Assessment years immediately before the previous year in which tax is required to be deducted or collected, as the case may be.
 - II. The time limit for filing tax return u/s 139(1) has expired for both of these A.Y's. and
 - III. aggregate of TDS and TCS in his case is rupees fifty thousand or more in each of these two previous years.
 - IV. shall not include a non-resident who does not have a permanent establishment in India
- Consequential amendment is proposed in section 194-IB(4) of the Act
- **With effect from 1st July, 2021**

TAXABILITY OF INTEREST ON PROVIDENT FUNDS WHERE INCOME IS EXEMPT [CLAUSE 5]

Existing:

- Section 10(11) provides for exemption with respect to any payment from a provident fund to which the Provident Funds Act, 1925 applies or from any other provident fund set up by the Central Government and notified.
- Section 10(12) provides for exemption with respect to the accumulated balance due and becoming payable to an employee participating in a recognized provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule.

Proposed:

- To insert proviso to section 10(11) and section 10(12) of the Act, providing that the provisions of these clauses **shall not apply to the interest income accrued during the previous year to contributions made by the person in that fund from 1st April, 2021 onwards exceeding Rs. 2,50,000 in a previous year.**
- **With effect from 1st April, 2021**

Thank You

