CIRCULAR NO. 23/2022

F. No. 370142/48/2022-TPL

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Direct Taxes)

****

Dated the 3rd of November, 2022

EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2022

CIRCULAR

INCOME-TAX ACT

Finance Act, 2022 – Explanatory Notes to the Provisions of the Finance Act, 2022

CIRCULAR NO. - 23/2022, DATED 3rd NOVEMBER, 2022

AMENDMENTS AT A GLANCE

Section of Income-tax Act, 1961	Particulars
2	Definitions
10	Incomes not included in total income
11	Income from property held for charitable or religious purposes.
12A	Conditions for applicability of sections 11 and 12
12AB	Procedure for fresh registration
13	Section 11 not to apply in certain cases
14A	Expenditure incurred in relation to income not includible in total income
17	"Salary", "perquisite" and "profits in lieu of salary" defined
35	Expenditure on scientific research
37	General
40	Amounts not deductible
43B	Certain deductions to be only on actual payment
50	Special provision for cost of acquisition in case of depreciable asset
56	Income from other sources
68	Cash credits
79	Carry forward and set off of losses in case of certain companies
79A	No set off of losses consequent to search, requisition and survey
80CCD	Deduction in respect of contribution to pension scheme of Central Government
80DD	Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability
80-IAC	Special provision in respect of specified business

80LA	Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre
92CA	Reference to Transfer Pricing Officer
94	Avoidance of tax by certain transactions in securities
115BAB	Tax on income of new manufacturing domestic companies
115BBD	Tax on certain dividends received from foreign companies
115BBH	Tax on Income from virtual digital asset
115BBI	Specified income of certain institutions
115JC	Special provisions for payment of tax by certain persons other than a company
115JF	Interpretation in this Chapter (Chapter XII-BA)
115TD	Tax on accreted income
115TE	Interest payable for non-payment of tax by trust or institution
115TF	When trust or institution is deemed to be assessee in default
119	Instructions to subordinate authorities
132	Search and seizure
132B	Application of seized or requisitioned assets
133A	Power of survey
139	Return of income
140B	Tax on updated return
143	Assessment
144	Best judgment assessment
144B	Faceless Assessment
144C	Reference to dispute resolution panel
148	Issue of notice where income has escaped assessment
148A	Conducting inquiry, providing opportunity before issue of notice under section 148
148B	Prior approval for assessment, reassessment or recomputation in certain cases.
149	Time limit for notice
153	Time limit for completion of assessment, reassessment and recomputation
153B	Time limit for completion of assessment under section 153A
155	Other amendments
156A	Modification and revision of notice in certain cases.
158AA	Procedure when in an appeal by revenue an identical question of law is pending before Supreme Court
158AB	Procedure where an identical question of law is pending before High Courts or Supreme Court
170	Succession to business otherwise than on death

170A	Effect of order of tribunal of court in respect of business reorganisation
179	Liability of directors of private company
194-IA	Payment on transfer of certain immovable property other than agricultural land
194-IB	Payment of rent by certain individuals or Hindu undivided family
194R	Deduction of tax on benefit or perquisite in respect of business or profession
194S	Payment on transfer of virtual digital asset
201	Consequences of failure to deduct or pay
206AB	Special provision for deduction of tax at source for non-filers of income-tax return
206C	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.
206CCA	Special provision for collection of tax at source for non-filers of income-tax return
234A	Interest for defaults in furnishing return of income
234B	Interest for defaults in payment of advance tax
239A	Refund for denying liability to deduct tax in certain cases
245MA	Dispute Resolution Committee
246A	Appealable orders before Commissioner (Appeals)
248	Appeal by a person denying liability to deduct tax in certain cases
253	Appeals to the Appellate Tribunal
255	Procedure of Appellate Tribunal
263	Revision of orders prejudicial to revenue
271AAB	Penalty where search has been initiated
271AAC	Penalty in respect of certain income
271AAD	Penalty for false entry, etc., in books of account
271AAE	Benefits to related persons.
271C	Penalty for failure to deduct tax at source
272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
276CC	Failure to furnish returns of income
278A	Punishment for second and subsequent offences
278AA	Punishment not to be imposed in certain cases
285B	Submission of statements by producers of cinematograph films or persons engaged in specified activity

1. Introduction

1.1 The Finance Act, 2022 (hereafter referred to as 'FA 2022') as passed by the Parliament, received the assent of the President on 30th March, 2022 and has been enacted as Act No. 6 of 2022.

1.2 This circular explains the substance of the provisions of the FA 2022 relating to direct taxes.

2. Changes made by FA 2022

2.1 The FA 2022 has,-

(i) specified the existing rates of income-tax for the assessment year 2022-23 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2022-23; and

(ii) amended sections of the Income-tax Act, 1961 ('the Act').

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2022-23.

3.1.1 Part I of First Schedule to the FA 22 specifies the rates of income-tax in respect of incomes of all categories of assessees liable to tax for the assessment year 2022-23. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2021 for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases during the financial year 2021-22. Main features of the rates specified in the said Part I are as follows:

3.1.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family (HUF), association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under:

<table>
<tr><td>Income chargeable to tax</td><td colspan="3">Rate of income- tax</td></tr>
<tr><td></td><td>Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.</td><td>Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)</td><td>Individual, resident in India who is of the age of eighty years or more (very senior citizen)</td></tr>
<tr><td>Up to Rs. 2,50,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="2">Nil</td></tr>
<tr><td>Rs. 2,50,001 - Rs. 3,00,000</td><td>5%</td></tr>
</table>

Rs. 3,00,001 - Rs. 5,00,000		5%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

For individuals opting for the concessional taxation regime under section 115BAC of the Act, the rates are as under:

Total Income (Rs)	Rate of income- tax
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5
From 5,00,001 to 7,50,000	10
From 7,50,001 to 10,00,000	15
From 10,00,001 to 12,50,000	20
From 12,50,001 to 15,00,000	25
Above 15,00,000	30

The amount of income-tax so computed, including in the case of an individual or an HUF exercising option under section 115BAC, or as computed under the provisions of section 111A or section 112 or section 112A of the Act but not having any income under section 115AD of the Act, shall be increased by a surcharge,-

(i) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent. of such income-tax; and

(ii) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent. of such income-tax;

(iii) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;

(iv) having a total income (excluding the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;

(v) having a total income (including the income by way of dividend or income under the provisions of section 111A and 112A of the Act) exceeding two crore rupees, but is not covered under clause (iii) or (iv) above, at the rate of fifteen per cent of such income-tax.

However, surcharge shall be at the rates provided in (i) to (iv) above for all categories of income without excluding dividend or capital gains in case if the income is taxable under section 115A, 115AB, 115AC, 115ACA and 115E of the Act.

Further, in case an individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) has any income under section 115AD of the Act, the amount of income-tax so computed, shall be increased by a surcharge,-

(i) having a total income exceeding fifty lakh rupees but not exceeding one crore rupees, at the rate of ten per cent of such income-tax; and

(ii) having a total income exceeding one crore rupees but not exceeding two crore rupees, at the rate of fifteen per cent of such income-tax;

(iii) having a total income [excluding the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but not exceeding five crore rupees, at the rate of twenty-five per cent. of such income-tax;

(iv) having a total income [excluding the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding five crore rupees, at the rate of thirty-seven per cent. of such income-tax;

(v) having a total income [including the income by way of dividend or income of the nature referred to in clause (b) of sub-section (1) of section 115AD of the Act] exceeding two crore rupees but is not covered in sub-clauses (iii) and (iv), at the rate of fifteen per cent. of such income-tax:

It may be further mentioned that marginal relief shall be available so the total amount payable as income-tax and surcharge on total income exceeding-

(i) fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees.

(ii) one crore rupees but not exceeding two crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(iii) two crore rupees but not exceeding five crore rupees shall not exceed the total amount payable as income-tax on a total income of two crore rupees by more than the amount of income that exceeds two crore rupees.

(iv)five crore rupees shall not exceed the total amount payable as income-tax on a total income of five crore rupees by more than the amount of income that exceeds five crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.1.3 Co-operative Societies.

Paragraph B of Part I of the First Schedule to the FA 2022 specifies the rates of income-tax in the case of every co-operative society as under:-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 – Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a co-operative society having a total income exceeding one crore rupees.

On satisfaction of certain conditions, a co-operative society resident in India has the option to pay tax at 22 per cent. as per the provisions of section 115BAD. Surcharge would be at 10% on such tax.

However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Esducation Cess.

3.1.4 Firms.

Paragraph C of Part I of the First Schedule to the FA 2022 specifies the rate of income-tax as thirty per cent. in the case of every firm.

The amount of income-tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.1.5 Local Authorities.

Paragraph D of Part I of the First Schedule to the FA 2022 specifies the rate of income-tax as thirty per cent. in the case of every local authority.

The amount of income-tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.1.6 Companies.

Paragraph E of Part I of the First Schedule to the Act specifies the rates of income-tax in the case of a company.

(i) In case of a domestic company, the rate of income-tax is-

a) twenty-five per cent. of the total income, if the total turnover or gross receipts of the company in the previous year 2019-20 does not exceed four hundred crore rupees;

b) twenty-five per cent. of the total income at the option of the company, if it opts for taxation under section 115BA of the Act;

c) twenty-two per cent. of the total income, at the option of the company, if it opts for taxation under section 115BAA of the Act;

d) fifteen per cent. of the total income, at the option of the company, if it opts for taxation under section 115BAB of the Act;

e) thirty per cent. of the total income, in all other cases.

The tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be enhanced by a surcharge of seven per cent. where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent. shall be levied if the total income of the company exceeds ten crore rupees.

However, where the domestic company exercises the option under section 115BAA or section 115BAB, the tax computed shall be enhanced by a surcharge of ten per cent. for all levels of income.

(ii) In the case of a company other than a domestic company, the rate of tax is forty per cent.

The tax so computed shall be enhanced by a surcharge of two per cent. where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent. shall be levied if the total income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that,-

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees,

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed, inclusive of surcharge in the case of every company.

No marginal relief shall be available in respect of Health and Education Cess.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2022-23.

3.2.1 Part II of the First Schedule to the FA 2022 specifies the rates for deduction of income-tax at source during the FY 2022-23 under the provisions of sections 193, 194A, 194B, 194BB, 194D, 194LBA, 194LBB, 194LBC and 195 of the Act. The rates will remain the same as those specified in Part II of the First Schedule to the Finance Act, 2021, for the purposes of deduction of income-tax at source during the FY 2021-22. For sections specifying the rate of deduction of tax at source, the tax shall continue to be deducted as per the provisions of these sections.

3.2.2 Surcharge.

The tax deducted at source in the following cases shall be increased by a surcharge, as specified under, for purposes of the Union:

The amount of tax so deducted shall be increased by a surcharge,—

(a) in the case of every individual or HUF or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person

referred to in sub-clause (vii) of clause (31) of section 2 of the Act, being a non-resident, calculated,—

(i) at the rate of ten per cent. of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds fifty lakh rupees but does not exceed one crore rupees;

(ii) at the rate of fifteen per cent. of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed two crore rupees;

(iii) at the rate of twenty-five per cent. of such tax, where the income or aggregate of income (excluding the income by way of dividend or income under the provisions of sections 111A,112 and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees but does not exceed five crore rupees;

(iv) at the rate of thirty-seven per cent. of such tax, where the income or aggregate of income (excluding the income by way of dividend or income under the provisions of sections 111A, 112 and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds five crore rupees;

(v) at the rate of fifteen per cent. of such tax, where the income or aggregate of income (including the income by way of dividend or income under the provisions of section 111A,112 and 112A of the Act) paid or likely to be paid and subject to the deduction exceeds two crore rupees, but is not covered under (iii) and (iv) above:

(b) in the case of every co-operative society, being a non-resident, calculated ,—

(i) at the rate of seven per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of twelve per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

(c) in the case of every firm, being a non-resident at the rate of twelve per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;

(d) in the case of every company, other than a domestic company, calculated,—

(i) at the rate of two per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees but does not exceed ten crore rupees;

(ii) at the rate of five per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten crore rupees.

(e) No surcharge on tax deducted at source shall be levied in the case of an individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person, co-operative society, local authority, firm, being a resident or a domestic company.

3.2.3 Health and Education Cess.

Health and Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of four per cent of income-tax including tax deducted and surcharge, if any. For instance, if the amount of income of a foreign company is Rs. 1,20,00,000/- and tax to be deducted from such foreign company is Rs. 12,00,000/- at the rate of 10 per cent., then the surcharge at the rate of two per cent. on such tax deducted shall be Rs. 24,000/-. Health and Education cess on such amount of tax deducted and surcharge (i.e. Rs. 12,00,000/- + Rs. 24,000/- = Rs. 12,24,000/-) shall be Rs. 48,960/-.

3.3 Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2022-23.

3.3.1 Part III of the First Schedule to the FA 2022 specifies the rates for deduction of income-tax at source from "Salaries" or under section 194P of the Act during the FY 2022-23 and also for computation of "advance tax" payable during the said year in the case of all categories of assessees have been specified in the said Part of the First Schedule to the FA 2022. These rates are also applicable for charging income-tax during the financial year 2022-23 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are provided in following paragraphs.

3.3.2 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). The basic exemption limits, rates of tax and slabs of income for various categories remain the same as was in financial year 2021-22.

The rates of tax during the financial year 2022-23 are as follows: -

Income chargeable to tax	Rate of income- tax

	Individual (other than senior and very senior citizen), HUF, association of persons, body of individuals and artificial juridical person.	Individual, resident in India who is of the age of sixty years or more but less than eighty years. (senior citizen)	Individual, resident in India who is of the age of eighty years or more (very senior citizen)
Up to Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 - Rs. 3,00,000	5%		
Rs. 3,00,001 - Rs. 5,00,000		5%	
Rs. 5,00,001 - Rs. 10,00,000	20%	20%	20%
Exceeding Rs. 10,00,000	30%	30%	30%

On satisfaction of certain conditions as per the provisions of section 115BAC, an individual or HUF has the option to pay tax in respect of the total income at following rates:

Total Income (Rs)	**Rate**
Up to 2,50,000	Nil
From 2,50,001 to 5,00,000	5 per cent.
From 5,00,001 to 7,50,000	10 per cent.
From 7,50,001 to 10,00,000	15 per cent.
From 10,00,001 to 12,50,000	20 per cent.
From 12,50,001 to 15,00,000	25 per cent.
Above 15,00,000	30 per cent.

The amount of income-tax so computed (including an individual or an HUF exercising option under section 115BAC) or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be increased by a surcharge,-

(a) at the rate of ten per cent. Of such income-tax, in case of a person having a total income (including any income by way of dividend or income under section 111A, 112 and 112A) exceeding fifty lakh rupees but not exceeding one crore rupees;

(b) at the rate of fifteen per cent. of such income-tax, in case of a person having a total income (including any income by way of dividend or income under section 111A, 112 and 112A) exceeding one crore rupees but not exceeding two crore rupees;

(c) at the rate of twenty-five per cent. of such income-tax, in case of a person having a total income (excluding any income by way of dividend or income under section 111A, 112 and 112A) exceeding two crore rupees but not exceeding five crore rupees;

(d) at the rate of thirty-seven per cent. of such income-tax, in case of a person having a total income (excluding any income by way of dividend or income under section 111A, 112 and 112A) exceeding five crore rupees;

(e) at the rate of fifteen per cent. of such income-tax, in case of a person having a total income (including any income by way of dividend or income under section 111A, 112 and 112A) exceeding two crore rupees but which is not included in (c) or (d) above;

In case of an association of persons consisting of only companies as its members, the rate of surcharge on the amount of Income-tax shall not exceed fifteen per cent.

However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding-

(i) fifty lakh rupees but not exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of fifty lakh rupees by more than the amount of income that exceeds fifty lakh rupees

(ii) one crore rupees but not exceeding two crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

(iii) two crore rupees but not exceeding five crore rupees shall not exceed the total amount payable as income-tax on a total income of two crore rupees by more than the amount of income that exceeds two crore rupees.

(iv) five crore rupees shall not exceed the total amount payable as income-tax on a total income of five crore rupees by more than the amount of income that exceeds five crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.3.3 Co-operative Societies.

Paragraph B of Part III of the First Schedule to the Act specifies the rates of income-tax in the case of every co-operative society. The rates are as follows: -

Income chargeable to tax	Rate
Up to Rs. 10,000	10%

Rs. 10,001 – Rs. 20,000	20%
Exceeding Rs. 20,000	30%

The amount of income-tax or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall be increased by a surcharge at the rate of seven per cent. of such income-tax in case the total income of a co-operative society exceeds one crore rupees but does not exceed ten crore rupees. Surcharge at the rate of twelve per cent. of such income-tax shall continue to be levied in case of a co-operative society having a total income exceeding ten crore rupees.

On satisfaction of certain conditions, a co-operative society resident in India has the option to pay tax at 22 per cent. as per the provisions of section 115BAD. Surcharge would be at 10 per cent. on such tax.

Marginal relief shall be allowed in the case of co-operative society to ensure that:

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees,

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Health and Education Cess on income-tax shall be levied at the rate of four per cent. of the amount of income-tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.3.4 Firms.

Paragraph C of Part III of the First Schedule to the FA 2022 specifies the rate of income-tax as thirty per cent. in the case of every firm.

The amount of income-tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall continue to be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a firm having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The Health and Education Cess on income-tax shall be levied at the rate of four per cent. on the amount of tax computed inclusive of surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.3.5 Local Authorities.

Paragraph D of Part III of the First Schedule to the FA 2022 specifies the rate of income-tax as thirty per cent in the case of every local authority.

The amount of income-tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall continue to be increased by a surcharge at the rate of twelve per cent. of such income-tax in case of a local authority having a total income exceeding one crore rupees. However, marginal relief shall be available so that the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

Health and Education Cess on income-tax shall be levied at the rate of four per cent. of the amount of income-tax and surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.3.6 Companies.

Paragraph E of Part III of the First Schedule to the FA 2022 specifies the rate of income-tax in the case of a company.

(i) In case of a domestic company, the rate of income-tax is,-

a) twenty-five per cent. of the total income, if the total turnover or gross receipts of the company in the previous year 2020-21 does not exceed four hundred crore rupees;

b) twenty-five per cent. of the total income, at the option of the company, if it opts for taxation under section 115BA of the Act;

c) twenty-two per cent. of the total income, at the option of the company, if it opts for taxation under section 115BAA of the Act;

d) fifteen per cent. of the total income, at the option of the company, if it opts for taxation under section 115BAB of the Act;

e) thirty per cent. of the total income, in all other cases.

The tax so computed or as computed under the provisions of section 111A or section 112 or section 112A of the Act shall continue to be enhanced by a surcharge of seven per cent. where such domestic company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of twelve per cent. shall continue to be levied if the total income of the company exceeds ten crore rupees.

However, where the domestic company exercises the option under section 115BAA or section 115BAB, the tax computed shall be enhanced by a surcharge of ten per cent.

(ii) In the case of a company other than a domestic company, the tax rate is forty per cent.

The tax so computed, shall continue to be enhanced by a surcharge of two per cent. where such company has total income exceeding one crore rupees but not exceeding ten crore rupees. Surcharge at the rate of five per cent. shall continue to be levied if the total income of such company exceeds ten crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that:

(i) the total amount payable as income-tax and surcharge on total income exceeding one crore rupees but not exceeding ten crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees,

(ii) the total amount payable as income-tax and surcharge on total income exceeding ten crore rupees shall not exceed the total amount payable as income-tax and surcharge on a total income of ten crore rupees, by more than the amount of income that exceeds ten crore rupees.

Health and Education Cess on Income-tax shall be levied at the rate of four per cent of the amount of income-tax computed including surcharge.

No marginal relief shall be available in respect of Health and Education Cess.

3.4 Surcharge on Additional Income-tax.

Where additional income-tax has to be paid under section 92CE, or section 115-QA or section 115TD of the Act, that is to say, on secondary adjustment, or distribution of income by a company on buy-back of shares from shareholders or on accreted income of certain trusts and institutions, the additional tax so payable shall be increased by a surcharge of twelve per cent. of such income-tax.

Health and Education Cess on Income-tax shall be levied at the rate of four per cent. of the amount of income-tax computed including surcharge.

3.5 Surcharge in case of newly introduced sections

For two newly inserted provisions 115BBH and 115BBI, the applicable tax rate is provided in the respective sections and surcharge shall be levied based on status of the taxpayer as is otherwise applicable to such taxpayer.

Health and Education Cess on Income-tax shall be levied at the rate of four per cent. of the amount of income-tax computed including surcharge.

4. Definition of “books of account”

4.1 Section 2 of the Act defines various terms used in the Act. Clause (12A) of section 2 defines "books or books of account" to include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electro-magnetic data storage device.

4.2 With the advancement of technology and its widespread utility in daily conduct of business, books of account are maintained in electronic form by a significant section of the assessees in the current age.

4.3 Therefore, to align the definitions under the Act with the current practices, clause (12A) of section 2 of the Act has been amended so as to provide that the definition of books or books of account would include books or books of account kept in electronic or in digital form or as print outs of data stored in such electronic or in digital form.

4.4 Applicability: This amendment is effective from 1st April, 2022.

5. Definition of the term "slump sale"

5.1 Slump sale is defined in clause (42C) of section 2 of the Act, as the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets and liabilities in such sales. *Vide* Finance Act, 2021, the definition of "slump sale" was amended to expand its scope to cover all forms of transfer under slump sale. However, inadvertently, in the last sentence, there is reference to the word "sales" instead of "transfer".

5.2 Therefore, consequential amendment was carried out *vide* FA 2022 by amending the provision of clause (42C) of section 2 of the Act, to substitute the word "sales" with the word "transfer".

5.3 Applicability: This amendment is effective retrospectively from the 1st April, 2021 and accordingly applies to the assessment year 2021-22 and subsequent assessment years.

6. Scheme for taxation of virtual digital assets

6.1 Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, a new scheme to provide for taxation of such virtual digital assets has been introduced.

6.2 A new section 115BBH has been inserted in the Act to provide that where the total income of an assessee includes any income from transfer of any virtual digital asset notwithstanding anything contained in any other provision of the Act, the income-tax payable shall be the aggregate of-

a. the amount of income-tax calculated on the income from transfer of such virtual digital asset at the rate of thirty per cent; and

b. the amount of income-tax with which the assessee would have been chargeable, had the total income of the assessee been reduced by the income referred to in clause (a).

6.2.1 However, notwithstanding anything contained in any other provision of the Act, no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

6.2.2 Further, no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years. Therefore, the loss from transfer of virtual digital asset cannot be set off against any income (including income from the transfer of another virtual digital asset).

6.2.3 The word "transfer" as defined in clause (47) of section 2 shall apply to any virtual digital asset, whether capital asset or not.

6.2.4 Applicability: This amendment takes effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

6.3 Further, in order to widen the tax base from the transactions so carried out in relation to these virtual digital assets, section 194S has been inserted in the Act. Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.

In cases where the consideration for transfer of virtual digital asset is—

(a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

(b) 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 responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

6.3.1 In case of specified person, the provisions of sections 203A and 206AB are not applicable. Further, no tax is to be deducted in case the payer is the specified person and the value or the aggregate of such value of consideration to a resident is equal to or less than Rs. 50,000 during the financial year. In any other case, the said limit is Rs. 10,000 during the financial year.

6.3.2 It has been provided that in case of a transaction where tax is deductible under section 194-O along with section 194S, then the tax shall be deducted under section 194S and not section 194-O.

6.3.3 Furthermore, where any sum paid for transfer of virtual digital asset is credited to any account, whether called "Suspense Account" or by any other name, in the books of

account of the person liable to pay such sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of section 194S shall apply accordingly.

6.3.4 For the purposes of the said section, it has been provided that 'specified person' means a person:–

(i) being an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;
(ii) being an individual or Hindu undivided family having income under any head other than the head 'Profits and gains of business or profession'.

6.3.5 The Board has been empowered to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of the said section and every such guideline issued by the Board has to be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital assets.

6.3.6 *Vide* circular no. 13/2022 dated 22.06.2022, the Board has issued guidelines, with prior approval of the Central Government, for removal of difficulties. Order under section 119 in relation to section 194S has also been issued in Circular no. 14/2022 dated 28.06.2022 which covers all other transactions which are not covered by Circular no. 13/2022. Circular no 13/2022 dated 22.6.2022 was laid before the Rajya Sabha on 26th July, 2022 and the Lok Sabha on 1st August, 2022.

6.3.7 *Vide* Notification No. 67/2022 (GSR 463E) dated 21.06.2022, rule 30 and rule 31 of the Income-tax Rules have been amended to provide conditions regarding sum deducted under section 194S by a specified person and requisite Form No. 26QE and Form No.16E to be furnished. Necessary amendments have also been made in Form 26Q to include details of TDS deducted u/s 194S in other cases.

6.3.8 Further, *vide* Notification no. 73/2022 (GSR 482E) dated 30.06.2022, it has been notified that where an Exchange in accordance with the guidelines issued under sub-section (6) of section 194S, agreed to pay tax in relation to a transaction of transfer of a virtual digital asset owned by it (as an alternative to tax required to be deducted by the buyer of such asset under section 194S), the Exchange shall deliver or cause to be delivered, a quarterly statement of such transactions in Form No. 26QF.

6.3.9 Applicability: This amendment is effective from 1st July, 2022.

6.4 Further, in order to provide for taxing the gifting of virtual digital assets, *Explanation* to clause (x) of sub-section (2) of section 56 of the Act has been amended to *inter alia*, provide that for the purpose of the said clause, the expression "property" shall have the meaning assigned to it in *Explanation* to clause (vii) and shall include virtual digital asset.

6.4.1 Applicability: This amendment takes effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

6.5 To define the term "virtual digital asset", a new clause (47A) has been inserted to section 2 of the Act. A virtual digital asset has been defined as any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically. Non-fungible token and any other token of similar nature are included in the definition.

6.5.1 Central Government has been empowered to notify any other virtual digital asset as virtual digital asset by way of notification in the Official Gazette. Non-fungible token has been defined to mean such digital assets as notified by the Central Government. Further, Central Government can notify such assets which shall not be considered as virtual digital assets.

6.5.2 Further, *vide* Notification no. 74/2022 (SO 2958E) dated 30.6.2022, the Central Government has notified that gift card or vouchers, mileage points, reward points or loyalty cards; and subscription to websites or platforms or application shall be excluded from the definition of virtual digital asset.

6.5.3 Subsequently, *vide* Notification no. 75/2022 (SO 2959E) dated 30.06.2022, Central Government has specified a non-fungible token to be a token which qualifies to be a virtual digital asset within the meaning of sub-clause (a) of clause (47A) of section 2 of the Act but shall not include a non-fungible token whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

6.5.4 Applicability: These amendments are effective from 1st April, 2022.

7. Tax Incentives to International Financial Services Centre (IFSC)

7.1 Over the past few years several tax concessions have been provided to units located in International Financial Services Centre (IFSC) under the Act to make it a global hub of financial services sector. In order to further incentivise operations from IFSC, the following additional incentives have been provided *vide* FA 2022:

(i) For the purposes of clause (4D) of section 10 of the Act, the definition of specified fund, *inter alia*, means a Category III Alternative Investment Fund (AIF) regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 of which all the units other than unit held by a sponsor or manager are held by non-residents. Finance Act, 2020 inserted clause (1A) to section 6 of the Act to provide that an individual who is a citizen of India having income other than income from foreign sources, exceeding Rupees 15 lakh and who is not liable to tax in any other country shall be deemed to be a resident in India. It was brought to the notice that some of the unit holders,

after the issue of units may become residents or deemed residents in India. It will result in the denial of the entire exemption of the specified fund. Fund has no control over such a situation. In view of the above, FA 2022 has inserted a proviso to item (III) to provide that the conditions specified in item (III) of sub-clause (i) of clause (c) of the *Explanation* to clause (4D) of section 10 shall not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident under clause (1) or clause (1A) of section 6 in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed five per cent. of the total units issued and fulfil such other conditions as may be prescribed.

Accordingly, *vide* Notification No. 64/2022 (GSR 455E) dated 16.06.2022 published in the Official Gazette, rule 21AIA has been inserted in the Income-tax Rules, 1962 to provide that the other conditions required to be fulfilled by a specified fund being a Category -III AIF, shall, inter-alia, be that,-

a) the unit holder of the specified fund (other than the sponsor or manager of such fund) who becomes a resident under clause (1) or clause (1A) of section 6 of the Act during any previous year subsequent to the previous year in which such unit or units were issued, shall cease to be a unit holder of such specified fund within a period of three months from the end of the previous year in which he becomes a resident;

b) the specified fund shall be required to maintain necessary documentation in respect of the residency status of the unit holders including the total number of units held, the total value of units held etc. and that the relevant information in respect of the residency status of the unit holders is furnished in Form 10-IG;

(ii) Clause (4E) of section 10 of the Act has been amended so as to extend the exemption under the said clause to the income accrued or arisen to, or received by, a non-resident as a result of transfer of offshore derivative instruments or over the counter derivatives entered into with an Offshore Banking Unit of an International Financial Services Centre, referred to in sub-section (1A) of section 80LA.

(ii) Clause (4F) of section 10 has been amended to extend the exemption under the said clause to the income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an International Financial Services Centre, as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st March, 2024. Further, “ship” has been defined to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.

(iii) Clause (4G) in section 10 has been amended 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 International Financial Services Centre, referred to in sub-section (1A) of section 80LA, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India. Further, it has also been provided that “portfolio manager” shall have the same meaning as assigned to it in

clause (z) of sub-regulation (1) of regulation (2) of International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 made under the International Financial Services Centres Authority Act, 2019;

(iv) The *Explanation* to clause (viib) of section 56 of the Act has been amended to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the International Financial Services Centres Authority Act, 2019.

(v) Clause (d) of sub-section (2) of section 80LA of the Act has been amended to provide that in addition to the income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the International Financial Services Centre to any person shall also be eligible for deduction under section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2024. Further, it has also been provided that ship shall have the same meaning as provided under clause (4F) of section 10.

7.2 Applicability: These amendments are effective from 1st April, 2023 and accordingly apply to the assessment year 2023-24 and subsequent assessment years.

8. Withdrawal of exemption under clauses (8), (8A), (8B) and (9) of section 10

8.1 Prior to amendments made *vide* FA 2022, clause (8) of the section 10 of the Act provided for exemption to the income of an individual who is assigned duties in India in connection with any co-operative technical assistance programmes and projects. Such co-operative technical assistance programmes and projects were required to be in accordance with an agreement entered by the Central Government and the Government of a foreign state (the terms thereof provide for the exemption given by this clause).

8.2 Exemption was provided to both (i) the remuneration received by the individual from the foreign state for such duties and (ii) any other income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual was required to pay any income or social security tax to the Government of the foreign state.

8.3 Clause (8A) of the said section provided for exemption on the remuneration or fee received by a consultant, directly or indirectly out of the funds made available to an international organisation (agency) under a technical assistance grant agreement between the agency and the Government of a foreign state. The said clause also provided exemption to such consultant in respect of any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the consultant was required to pay income or social security tax to the Government of the country of his or its origin.

8.4 For the purposes of this clause, if the consultant was an individual, he was required to be a foreign citizen or in case he was an Indian citizen he should be not ordinarily resident

in India. In case the consultant was not an individual, such person was required to be non-resident.

8.5 Consultant was required to be engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project. Such technical assistance programme or projects were required to be in accordance with an agreement entered into by the Central Government and the agency and the agreement relating to the engagement of the consultant is required to be approved by the prescribed authority.

8.6 Clause (8B) of the said section provided for exemption to an individual who is an employee of the consultant as referred to in clause (8A) of section 10. Such individuals were those who were assigned duties in India in connection with any technical assistance programme and project. These technical assistance programmes and projects were required to be in accordance with an agreement entered into by the Central Government and the agency.

8.7 The exemption was provided to the remuneration received by such individual, directly or indirectly, for such duties from any consultant referred to in clause (8A) of section 10. Exemption was also provided to any income accruing or arising outside India (which is not deemed to accrue or arise in India), in respect of which the individual was required to pay income or social security tax to the country of his origin.

8.8 The individual was required to be the employee of the consultant. He was to be a foreign citizen or if he is an Indian citizen, he was required to be not ordinarily resident in India. It was also required that the contract of service of the employee was approved by the prescribed authority before the commencement of his service.

8.9 Clause (9) of the said section provided for exemption to the income of the family members of any individual or consultant as referred in clause (8), clause (8A) and clause (8B), who accompanied such individual or consultant to India. The exemption is provided to income accruing or arising outside India (which was not deemed to accrue or arise in India), in respect of which such member was required to pay any income or social security tax to the Government of that foreign state or country of origin of such member.

8.10 The exemptions as provided under the above-mentioned clauses have outlived their utility in the era of simplification of tax laws and where exemptions and tax incentives are being phased out as a matter of stated policy of the Government. Further, if under a tax treaty, India gets a right to tax a particular income and the other country is expected to then relieve double taxation by exemption or credit method, providing exemption by India amounts to surrender of right of taxation by India in favour of the other country.

8.11 Accordingly, FA 2022 has amended clauses (8), (8A), (8B) and (9) of section 10 of the Act to provide that the provisions of the said clauses shall not apply to remuneration, fee or income of the previous year relevant to the assessment year beginning on the 1st day of April, 2023 and subsequent assessment years.

8.12 Applicability: These amendments will be effective from the 1st April, 2023 and accordingly, apply in relation to the assessment year 2023-24 and subsequent assessment years.

9. Rationalisation of the provision of Charitable Trust and Institutions

9.1 Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or any trust or institution registered u/s 12AA or 12AB of the Act is exempt subject to the fulfilment of the conditions provided under various sections. The exemption to these trusts or institutions is available under the two regimes:

(i) Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and

(ii) Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).

9.2 FA 2022 has rationalised the provisions of both the exemption regimes by-

(I) ensuring their effective monitoring and implementation;

(II) bringing consistency in the provisions of the two exemption regimes; and

(III) providing clarity on taxation in certain circumstances.

In addition to the above, some amendments consequent to the amendments of past few years have also been undertaken. All the amendments are discussed below:

9.3 Ensuring effective monitoring and Implementation of two exemption regimes

9.3.1 <u>Books of account to be maintained by the trusts or institutions under both the regimes</u>

a) Where the total income of any trust or institution under the second regime, as computed under this Act without giving effect to the provisions of section 11 and section 12 of the Act, exceeds the maximum amount which is not chargeable to income-tax in any previous year, it is required to get its accounts audited. Similar provision exists for the trusts or institutions under the first regime in the tenth proviso to clause (23C) of section 10 of the Act.

b) However, prior to the amendments made *vide* FA 2022, there was no specific provision under the Act providing for the books of account to be maintained by such trusts or institutions. In order to ensure proper implementation of both the exemption regimes, FA 2022 has amended clause (b) of sub-section (1) of section 12A of the Act and tenth

proviso to clause (23C) of section 10 of the Act to provide that where the total income of the trust or institution under both regimes, without giving effect to the provisions of clause (23C) of section 10 or section 11 and 12, exceeds the maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be prescribed. Accordingly, the books of accounts and other documents required to be maintained by such trust or institution under the first and second regime and the place where they are required to be maintained have been prescribed in rule 17AA of the Income-tax Rules, 1962 which has been notified *vide* Notification No. 94/2022 (GSR 622 E) dated 10.08.2022 published in the Official Gazette.

c) These amendments will be effective from 1st April, 2023 and accordingly apply to the assessment year 2023-24 and subsequent assessment years.

9.3.2 Penalty for passing on unreasonable benefits to trustee or specified persons

a) Under section 13 of the Act, trusts or institution under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. In order to discourage such misuse of the funds of the trust or institution by specified persons, FA 2022 has inserted a new section 271AAE in the Act to provide for penalty on trusts or institution under both the regimes which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is noticed again in any subsequent year. It has also been provided that section 271AAE shall operate without prejudice to any other provision of Chapter XXI. Thus, if any penalty is leviable under any of the other provisions of Chapter XXI, in addition to the penalty under section 271AAE, that penalty would also be applicable.

b) Section 271AAE provides that, if during any proceeding under the Act, it is found that a person, being any trust or institution under the first or the second regime, has violated the provisions of twenty-first proviso to clause (23C) of section 10 (inserted by the FA 2022 and discussed in subsequent paragraphs) or clause (c) of sub-section (1) of section 13, as the case may be, the Assessing Officer may direct that such person shall pay by way of penalty,

i) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13 where the violation is noticed for the first time during any previous year; and

ii) a sum equal to two hundred per cent of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any person referred to in sub-section (3) of section 13, where violation is noticed again in any subsequent previous year.

c) These amendments will be effective from 1st April, 2023 and accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

9.3.3 Reference to the Principal Commissioner or Commissioner (PCIT/CIT) for the cancellation of registration/approval:

a) Prior to the amendments made vide FA 2022, there were certain issues relating to the process of approval or registration, or cancellation or withdrawal thereof, which were noticed, namely:

i) Registration or approval of non-genuine trusts or institution under automated approval system:

First and second provisos to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 w.e.f. 01.04.2021. These provisos provided that the application for the approval of any trust or institution under the first regime, shall be made to the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority. Similarly, provisions of clause (ac) of sub-section (1) of section 12A provide that application for the trusts or institution under the second regime shall be made to the Principal Commissioner or Commissioner. The provisional registrations or provisional approval or re-registrations or approvals in certain cases, under these clauses, are granted in an automated manner and the respective rules have been amended accordingly. In such a scenario, it was essential to ensure that non-genuine trusts or institutions do not get exemption provided by these provisions.

ii) Differences in the provisions related to reference for the cancellation of trusts under both the regimes:

Provisions of sub-section (3) of section 143 provides that no order under this sub-section shall be made, denying the benefits of clause (23C) of section 10, unless the Assessing Officer has intimated the Central Government or prescribed authority the contravention of the provisions of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 and approval granted to such trust or institution has been rescinded. There was no such provision in cases of trusts or institutions under second regime.

iii) No time limit prescribed for the PCIT/CIT to decide on references for the withdrawal of approval:

For the trusts or institutions under the first regime, the provisions for making reference by the Assessing Officer to the Principal Commissioner or Commissioner are contained in the first proviso to sub-section (3) of section 143 and the time limitation for the completion of assessment is extended as per the provisions of clause (iii) of *Explanation* 1 to section 153. However, there was no time limit for such Principal Commissioner or Commissioner to decide on such reference.

b) In order to address the above issues, FA 2022 has amended the provisions of section 12AB and fifteenth proviso to clause (23C) of section 10 of the Act as follows:

(I) Sub-section (4) of section 12AB of the Act has been substituted with a new sub-section (4) to provide that where registration or provisional registration of a trust or an institution has been granted under clause (a) or clause (b) or clause (c) of sub-section (1) of section 12AB or clause (b) of sub-section (1) of section 12AA, as the case may be, and subsequently,

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year, or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the trust or institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence or otherwise of any specified violation;

(ii) pass an order in writing cancelling the registration of such trust or institution, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, if he is satisfied that one or more specified violation have taken place;

(iii) pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of one or more specified violation;

(iv) forward a copy of the order under clause (ii) or (iii), as the case may be, to the Assessing Officer and such trust or institution.

(II) The term “specified violation” has been defined by inserting an *Explanation* to sub-section (4) of section 12AB of the Act to mean the following violation:

(a) where any income of the trust or institution under the second regime has been applied other than for the objects for which it is established; or

(b) the trust of institution under the second regime has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or the institution under the second regime has applied any part of its income from the property held under a trust for private religious purposes which does not enure for the benefit of the public; or

(d) the trust or institution under the second regime established for charitable purpose created or established after the commencement of this Act, has applied any part of its income for the benefit of any particular religious community or caste;

(e) any activity being carried out by the trust or the institution under the second regime,

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) the trust or the institution under the second regime has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1) of section 12AB, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

III) Sub-section (5) of section 12AB of the Act has been substituted with a new sub-section (5) to provide that the order under clause (ii) or (iii) of sub-section (4) of said section shall be passed before expiry of the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) of sub-section (4);

IV) Similarly, the fifteenth proviso to clause (23C) of section 10 of the Act has been substituted to provide that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of the said section 10 is approved or provisionally approved under said clause and subsequently—

(a) the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any previous year;

(b) the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143 for any previous year; or

(c) such case has been selected in accordance with the risk management strategy, formulated by the Board from time to time, for any previous year,

the Principal Commissioner or Commissioner shall—

(i) call for such documents or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;

(ii) pass an order in writing cancelling the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years if he is satisfied that one or more specified violation has taken place;

(iii) pass an order in writing refusing to cancel the approval of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, on or before the specified date, if he is not satisfied about the occurrence of one or more specified violations;

(iv) forward a copy of the order under clause (ii) or (iii), as the case may be, to the Assessing Officer and such fund or trust or institution or any university or other educational institution or any hospital or other medical institution;

V) FA 2022 has inserted an *Explanation* 1 to the fifteenth proviso to clause (23C) of section 10 of the Act to provide that for the purposes of this proviso, "specified date" shall mean the day on which the period of six months, calculated from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, on or after the 1st day of April, 2022, calling for any document or information, or for making any inquiry, under clause (i) expires.

VI) The term "specified violation" has been defined by inserting an *Explanation* (*Explanation* 2) to the fifteenth proviso to clause (23C) of section 10 of the Act to mean the following: -

(a) where any income of trust or institution under the first regime has been applied other than for the objects for which it is established; or

(b) the trust or institution under the first regime has income from profits and gains of business is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or

(c) any activity being carried out by the trust or institution under the first regime—

(A) is not genuine; or

(B) is not being carried out in accordance with all or any of the conditions subject to which it was notified or approved; or

(d) the trust or institution under the first regime has not complied with the requirement of any other law for the time being in force, and the order, direction or decree, by whatever

name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.

Consequentially, sub-section (3) of section 143 of the Act has also been amended by deleting the reference to trusts or institution under the first regime in the first proviso and deleting the existing third proviso.

FA 2022 has also inserted *Explanation* 3 to the fifteenth proviso to clause (23C) of section 10 of the Act to provide that where a reference, under the first proviso to sub-section (3) of section 143, has been made on or before the 31st March, 2022 by the Assessing Officer for the contravention of certain provisions of clause (23C) of section 10 of the Act, such references shall be dealt with in the manner provided under the said *Explanation*.

VII) FA 2022 has inserted another proviso in sub-section (3) of section 143 of the Act to provide that where the Assessing Officer is satisfied that any trust or institution under first or second regime has committed any specified violation, as defined in the *Explanation* 2 to fifteenth proviso to clause (23C) of section 10 or *Explanation* to sub-section (4) of section 12AB, as the case may be, he shall,

(a) send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be; and

(b) no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner under clause (ii) or (iii) of the fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB.

Consequentially, FA 2022 has also amended the provisions of clause (iii) of *Explanation* to section 153 by deleting the reference to trusts or institution under the first regime and inserting a new clause (xiii) to provide that the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 or is deemed to have been made under *Explanation* 3 to the fifteenth proviso to clause (23C) of section 10, and ending with the date on which the copy of the order under clause (ii) or (iii) of fifteenth proviso to clause (23C) of section 10 or clause (ii) or (iii) of sub-section (4) of section 12AB, as the case may be, is received by the Assessing Officer shall be excluded in computing the period of limitation.

Applicability: These amendments are effective from 1st April, 2022.

9.4 Bringing consistency in the provisions of two exemption regimes

As mentioned earlier, there was a requirement for alignment of certain provisions of the two regimes as they both intend to grant similar benefit.

9.4.1 Accumulation provisions

i) Under the provisions of the Act, a trust or institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during the previous year, it is allowed to accumulate such income for a period not exceeding 5 years as per the following provisions, namely:

(I) sub-section (2) of section 11 of the Act for the trusts or institution under the second regime; and

(II) third proviso to clause (23C) of section 10 of the Act for trusts or institution under the first regime.

ii) However, prior to the amendments made vide FA 2022 the accumulation of income, as per the provisions of sub-section (2) of section 11 of the Act was allowed subject to the fulfilment of certain conditions while there were no such conditions specifically provided under the third proviso to clause (23C) of section 10 of the Act;

iii) Similarly, sub-section (3) of section 11 of the Act provided for the specific previous year in which the accumulated income will be subjected to tax in case of different types of violations. It, inter alia, provided that if the accumulated income is not applied within 5 years, it shall be taxed in the 6th year. While, on the other hand, there were no such specific provisions under clause (23C) of section 10 of the Act and therefore, if the accumulated income was not applied within 5 years, the same was taxed in the 5th year itself.

iv) In order to bring consistency in the two regimes, FA 2022 has:

A) amended the provisions of sub-section (3) of section 11 of the Act to provide that any income referred to in sub-section (2) which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of sub-section (2) of section 11, but not utilised for the purpose for which it is so accumulated or set apart.

B) inserted *Explanation* 3 to the third proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of application under this proviso, where eighty-five per cent of the income referred to in clause (a) of the third proviso, is not applied, wholly and exclusively to the objects for which the trust or institution under the first regime is established, during the previous year but is accumulated or set apart, either in whole or in part, for application to such objects, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or

set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5) of section 11; and

(c) the statement referred to in clause (a) of *Explanation* 3 is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year;

Accordingly, *vide* Notification No. 96/2022 (GSR 632(E)) dated 17.08.2022, Rule 17 and Form No. 10 of Income tax Rules, 1962 have been substituted to provide for the statement to be furnished to the Assessing Officer/Prescribed Authority under clause (a) of the *Explanation* 3 to the third proviso to clause (23C) of section 10 of the Act, 1961.

C) inserted a proviso to the proposed *Explanation* 3 to the third proviso to clause (23C) of section 10 of the Act to provide that in computing the period of five years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

D) inserted an *Explanation* (*Explanation* 4) to third proviso to clause (23C) of section 10 to provide that any income referred to in the newly inserted *Explanation* 3 shall be deemed to be the income of the previous year in which the following takes place—

(a) the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the first regime is established or ceases to be accumulated or set apart for application thereto, or

(b) the income ceases to remain invested or deposited in any of the forms or modes specified in sub-section (5) of section 11, or

(c) the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred to in clause (a) of the proposed *Explanation* 3,

(d) the income is credited or paid to any trust or institution under the first or second regime.

For the circumstances referred to in clause (c), it has been provided that the income shall be deemed to be the income of previous year which is the last previous year of the period, for which the income is accumulated or set apart under sub-clause (a) of clause (iii) of the proposed *Explanation* 3, but not utilised for the purpose for which it is so accumulated or set apart.

E) inserted an *Explanation* (*Explanation* 5) to third proviso to clause (23C) of section 10 of the Act to enable the Assessing Officer to allow trusts or institutions under the first regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions. These other purposes are required to be in conformity with the

objects for which the trust or institution under the first regime is established. If it is done, the provisions of *Explanation* 4 to third proviso to clause (23C) of section 10 shall apply as if the purpose specified by such person in the application under this *Explanation* were a purpose specified in the notice given to the Assessing Officer under clause (a) of the proposed *Explanation* 3 of the third proviso to clause (23C) of section 10.

F) inserted a proviso to proposed *Explanation* 5 to third proviso to clause (23C) of section 10 of the Act to provide that the Assessing Officer shall not allow the application of any accumulated income, as referred to in the proposed *Explanation* 3, to be credited or paid to any trust or institution under the first or second regime, as referred to in clause (d) of proposed *Explanation* 4 to the third proviso to clause (23C) of section 10.

Applicability: These amendments will be effective from 1st April, 2023 and accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

9.4.2 Bringing consistency in the provisions relating to payment to specified person

i) Under section 13 of the Act, trusts or institutions under the second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. FA 2022 has inserted twenty first proviso in clause (23C) of section 10 of the Act to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be the income of such trust or institution under the first regime of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to trust or institution under the first regime.

Applicability: This amendment will be effective from 1st April, 2023 and accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

9.4.3 The provisions of section 115TD to apply to any trust or institution under the first regime.

i) Chapter XII-EB was introduced by the Finance Act, 2016 to provide for the taxation of accreted income of the trust in certain cases. A society or a company or a trust or an institution carrying on charitable activity may voluntarily wind up its activities and dissolve or may also merge with any other charitable or non-charitable institution, or it may convert into a non-charitable organization. In order to ensure that the intended purpose of exemption availed by trust or institution is achieved, a specific provision in the Act was brought about for imposing a levy in the nature of an exit tax which is attracted when the organisation is converted into a non-charitable organisation or gets merged with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation. Accordingly, a new Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF was inserted in the Act.

ii) The provisions of the Chapter XII-EB have been made applicable to only the trusts or institutions under the second regime. However, the provisions are not applicable to any trust or institution under the first regime.

iii) Hence, FA 2022 has amended the provisions of section 115TD, 115TE and 115TF of the Act to make them applicable to any trust or institution under the first regime as well.

Applicability: These amendments will be effective from 1st April, 2023.

It may be noted that *vide* Notification No. 101/2022 (GSR 647E) dated 22.08.2022, rule 17CB of the Income-tax Rules has been amended so as to replace the reference of "trust or institution" with specified person wherever it occurs and to provide that specified person shall have the same meaning as provided in clause (iia) of the *Explanation* to section 115TD of the Act.

9.4.4 Filing of return by person claiming exemption under clause (23C) of section 10 of the Act

i) According to clause (ba) of sub-section (1) of section 12A of the Act, if a trust or institution under the second regime does not furnish return of income in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section, then provisions of sections 11 and 12 are not applicable. However, there was no similar provision in the first regime.

ii) Hence, FA 2022 has inserted twentieth proviso to clause (23C) of section 10 of the Act to provide that for the purpose of exemption under this clause, any trust or institution under the first regime is required to furnish the return of income for the previous year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under that section.

Applicability: This amendment will be effective from the 1st April, 2023, and accordingly, applies in relation to the assessment year 2023-24 and subsequent assessment years.

9.4.5 Approval under clause (23C) of section 10 to be in-operative in case of notification under clause (46) of section 10

i) Finance Act, 2020 had inserted first proviso to sub-section (7) of section 11 of the Act to provide that the registration under Section 12A or 12AA or 12AB) shall become inoperative from the later of: (i) date on which such trust or institution is approved under clause (23C) of section 10 or clause (46) of section 10 of the Act or, (ii) the date on which the proviso comes into force, i.e., 01-06-2020. In other words, the registration shall be inoperative if the approval is obtained under clause (23C) of section 10 or an institution is notified under clause (46) of section 10 of the Act. Finance Act, 2020 also inserted a second proviso to sub-section (7) of section 11 of the Act to provide that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration again operative under Section 12AB.

ii) However, such provisions did not exist for the trusts or institutions under the first regime. In view of this, FA 2022 has inserted an *Explanation* to 19th proviso to clause (23C) of section 10 to provide that where, on or after the first day of April, 2022, any trust or institution under the first regime is also notified under clause (46) of section 10 of the Act, the approval or provisional approval granted to such trust or institution shall become inoperative from the date of notification of such trust or institution, under clause (46) of section 10.

Applicability: This amendment is effective from the 1st April, 2022.

9.5 Providing clarity on taxation in certain circumstances

There are various conditions prescribed for availing exemption under the two regimes. There was a need for clear provisions in the Act listing out how income is to be computed in case of non-compliance. Hence, FA 2022 has made certain amendments to provide for the same so that there is no dispute in such cases and the law is applied consistently.

9.5.1 Allowing certain expenditure in case of denial of exemption

i) Prior to amendments made *vide* FA 2022, different provisions mandated denial of exemption to the trusts or institutions under both the regimes. Some of the provisions under which exemption was not available for its violation are as follows:

(a) In case of commercial receipts in excess of 20% of the annual receipts in violation of the provisions of proviso to clause (15) of section 2;

(b) Not getting the books of account audited;

(c) Not filing the return of income presently specifically provided under the second regime only;

ii) There was lack of clarity on computation of taxable income in case of non-availability of exemption in these cases. For example, if the exemption was denied to the trust or institution for the late submission of the audit report, its entire receipts could be subject to tax and no deduction for any application would have been allowed.

iii) In order to bring clarity in the computation of the income chargeable to tax in such cases, FA 2022 has:

(a) inserted sub-section (10) in section 13 of the Act to provide that where the provisions of sub-section (8) are applicable to any trust or institution under the second regime or such trust or institution violates the conditions prescribed under clause (b) or clause (ba) of sub-section (1) of section 12A, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions, namely :-

(i) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

(ii) such expenditure is not from any loan or borrowing;

(iii) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

(iv) such expenditure is not in the form of any contribution or donation to any person.

(b) inserted an *Explanation* to sub-section (10) to section 13 of the Act to provide that for the purposes of determining the amount of expenditure under this sub-section, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(c) inserted sub-section (11) to section 13 of the Act to provide that for the purposes of computing income chargeable to tax, under sub-section (10), 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.

(d) inserted twenty second proviso to clause (23C) of section 10 of the Act to provide that where any trust or institution under the first regime violates the provisions of the eighteenth proviso or violates the conditions prescribed under tenth or twentieth proviso, its income chargeable to tax shall be computed after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of such trust or institution, subject to fulfilment of the following conditions:

(i) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the previous year relevant to the assessment year for which the income is being computed;

(ii) such expenditure is not from any loan or borrowing;

(iii) claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application of income in the same or any other previous year; and

(iv) such expenditure is not in the form of any contribution or donation to any person.

(e) inserted an *Explanation* in the twenty second proviso to clause (23C) of section 10 of the Act to provide that for the purposes of determining the amount of expenditure under this proviso, the provisions of sub-clause (ia) of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A, shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

(f) inserted twenty third proviso in clause (23C) of section 10 of the Act to provide that for the purposes of computing income chargeable to tax under twenty second proviso, 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.

Applicability: These amendments will be effective from 1st April, 2023 and accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

9.5.2 Taxation of certain income of the trusts or institutions under both the regimes at special rate

Following incomes of the trusts or institutions are chargeable to tax, under different provisions of the Act:

(a) The trusts or institutions under the first or second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. For the trusts or institutions under the second regime, clause (c) of sub-section (1) of section 13 of the Act provides that the entire exemption shall be denied to the trust irrespective of the amount of benefit passed on. For trusts or institutions under the first regime similar provisions has been provided by way of insertion of twentieth proviso to clause (23C) of section 10 of the Act.

(b) It is mandatory for any trust or institution under the first regime, to keep their funds in the specified modes as provided under sub-section (5) of section 11 of the Act. Third proviso of clause (23C) of section 10 of the Act specifically provides that the funds of such trusts or institutions shall be maintained in these specified modes. For the trusts or institutions under the second regime, clause (d) of sub-section (1) of section 13 of the Act provides that the exemption shall be denied to the trust irrespective of the amount of investment in non-specified modes.

(c) Further, the trusts or institutions under both the regimes are required to apply at least 85% of their income during the year. Where the trust is not able to apply 85% of the income, it may accumulate such income for maximum 5 years. Sub-section (3) of section 11 of the Act specifically provides for the trusts or institutions under the second regime that such accumulated income, which could not be applied within the period of accumulation (maximum 5 years), shall be deemed to be the income of the trust. Similarly, for the trusts or institutions under the second regime, there is a specific provision under clause (2) of *Explanation* 1 to sub-section (1) of section 11 of the Act providing for the accumulation of income for a period of one year. Sub-section (1B) of section 11 of the Act provides that if the income accumulated under clause (2) of *Explanation* 1 to sub-section (1) of section 11 of the Act could not be applied within the time allowed; it shall be deemed to be the income of the trust.

(d) The trusts or institutions under the first regime are also required to apply at least 85% of their income during the year. Where such trust is not able to apply 85% of its income during the year and does not accumulate such income, entire income of such trust shall be subjected to tax where the trust is approved under the second proviso to clause (23C) of section 10 of the Act since third proviso to clause (23C) of section 10 of the Act mandates minimum 85% application of income unless such income is accumulated.

Denying exemption to the trust, for small amount of income applied in violation to the provisions referred in clause (a) and (b) above creates difficulties to the trusts or institutions under both the regimes as there is ambiguity about the manner of taxation of such income. Further, there was need for special provision to ensure that the income

applied in violation is taxed at special rate without deduction. Accordingly, in order to rationalise the provisions, the FA 2022 has:

(a) amended clause (c) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.

(b) inserted twenty first proviso in clause (23C) of section 10 to specifically provide that where the income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of the said clause , or any part of the such income or property, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be income of such fund or institution or trust or university or other educational institution or hospital or other medical institution of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to it.

(c) amended clause (d) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been invested in violation of the provisions of the said clause shall be liable to be included in total income.

(d) inserted *Explanation* 4 in third proviso to clause (23C) of section 10 of the Act to specifically provide that income accumulated which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.

(e) inserted new section 115BBI in the Act to provide that notwithstanding anything contained in this Act where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and

(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

(f) The sub-section (2) of this new section seeks to provide that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.

(g) *Explanation* to the new section defines "specified income" to mean:

(i) income accumulated or set apart in excess of fifteen per cent of the income where such accumulation is not allowed under any specific provisions of the Act; or

(ii) deemed income referred to in *Explanation* 4 to third proviso to clause (23C) of section 10 or sub-section (3) of section 11 or sub-section (1B) of section 11; or

(iii) any income which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of third proviso of clause (23C) of section 10 or not to be excluded from total income under the provisions of clause (d) of sub-section (1) of section 13; or

(iv) any income which is deemed to be income under the twenty first proviso to clause (23C) of section 10 or which is not excluded from total income under clause (c) of sub-section (1) of section 13; or

(v) any income applied outside India and which is not excluded from total income under clause (c) of sub-section (1) of section 11.

Applicability: These amendments will be effective from 1st April, 2023 and accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

9.5.3 Voluntary Contributions for the renovation and repair of temples, mosques, gurudwaras, churches etc notified under clause (b) of sub-section (2) of section 80G

i) Donations for the renovation and repair of temples, mosques, gurudwaras, churches etc notified under clause (b) of sub-section (2) of section 80G of the Act are received for specific purposes. However, prior to the amendments made vide FA 2022, it was not clear if such donations are treated as corpus donations or are required to be applied or can be accumulated for a maximum period of 5 years.

ii) In order to provide clarity, FA 2022 has inserted *Explanation* 3A in sub-section (1) of section 11 of the Act to provide that where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may, at its option, be treated by such trust or institution as forming part of the corpus of the trust or the institution, subject to the condition that the trust or the institution,

(a) applies such corpus only for the purpose for which the voluntary contribution was made;

(b) does not apply such corpus for making contribution or donation to any person; and

(c) maintains such corpus as separately identifiable;

(d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

iii) FA 2022 has also inserted *Explanation* 3B in sub-section (1) of section 11 of the Act to provide that for the purposes of *Explanation* 3A, where any trust or institution has treated

any sum received by it as forming part of the corpus and subsequently any of the conditions specified in clause (a), (b), (c) or clause (d) thereof are violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

iv) FA 2022 has also inserted *Explanation* 1A in the third proviso to clause (23C) of section 10 of the Act to provide that where the property held under a trust or institution referred to in sub-clause (v), includes any temple, mosque, gurdwara, church or other place notified under clause (b) of sub-section (2) of section 80G of the Act, any sum received by such trust or institution as a voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place, may be treated by such trust or institution, at its option, as forming part of corpus of the trust or institution, subject to the condition that the trust or institution,

(a) applies such corpus only for the specific purpose for which the voluntary donation was made;

(b) does not apply such corpus for making contribution or donation to any person;

(c) maintains such corpus as separately identifiable; and

(d) invests or deposits such corpus in the forms and modes specified under sub-section (5) of section 11.

v) FA 2022 has also inserted *Explanation* 1B in the third proviso to clause (23C) of section 10 of the Act to provide that for the purposes of *Explanation* 1A, where any trust or institution referred to in sub-clause (v) has treated any sum received by it as forming part of the corpus and subsequently any of the conditions specified in clause (a), (b), (c) or clause (d) thereof are violated, such sum shall be deemed to be the income of such trust or institution of the previous year during which the violation takes place.

Applicability: These amendments are effective retrospectively from 1st April, 2021 and accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

9.5.4 Clarifying that application will be allowed only when its actually paid

(i) Trust or institution under both the regimes are required to apply 85% of their income for the purposes specified. As is evident from the word “application”, it means actually paid. This is the position which has been held by different courts also. Accordingly FA 2022 has clarified by way of insertion of *Explanation*s “[*Explanation* 3 to clause (23C) of section 10 and *Explanation* to section 11] to provide that any sum payable by any trust under the first or second regime shall be considered as application of income in 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 by such trust according to the method of accounting regularly employed by it. It is further proposed to insert proviso to the proposed *Explanation*s [*Explanation* 3 to clause (23C) of section 10 and *Explanation* to section 11] to

provide that where during any previous year, any sum has been claimed to have been applied by such trust, such sum shall not be allowed as application in any subsequent previous year.

Applicability: These amendments are effective from 1st April, 2022.

9.5.5 Clarification with respect to taxability of unreasonable benefit provided by the trust or institution to the specified persons in the hands of specified person

(i) Prior to amendments made *vide* FA 2022, clause (x) of sub-section (2) of section 56 of the Act provided that if any sum of money is received by any person or any property is received without consideration or at a value less than the fair market value or stamp duty value, as the case may be, the difference shall be treated as income of the recipient. However, clause (VI) and (VII) of the first proviso to clause (x) of sub-section (2) of section 56 carve out an exception providing that where any sum of money is received by any person or any property is received without consideration or at a value less than the fair market value or stamp duty value, as the case may be, from any trust or institution under the first or the second regime, the difference shall not be chargeable to tax under the head "income from other sources".

(ii) FA 2022 has inserted twenty first proviso in clause (23C) of section 10 of the Act to provide that where the income or part of income or property of any trust or institution under the first regime, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be the income of such trust or institution under the first regime of the previous year in which it is so applied.

Further, the said Act has also amended clause (c) of sub-section (1) of section 13 of the Act to provide that where the trusts or institutions provide any unreasonable benefit to any person referred to in sub-section (3) of section 13, the amount of such benefit shall be liable to be included in total income of such trust or institution.

(iii) In view of the above amendments made *vide* FA 2022, clause (x) of sub-section (2) of section 56 of the Act could be interpreted in a manner that where any unreasonable benefit is passed on by any trust or institution under the first or second regime to any person referred to in sub-section (3) of section 13, the provisions of clause (x) of sub-section (2) of section 56 may not be applicable. However, that is not the intention of the law.

(iv) In view of the above, FA 2022 has inserted a proviso to clause (x) of sub-section (2) of section 56 to provide that the exemption provided in item (VI) and item (VII) of the first proviso to clause (x) of section 56 in respect of any money or property received from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10 or from any trust or institution registered under section 12A or section 12AA or section 12AB shall not apply where any sum of money or any property has been received by any person referred to in sub-section (3) of section 13.

Applicability: This amendment will be effective from 1st April 2023 and accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years.

9.6 Consequential Amendments

9.6.1 Reference to prescribed authority under clause (23C) of section 10

i) First and second proviso to clause (23C) of section 10 of the Act were substituted by new provisos by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021. These provisos provided that the application for the approval of any trust under the first regime, shall be filed before the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner or Commissioner shall grant approval after examination of the application. Earlier such applications were required to be filed before the prescribed authority. Accordingly necessary amendments were carried out. However, the reference to prescribed authority continued to be at certain places in the clause (23C) of section 10 of the Act.

ii) FA 2022 has therefore substituted the reference to prescribed authority with Principal Commissioner or Commissioner in sub-clause (iv), (v), (vi) and (via) and nineteenth proviso to clause (23C) of section 10 of the Act

Applicability: This amendment is effective from 1st April, 2022.

9.6.2 Amendment to sub-section (1A) of section 35

i) Sub-section (1A) to section 35 of the Act was inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021. It mandated the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 of the Act to file the statement of donations received by these entities from the donors. However, an inadvertent drafting error has crept in the sub-section. Prior to amendment made vide FA 2022, the language read that no deduction shall be allowed to the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35, if such statement of donations is not filed. However, that was not the intention of the law. The deduction claimed by the donor was required to be dis-allowed in such cases. In section 80G of the Act similar provisions were introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from the 1st April, 2021, whereby the deduction claimed by the donor under this section was disallowed in case the donee fails to furnish the statement of donations.

ii) Hence, FA 2022 has amended sub-section (1A) of section 35 of the Act to provide that the deduction claimed by the donor with respect to the donation given to any research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 of the Act shall be disallowed unless such research association, university, college or other institution or company files the statement of donations.

Applicability: This amendment is effective retrospectively from 1st April, 2021 and shall be applicable to AY 2021-22 and subsequent assessment years.

10. Clarification in respect of disallowance under section 14A in absence of any exempt income during an assessment year

10.1 Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income that does not form part of the total income as per the provisions of the Act (exempt income).

10.2 Over the years, disputes have arisen in respect of the issue whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.

10.3 CBDT issued Circular No. 5/2014, dated 11/02/2014, clarifying that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income. However, still some courts have taken a view that if there is no exempt income during a year, no disallowance under section 14A of the Act can be made for that year. Such an interpretation is not in line with the intention of the legislature. To illustrate, if during a previous year, an assessee incurs an expense of ₹1 lakh to earn non-exempt income of ₹1.5 lakh and also incurs an expense of ₹20,000/- to earn exempt income which may or may not have accrued/received during the year. By holding that provisions of section 14A of the Act does not apply in this year as the exempt income was not accrued/received during the year, it amounts to holding that ₹20,000/- would be allowed as deduction against non-exempt income of ₹1.5 Lakh even though this expense was not incurred wholly and exclusively for the purpose of earning non-exempt income. Such an interpretation defeats the legislative intent of both section 14A as well as section 37 of the Act.

10.4 In order to make the intention of the legislation clear and to make it free from any misinterpretation, FA 2022 has inserted an *Explanation* to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in the Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

Applicability: This amendment is effective from the 1st day of April, 2022.

10.5 Further, FA 2022 also amended sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Act and provide that and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in any other provisions of this Act.

Applicability: This amendment is effective from the 1st day of April, 2022.

11. Exemption of amount received for medical treatment and on account of death due to Covid-19

11.1 Clause (x) of sub-section (2) of section 56 of the Act, *inter alia*, provides that where any person receives, in any previous year, from any person or persons any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum shall be the income of the person receiving such sum. However, certain exceptions have been provided in the clause for transactions specified therein.

11.2 Clause (2) of section 17 of the Act, *inter alia*, provides the definition of "perquisite". However, certain exceptions have been provided which shall not be considered as perquisites.

11.3 The Finance Ministry had released a press statement dated 25.06.2021 wherein it was announced that income tax shall not be charged on the amount received by a taxpayer from employer or from any person for treatment of COVID-19 during FY 2019-20 and subsequent years. It was further announced that income tax exemption shall be provided to ex-gratia payment received by family members of a deceased person from the employer of such person or from other person on the death of such person on account of COVID-19 during FY 2019-20 and subsequent years. Also, it was stated that the exemption shall be allowed without any limit for the amount received from the employer and the exemption shall be limited to Rs. 10 lakh in aggregate for the amount received from any other person.

11.4 In order to provide the relief as stated in the press statement, clause (2) of section 17 has been amended and a new sub-clause has been inserted in clause (ii) of the proviso to state that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government, shall not be forming part of "perquisite". The conditions in regard to this have been notified *vide* CBDT's Notification No. 90/2022 (SO 3703E) dated 05.08.2022. Through the said Notification, the Central Government notified that the employee shall submit the following documents to the employer, –

(i) the COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;

(ii) all necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as COVID-19 positive; and

(iii) a certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

11.5 Further the first proviso to clause (x) of sub-section (2) of section 56 has been amended and two new clauses (XII) and (XIII) in the proviso have been inserted so as to provide that-

> (i) any sum of money received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, in respect of any illness related to COVID-19 subject to such conditions, as may be notified by the Central Government in this behalf, shall not be the income of such person;
> (ii) any sum of money received by a member of the family of a deceased person, from the employer of the deceased person (without limit), or from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees, where the cause of death of such person is illness relating to COVID-19 and the payment is, received within twelve months from the date of death of such person, and subject to such other conditions, as may be notified by the Central Government, shall not be the income of such person.

11.6 Further, for the purpose of both of the said clauses, it has been provided that "family" in relation to an individual shall have the same meaning as assigned to it in *Explanation* 1 to clause (5) of section 10. The conditions in regard to the newly inserted clause (XII) of the first proviso of clause (x) of sub-section (2) of section 56 of the Act have been notified *vide* CBDT's Notification No. 91/2022 (SO 3703E) dated 05.08.2022 and the conditions in regard to the newly inserted clause (XIII) of the first proviso of clause (x) of sub-section (2) of section 56 of the Act have been notified *vide* CBDT's Notification No. 92/2022 (SO 3705E) dated 05.08.2022.

11.7 Through Notification No. 91/2022, the Central Government notified that the individual shall keep a record of the following documents, namely:
(i) the COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted; and
(ii) all necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within six months from the date of being determined as a COVID-19 positive.

It has also been notified that statement of any amount received for any expenditure actually incurred by an individual for his medical treatment or treatment of any member of his family, for any illness related to COVID-19 for the purposes of clause (XII) of the first proviso to clause (X) of sub-section (2) of section 56 of the Act shall be verified and furnished in Form No. 1. Further, the details of the amount received in any financial year shall be furnished in Form No. 1 to the Income Tax Department within nine months from the end of such financial year or 31.12.2022, whichever is later.

11.8 Through Notification No. 92/2022, the Central Government notified the following conditions:

(i) the death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;
(ii) the family member of the individual shall keep a record of the following documents, -
(a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician; and
(b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

11.9 It has also been notified that the statement of any sum of money received by a member of the family of a deceased person from the employer of the deceased person or from any other person or persons, on account of death due to COVID-19 for the purposes of clause (XIII) of the first proviso to clause (x) of sub-section (2) of section 56 of the Act shall be verified and furnished in Form A. Further, the details of the amount received in any financial year shall be furnished in Form A to the Assessing Officer within nine months from the end of such financial year or 31.12.2022, whichever is later.

11.10 Applicability: This amendment is effective retrospectively from the 1st April, 2020 and accordingly, applies in relation to the assessment year 2020-21 and subsequent assessment years.

12 Clarifications on allowability of expenditure under section 37

12.1 Section 37 of the Act provides for allowability of revenue and non-personal expenditure (other than those failing under sections 30 to 36) laid out or expended wholly and exclusively for the purposes of business or profession. *Explanation* 1 of sub-section (1) of section 37 of the Act provides that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

12.2 However, it is seen that certain taxpayers are claiming deductions on expenditure incurred in offering certain benefits or perquisite to a person which are not intended to be allowed under this section. These expenditures are like meeting expenditure related to travel, hospitality, conference etc. In these cases, acceptance of such benefit or perquisite by such person is in violation of a law or rule or regulation or guidelines, as the case may be, governing the conduct of such person.

12.3 CBDT, *vide* circular No. 5/2012 dated 1.8.2012, noted that the Indian Medical Council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10.12.2009 imposing a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from the pharmaceutical and allied health sector Industries. Accordingly, CBDT clarified that the claim of any

expense incurred in providing above mentioned or similar benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section subsection (1) of section 37 of Act being an expense prohibited by the law. This disallowance was directed to be made in the hands of such pharmaceutical or allied health sector industries or other assessee which provided aforesaid benefits and claimed it as a deductible expense in its accounts against income.

12.4 This circular was challenged in Himachal Pradesh High Court in the case of Confederation of Indian Pharmaceutical Industry Vs Central Board of Direct Taxes [(2013) 335 ITR 388 (HP)], in which the Hon'ble High Court rejected the petition and held that –

"The regulation of the Medical Council prohibiting medical practitioners from availing of freebies is a very salutary regulation which is in the interest of the patients and the public. This Court is not oblivious to the increasing complaints that the medical practitioners do not prescribe generic medicines and prescribe branded medicines only in lieu of the gifts and other freebies granted to them by some particular pharmaceutical industries. Once this has been prohibited by the Medical Council under the powers vested in it, s. 37(1) comes into play. The Petitioner's contention that the circular goes beyond the section is not acceptable. In case the assessing authorities are not properly understanding the circular then the remedy lies for each individual assessee to file an appeal but the circular which is totally in line with s. 37(1) cannot be said to be illegal. If the assessee satisfies the assessing authority that the expenditure is not in violation of the regulations framed by the medical council then it may legitimately claim a deduction, but it is for the assessee to satisfy the AO that the expense is not in violation of the Medical Council Regulations."

12.5 After this there have been various judgments of Income-tax Appellate Tribunals. Some of these judgments have held that these expenses to be not allowable under sub-section (1) of section 37 the Act, while others holding it to be allowable. The latest judgment on this issue is from ITAT Mumbai in the case of *Macleods Pharmaceuticals* delivered on 14th October 2021 in ITA Nos. 5168 & 5169/Mum/2018. In this judgment ITAT held that the action of the assessing officer in disallowing the expenditure deserves to succeed and then explained as to why it is a fit case for the constitution of a special bench of three or more members. ITAT arrived at its recommendations based, *inter-alia*, on the following:

i. Hon'ble Supreme Court, in the case of Keshavji Ravji & Co Vs CIT [(1990) 183 ITR 1 (SC)] has held that the burden that the Income-tax Act itself through a correct interpretation of law envisages is equal to or higher than the burden envisaged by the CBDT circular, that burden of law cannot be negated because the circular also so states. Hence, the circular no 5 of 2012 is to be held as valid.
ii. Once a judicial forum higher than this Tribunal, (i.e Himachal Pradesh High Court in the case of *Confederation of Indian Pharmaceutical Industry*) holds that the interpretation to the scope of *Explanation* to sub-section (1) of section 37, as given in the circular, is a correct legal interpretation, it cannot be open to us to discard the interpretation so approved to be correct legal interpretation.

iii. In the case *Kap Scan and Diagnostic Centre (P) Ltd. [(2012) 344 ITR 476 (P&H)*], the Hon'ble High Court of Punjab & Haryana held that payments which are opposed to public policy being in the nature of unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy or have pernicious consequences to the society as a whole. The Court further held that if demanding of such commission was bad, paying it was equally bad. Both were privies to a wrong. Therefore, such commission paid to private doctors was opposed to the public policy and should be discouraged. The payment of commission by the assessee for referring patients to it cannot by any stretch of imagination be accepted to be legal or as per public policy. Undoubtedly, it is not fair practice and has to be termed as against the public policy.

iv. ITAT noted earlier coordinate bench judgment in the case of *DCIT Vs PHL Pharma Pvt Ltd (2017) 163 ITD 10 (Mum)*, where it was held that the disallowance could not be sustained as the MCI guidelines bind only the medical professionals and not the pharmaceutical companies. ITAT noted that this judgment was not in line with earlier co-ordinate bench judgment In the case of *Liva Healthcare Ltd, (2016) 161 ITD 63 (Mum)* where the Hon'ble Mumbai ITAT has held that the CBDT circular dated 01.08.2012 is merely a clarification in nature and creates a bar on such illegal payments being against public policy, the said bar always existed in the statute by virtue of the existence of *Explanation* of Section 37 of the Income-tax Act which was inserted by Finance Act, 1998 w.e.f. 01-04-1962. It was also noted that in Hon’ble AP High Court’s full bench decision in the case of CIT Vs B R Constructions (1993) 202 ITR 222 (AP- FC) their Lordships have observed that a "precedent ceases to be a binding precedent ... (iii) when it is inconsistent with the earlier decisions of the same rank; and (iv) when it is rendered per incuriam". Clearly, therefore, the decisions which disregard earlier binding decisions on the same issue, "cease to be a binding judicial precedent".

v. ITAT also noted that Hon’ble Delhi High Court in the case of *Max Hospital Vs Medical Council of India* (WP No. 1334 of 2013; judgment dated 10th January 2014), in which it was held that the provisions of Medical Council of India only bind the medical professionals and not others, such as hospitals and pharmaceutical companies. ITAT explained that it was a case in which Ethics Committee of the Medical Council of India, upon a complaint alleging death of a patient due to medical negligence, passed an order punishing the erring doctors but this order also had certain adverse remarks against the Max Hospital as well.

Aggrieved by these observations, Max Hospital filed a writ petition contending that since the Medical Council of India (Professional Conduct, Etiquette and Ethics) Regulations, have been framed in exercise of the power conferred under Section 20-A read with Section 33 (m) of the Indian Medical Council Act, 1956, these regulations do not govern or have any concern with the facilities, infrastructure or running of the Hospitals and secondly, that the Ethics Committee of the MCI acting under the Regulations had no jurisdiction to pass any direction or judgment on the

infrastructure of any hospital which power rests solely with the concerned State Govt. It was also contended that the Petitioner was not provided an opportunity of being heard and thus the principles of natural justice were violated. While dealing with these grievances, Hon'ble Delhi High Court has held, in its operative portion of the judgment- which was reproduced by the ITAT in entirety, as follows:

"8. It is clearly admitted by the Respondent that it has no jurisdiction to pass any order against the Petitioner hospital under the 2002 Regulations. In fact, it is stated that it has not passed any order against the Petitioner hospital. Thus, I need not go into the question whether the adequate infrastructure facilities for appropriate post-operative care were in fact in existence or not in the Petitioner hospital and whether the principles of natural justice had been followed or not while passing the impugned order. Suffice it to say that the observations dated 27.10.2012 made by the Ethics Committee do reflect upon the infrastructure facilities available in the Petitioner hospital and since it had no jurisdiction to go into the same, the observations were uncalled for and cannot be sustained.

9. Since the MCI had no jurisdiction to go into the infrastructure facilities, I need not also go into the aspect that in the year 2011, the facilities available in the hospital were inspected and were found to be in order.

10. The petition therefore has to succeed. I hereby issue a writ of certiorari quashing the adverse observations passed by the MCI against the Petitioner hospital highlighted in Para 1 above."

ITAT thus held that in their humble understanding, the judgment of Delhi High Court does not negate, dilute, or even deal with, ratio decidendi of, or even casual observations in, Hon'ble HP High Court's judgment in the case of *Confederation of Indian Pharmaceutical Industry* (discussed earlier). These judgments are in altogether in different field.

vi. ITAT thus noted that while Hon'ble HP High Court dealt with the interpretation of *Explanation* to sub-section (1) of section 37, Hon'ble Delhi High Court dealt with the powers of the MCI to pass an order against a Hospital in Delhi on the question of adequacy regarding infrastructure facilities by Hospitals in Delhi, and that too without affording an opportunity of hearing to the said hospital. Hon'ble Delhi High Court judgment in *Max Hospitals* case has no bearing on the question as to whether giving benefits to the medical professionals is in violation of law or not. ITAT further noted that it is also well settled in law, including by Hon'ble jurisdictional High Court in the case of CIT v. *Sudhir Jayantilal Mulji (1995) 214 ITR 154 (Bom)*, that a judicial precedent is only "an authority for what it actually decides and not what may come to follow from some observations which find place therein".

vii. On the coordinate bench judgment in the case of *DCIT Vs PHL Pharma Pvt Ltd (2017)*, ITAT noted the following:

"The more we ponder about the rationale of PHL Pharma decision (supra), the more convinced we are that this decision calls for reconsideration by a larger bench. In our humble understanding, conclusions arrived in the said decision do not reflect the correct legal position, and the same is the position with respect to a large

number of other coordinate bench decisions following the said decision or following the line of reasoning in the said decision- as discussed above. However, in all fairness, while we may or may not agree with a coordinate bench decision, it cannot be open to us to disregard the same, lest such judicial inconsistency should shake public confidence in the administration of justice and lest one of the fundamental legitimate expectations of the stakeholders, i.e. those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters, will stand declined. "It is, however, equally true", to borrow the words of Hon'ble Supreme Courts as articulated in the case of Union of India Vs Paras Laminates Pvt Ltd [(1990) 186 ITR 722 (SC)], "that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings being to light what is perceived by them as an erroneous decision in the earlier case" and that "in such circumstances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger bench". Taking a cue from the path so guided by Hon'ble Supreme Court in the case of Paras Laminates (supra), we recommend constitution of a bench of three or more Members to consider the question as to whether or not an item of expenditure on account of freebies to medical professionals, which is hit by rule 6.8.1 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002- as amended from time to time, read with section 20A of the Indian Medical Council Act 1956, can be allowed as a deduction under section 37(1) of the Income Tax Act, 1961 read with Explanation thereto, in the hands of the pharmaceutical companies.

12.6 Thus, the legal position is clear that the claim of any expense incurred in providing various benefits in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section sub-section (1) of section 37 of the Act being an expense prohibited by the law. Delhi High Court decision which was relied upon by ITAT in some decisions was in completely different context as discussed by ITAT Mumbai in their judgment in the case of *Macleods Pharmaceuticals*. These ITAT decisions allowing such expenditure were clearly not in line with the intention of the legislation.

12.7 Further, some taxpayers were seen to be claiming deduction on expenses incurred for a purpose which is an offence under foreign law or for compounding of an offence for violation of foreign law, claiming that provisions of *Explanation* 1 to subsection (1) of section 37 of the Act applies only to offences which are prohibited by the domestic law of the country. In some case this view has also been accepted by the tribunal. These judgments are also against the intention of the legislation as the legislation does not say that the *Explanation* 1 applies only to the violation of domestic law.

12.8 In order to make the intention of the legislation clear and to make it free from any misinterpretation, another *Explanation* has been inserted to sub-section (1) of section 37 of the Act to further clarify that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law", under *Explanation 1*, shall

include and shall be deemed to have always included the expenditure incurred by an assessee, —

i. for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
ii. to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite 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; or
iii. to compound an offence under any law for the time being in force, in India or outside India.

12.9 Applicability: This amendment takes effect from 1st of April, 2022.

12.10 It may be mentioned that subsequent to introduction of Finance Bill, 2022, the Supreme Court in the case of Apex Laboratories Pvt Ltd vs DCIT SLP – Civil No. 23207 of 2019 (dated February 22, 2022) held that pharmaceutical companies gifting freebies to doctors etc is clearly prohibited by law and therefore such expenses are not allowed to be claimed as a deduction under sub-section (1) of section 37 of the Act. The Supreme Court held that doing so would "wholly undermine public policy." (Para 33). The amendment carried out is in consonance with the judgement of Supreme Court.

13 Clarification regarding treatment of cess and surcharge

13.1 Section 40 of the Act specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Sub-clause (ii) of clause (a) of section 40 of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

13.2 However, it was seen that certain taxpayers were claiming deduction on account of 'cess' or 'surcharge' under section 40 of the Act claiming that 'cess' has not been specifically mentioned in the aforesaid provisions of section 40(a)(ii) of the Act and, therefore, cess is an allowable expenditure. This view was upheld by Courts in a few judgments. Further, Courts were also relying upon the CBDT Circular No. 91/58/66-ITJ(19) dated 18-05-1967.

13.3 The assessees were relying upon the decision of the Hon'ble Bombay High Court in the case of "Sesa Goa Limited Vs. JCIT" (2020) 117 taxmann.com and further on the decision of the Hon'ble Rajasthan High Court in the case of "Chambal Fertilizers & Chemicals Ltd Vs. JCIT": D.B Income-tax Appeal No. 52/2018 decided on 31-07-2018. In these decisions, the Hon'ble High Courts relied upon the aforesaid CBDT Circular Dt. 18-05-1967 and held that 'education cess' can be claimed as an allowable deduction while computing the income chargeable under the heads "profits and gains of business or

profession". Based on these decisions ITAT in various judgments followed the same reasoning and allowed deduction on account of payment of "Cess".

13.4 However, one of the latest judgments of ITAT Kolkata has discussed the two High Court judgments as well as other judgments *vide* order dated 26-10-2021 in the case of M/s. Kanoria Chemicals & Industries Ltd ITA No. 2184/Kol/2018 (TS-1129- ITAT2021 Kol) and held that the "Cess" is not to be allowed as deduction. The relevant portion of the judgment is produced below:

"19. However, with due respect to the decisions of the Hon'ble Bombay High Court and Hon'ble Rajasthan High Court and of co-ordinate Benches of this Tribunal, we find that the issue is squarely covered by the decision of the Hon'ble Apex Court of the country in the case of "CIT Vs. K. Srinivasan" (1972) 83 ITR 346, wherein the following questions came for adjudication before the Hon'ble Apex Court:- " Whether the words "Income tax" in the Finance Act of 1964 in subs (2) and sub-s.(2)(b) of s. 2 would include surcharge and additional surcharge."

20. The Hon'ble Supreme Court answered the question in favour of revenue observing as under:- "In our judgment it is unnecessary to express any opinion in the matter because the essential point for determination is whether surcharge is an additional mode or rate for charging income tax. The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among others "to charge (one) too much or in addition" also "additional tax". Thus, the meaning of surcharge is to charge in addition or to subject to an additional or extra charge. If that meaning is applied to s. 2 of the Finance Act 1963 it would lead to the result that income tax and super tax were to be charged in four different ways or at four different rates which may be described as (i) the basic charge or rate (In part I of the First Schedule); (ii) Surcharge; (iii) special surcharge and (iv) additional surcharge calculated in the manner provided in the Schedule. Read in this way the additional charges form a part of the income tax and super tax".

21. The Hon'ble Supreme Court, therefore, has decided the issue in favour of the revenue and held that surcharge and additional surcharge are part of the income tax. At this stage, it is pertinent to mention here that 'education cess' was brought in for the first time by the Finance Act, 2004, wherein it was mentioned as under:- " An additional surcharge, to be called the Education Cess to finance the Government's commitment to universalise quality basic education, is proposed to be levied at the rate of two per cent on the amount of tax deducted or advance tax paid, inclusive of surcharge."

22. The provisions of the Finance Act 2011 relevant to the Assessment Year under consideration i.e. 2012-13 are also relevant. For the sake of ready reference, the same is reproduced hereunder:- 2(11) The amount of income-tax as specified in sub-sections (1) to (10) and as increased by a surcharge for purposes of the Union calculated in the manner provided therein, shall be further increased by an additional surcharge for purposes of the Union, to be called the "Education Cess on income-tax", calculated at the rate of two per cent. of such income-tax and surcharge, so as to fulfil the commitment of the Government to provide and finance universalised quality basic education.

23. A perusal of the aforesaid provisions of the Finance Act 2004 and Finance Act 2011 would show that it has been specifically provided that 'education cess' is an additional surcharge levied on the income-tax. Therefore, in the light of the decision of the Hon'ble Supreme Court in the case of "CIT Vs. K. Srinivasan" (supra) the additional surcharge is part of the income-tax. The aforesaid decision of the Hon'ble Apex Court and the provisions of Finance Act, 2004 and the relevant provisions of section 2(11) & (12) of the subsequent Finance Acts have not been brought into the knowledge of the Hon'ble High Courts in the cases of "Sesa Goa Ltd" & "Chambal Fertilisers" (supra). Since the decision of the Hon'ble Supreme Court prevails over that of the Hon'ble High Courts, therefore, respectfully following the decision of the Hon'ble Supreme Court in the case of "CIT Vs. K. Srinivasan" (supra), this issue is decided against the assessee. The additional ground of assessee's appeal is accordingly dismissed."

13.5 The circular dated 18.05.1967 issued by CBDT and relied upon by Rajasthan High Court is being reproduced as under:

"Interpretation of provision of s.40(a)(ii) of IT Act, 1961-Clarification regarding 18/05/1967 BUSINESS EXPENDITURE SECTION 40(a)(ii),

Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions of s.10(4) of the old Act and s.40(a)(ii) of the new Act.

2. The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill, 1961 as introduced in the Parliament stood as under: "(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains". When the matter came up before the Select Committee, it was decided to omit the word 'cess' from the clause. The effect of the omission of the word 'cess' is that only taxes paid are to be disallowed in the assessments for the year 1962-63 and onwards.

3. The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided."

13.6 In the above referred Circular issued by CBDT, 'Cess' is to be allowed under sub-clause (ii) of clause (a) of section 40 of the Act. However, it is to be noted that 'Cess' is imposed not only by the Central Government through the Finance Act for a financial year, but also by various State Governments. It is pertinent to mention that in the above referred Circular of CBDT, there is no reference to the 'Cess' imposed by the Central Government through the Finance Act for a particular year. This CBDT circular needs to be seen from the perspective that "Education Cess" imposed by Finance Act 2004 and subsequent Acts and then designated as "Education and Health Cess" are actually tax in the form of additional surcharge, as stated clearly in each of the relevant Finance Act imposing such "Cess". It is only called "Cess" since they were imposed for a particular purpose of fulfilling the commitment of the Government to provide and finance quality health services and universalized quality basic education and secondary and higher education.

13.7 This circular was in reference to "Cess" imposed by State Government which is actually of the nature of "Cess" and not of the nature of "Additional Surcharge" being

termed as “Cess” in the relevant Finance Act. When an additional surcharge is imposed by the Central Government and it is named as “Cess”, then its allowability needs to be examined whether an additional surcharge is allowed to be a deduction or not. Hon’ble Supreme Court in the case of *K Srinivasan* has held that “surcharge” and “additional surcharge” are tax. Hence, the additional surcharge named as “Cess” and imposed by the Central Government through the Finance Act is nothing but a tax and hence, needs to be disallowed under sub-clause (ii) of clause (a) of section 40 of the Act. The relevant part of Hon’ble Supreme Court judgment is as under:

> *7. The above legislative history of the Finance Acts, as also the practice, would appear to indicate that the term “Income tax” as employed in Section 2 includes surcharge as also the special and the additional surcharge whenever provided which are also surcharges within the meaning of Article 271 of the Constitution. The phraseology employed in the Finance Acts of 1940 and 1941 showed that only the rates of income tax and supertax were to be increased by a surcharge for the purpose of the Central Government. In the Finance Act of 1958 the language used showed that income tax which was to be charged was to be increased by a surcharge for the purpose of the Union. The word “surcharge” has thus been used to either increase the rates of income tax and super tax or to increase these taxes. The scheme of the Finance Act of 1971 appears to leave no room for doubt that the term Income tax” as used in Section 2 includes surcharge.”*

13.8 Since the judgments of Rajasthan High Court and Bombay High Court did not consider the judgment of Hon’ble Supreme Court discussed above, the judgments of these two High Courts appear to be *per incuriam*. It may be mentioned that in paragraph 578 at page 297 of Halsbury's Laws of England, Fourth Edition, the rule of *per incuriam* is stated as follows:

> *"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must be decided which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force."*

13.9 From the above discussion it may be seen that the interpretations of two High courts and various ITATs are against the intention of legislature and not in line with the judgment of Hon’ble Supreme Court. Hence, in order to make the intention of the legislation clear and to make it free from any misinterpretation, *Explanation* 3 has been inserted retrospectively in sub-clause (ii) of clause (a) of section 40 of the Act to clarify that for the purposes of this sub-clause, the term “tax” includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. Amendment has been made retrospectively to make clear the position irrespective of the circular of the CBDT.

13.10 Enabling provisions have been made in the Act with the insertion of sub-section (18) of section 155 which provides that where any deduction in respect of any surcharge or

cess, which is not allowable as a deduction under section 40 of the Act but which has been claimed and allowed, such claim shall be deemed to be under-reported income of the Assessee. The Assessing Officer shall re-compute the total income of the Assessee. The provisions of section 154 will apply and the period of 4 years specified under sub-section (7) of section 154 is to be reckoned from the end of the previous year commencing on 1st April 2021. It has also been provided that if assessees apply for re-computation of their total income of previous years without allowing the claim of deduction of surcharge or cess within the prescribed form and prescribed time and pay the amount due within the specified time, such claim shall not be deemed to be under-reported income attracting penalty provisions under section 270A.

13.11 *Vide* Notification no. 111/2022 (G.S.R. 733E) dated 28.09.2022, rule 132 of Income-tax Rules has been inserted and Form no. 69 & Form no. 70 have been notified by the Central Government. The notification came into force from 1st October 2022. Rule 132 prescribes that an application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 in the said previous year, shall be made by the assessee in Form No. 69 on or before 31st March, 2023. It also provides that the assessee shall, after making the payment of the tax determined by the Assessing Officer, furnish the details of payment of tax in Form No. 70 to the Assessing Officer within thirty days from date of making the payment.

13.12 This is an opportunity given for taxpayers to acknowledge the mistake committed by them and pay taxes voluntarily and thus avoid facing penalty.

13.13 Applicability: The amendment relating to section 40 takes effect retrospectively from 1st April, 2005 and accordingly applies in relation to the assessment year 2005-06 and subsequent assessment years.

The amendment relating to sub-section (18) of section 155 is effective from 1st April, 2022.

14 Clarification regarding deduction on payment of interest only on actual payment

14.1 Section 43B of the Act provides for certain deductions to be allowed only on actual payment. *Explanation* 3C, 3CA and 3D of this section provides that a deduction of any sum, being interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank under clause (d), clause (da), and clause (e) of this section respectively, shall be allowed if such interest has been actually paid and any interest referred to in these clauses which has been converted into a loan or borrowing or advance shall not be deemed to have been actually paid.

14.2 However, certain taxpayers were claiming deduction under section 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion was a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.

14.3 Such interpretation is against the intent of legislation. The section was introduced to curb the mischief of claiming deduction by the assessee, without paying interest to

financial institutions/NBFC/scheduled bank or a co-operative bank. Section 43B makes a departure from other sections in the Act, as indicated by its non-obstante clause. Under the provisions of this section conversion of the outstanding interest liability into debentures is not an actual payment and cannot be claimed as deduction. In other words, a mercantile system of accounting cannot be looked at when a deduction is claimed under this section, as actual payment would have to be made.

14.4 In view of the above, *Explanation* 3C, *Explanation* 3CA and *Explanation* 3D of section 43B of the Act have been amended to provide that conversion of interest payable under clause (d), clause (da), and clause (e) of section 43B of the Act, into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.

14.5 Applicability: This amendment takes effect from 1st April, 2023 and will, accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

15 Reduction of Goodwill from block of assets to be considered as 'transfer'

15.1 From the assessment year 2021-2022, goodwill of a business or profession is not considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 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.

15.2 When the amendment was carried out through the Finance Act 2021, consequential amendment was carried out in section 50 of the Act by insertion of a proviso to clause (2) of that section. A further consequential amendment has now been carried out.

15.3 Accordingly, it has been clarified that for the purposes of section 50 of the Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with sub item (B) of item (ii) of sub-clause (c) of clause (6) of section 43, shall be deemed to be transfer.

15.4 Applicability: Since the amendment to the effect that goodwill of a business or profession is not a depreciable asset has been made applicable from assessment year 2021-2022, the above amendment takes effect retrospectively from 1st April 2021 and applies in relation to the assessment year 2021-22 and subsequent assessment years.

16 Cash credits under section 68

16.1 Section 68 of the Act provides that where any sum is found to be credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

16.2 The onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person. Certain judicial pronouncements have created doubts about the onus of proof and the requirements of this section, particularly, in cases where the sum which is credited is loan or borrowing.

16.3 It is noticed that there is a pernicious practice of conversion of unaccounted money by crediting it to the books of assessees through a masquerade of loan or borrowing.

16.4 *Vide* Finance Act, 2012, it was provided that the nature and source of any sum, in the nature of share application money, share capital, share premium or any such amount by whatever name called, credited in the books of a closely held company shall be treated as explained only if the source of funds is also explained in the hands of the shareholder. However, in case of loan or borrowing, courts have held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor. This has led to the provision becoming ineffective in handling evasion when routed through a layered credit claim.

16.5 Therefore, the provisions of section 68 of the Act have been amended so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a Venture Capital Fund, Venture Capital Company registered with SEBI.

16.6 Applicability: This amendment is effective from the 1st April, 2023 and, accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years.

17 Facilitating strategic disinvestment of public sector companies

17.1 Section 79 of the Act provides for carry forward and set-off of losses in case of certain companies. Sub-section (1) of the said section, *inter-alia*, provides that where a change in shareholding has taken place during the previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred. Sub-section (2) of the said section provides certain circumstances in which the provisions of sub-section (1) shall not apply.

17.2 It order to facilitate the strategic disinvestment of public sector companies, section 79 of the Act has been amended to provide that the provisions of sub-section (1) of section 79 shall not apply to an 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.

17.2.1 It has also been provided that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of sub-section (1) shall apply for such previous year and subsequent previous years.

17.2.2 The terms “erstwhile public sector company” and “strategic disinvestment” shall have the meaning assigned to in clause (ii) and (iii) of the *Explanation* to clause (d) of sub-section (1) of Section 72A respectively.

17.3 Applicability: This amendment is effective from 1st April, 2022 and accordingly, applies in relation to the assessment year 2022-23 and subsequent assessment years.

18 Set off of loss in search cases

18.1 Chapter VI of the Act deals with aggregation of income and set off or carry forward of loss. In Sections 70-80 of the Act, there are specific provisions relating to set off or carry forward and set off of losses while computing the income under various heads and with respect to different classes of persons.

18.2 It is noticed that in some cases, assessees claim set off of losses or unabsorbed depreciation, against undisclosed income corresponding to difference in stock, undervaluation of stock, unaccounted cash payment etc. which is detected during the course of search or survey proceedings. Prior to FA 2022, there was no provision in the Act to disallow such set-off and no distinction is made between undisclosed income which was detected owing to search & seizure or survey or requisition proceedings and income assessed in scrutiny assessment in the regular course of assessment, though for incomes falling under section 68, section 69, section 69B etc., such restriction is there.

18.3 Allowing the adjustment of undisclosed income detected as a result of search or requisition or survey against the loss or unabsorbed depreciation was resulting in the searched assessee reducing his tax liability to a substantial extent. This provision of non-adjustment of loss or unabsorbed depreciation against undisclosed income detected as a result of search or requisition or survey would help in ensuring that proper tax paid on income detected due to a search or survey. This would also result in increased deterrence against tax evasion.

18.4 The new section 79A which was inserted in the Act provides that notwithstanding anything contained in the Act, where consequent to a search initiated under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than under sub-section (2A) of section 133A, the total income of any previous year

of an assessee includes any undisclosed income, no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation under sub-section (2) of section 32 shall be allowed to the assessee under any provision of this Act in computing his total income for such previous year.

18.5 Further, the term "undisclosed income" has been defined for the above purpose as—

(i) any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition made under section 132A or a survey conducted under section 133A, other than that conducted under sub-section (2A) of section 133A, which has—

(a) not been recorded on or before the date of search or requisition or survey, in the books of account or other documents maintained in the normal course relating to such previous year; or

(b) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, or

(ii) any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is found to be false and would not have been found to be so, had the search or the survey not been conducted or the requisition not been made.

18.6 Applicability: This amendment is effective from the 1st day of April, 2022 and accordingly, applies in relation to the assessment year 2022-23 and subsequent assessment years.

19 Incentives to National Pension System (NPS) subscribers for state government employees

19.1 Under the existing provisions of the Act, any contribution by the Central Government or any other employer to the account referred to in section 80CCD of the Act (NPS account), shall be allowed as a deduction to the assesses in the computation of his total income, if it does not exceed 14% of his salary where such contribution is made by the Central Government. This limit is presently 10% of his salary where such contribution is made by any other employer. The State Governments were given an option to raise the contribution to 14% w.e.f 01.04.2019 on their own volition, based on their own internal approvals and notifications, without seeking the approval of the Pension Fund Regulatory and Development Authority. The provisions of section 80CCD however resulted in the amount contributed in excess of 10% being taxed in the hands of the employee.

19.2 In order to ensure that the State Government employees also get full deduction of the enhanced contribution by the State Government, the limit of deduction has been increased

under section 80CCD of the Act from the existing ten per cent to fourteen per cent in respect of contribution made by the State Government to the account of its employee.

19.3 Applicability: This amendment is effective retrospectively from the 1st April, 2020 and accordingly, applies in relation to the assessment year 2020-21 and subsequent assessment years.

20 Condition of releasing of annuity to a disabled person

20.1 The existing provision of section 80DD, *inter alia*, provides for a deduction to an individual or HUF, who is a resident in India, in respect of (a) expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent, being a person with disability; or (b) amount paid to LIC or any other insurer or administrator or specified company in respect of a scheme for the maintenance of a disabled dependant.

20.2 Sub-section (2) of the aforesaid section provides that the deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the dependant, in the event of the death of the individual or the member of the HUF in whose name subscription to the scheme has been made.

20.3 Sub-section (3) of the aforesaid section provides that if the dependant with disability predeceases the individual or the member of the HUF, the amount deposited in such scheme shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

20.4 In the Writ Petition No. 1107 of 2017 Ravi Agrawal versus Union of India and Another, Hon'ble Supreme Court observed that there could be cases where handicapped dependants may need payment of annuity or lump sum amount even during lifetime of their parents/guardians. It was further observed that the Centre may take into consideration all the aspects, including those where a disabled dependant might need payment on annuity or lump sum amount even during the lifetime of the parents or guardians.

20.5 Therefore, in order to remove this genuine hardship, the section has been amended to provide that deduction under the said section can also be allowed during the lifetime, i.e., upon attaining the age of sixty years or more of the individual or the member of the HUF, being the parent or the guardian, in whose name subscription to the scheme has been made and where payment or deposit has been discontinued. Further, the provisions of sub-section (3) have been amended such that they do not apply to the amount received by the dependant, before the death of the subscriber referred to above, by way of annuity or lump sum amount by application of the condition referred to in the amendment.

20.6 Applicability: This amendment is effective from the 1st April, 2023 and accordingly, applies in relation to assessment year 2023-24 and subsequent assessment years.

21 Extension of date of incorporation for eligible start up for exemption

21.1 The existing provisions of the section 80-IAC of the Act, *inter alia*, provide for a deduction of an amount equal to one hundred percent of the profits and gains derived from an eligible business by an eligible start-up for three consecutive assessment years out of ten years, beginning from the year of incorporation, at the option of the assesses subject to the condition that,-

(i) the total turnover of its business does not exceed one hundred crore rupees,

(ii) it is holding a certificate of eligible business from the Inter-Ministerial Board of Certification, and

(iii) it is incorporated on or after 1st day of April, 2016 but before 1st day of April 2022.

21.2 Due to COVID pandemic there have been delays in setting up of such units. In order to factor in such delays and promote such eligible start-ups, the provisions of section 80-IAC of the Act have been amended by the FA 2022 to extend the period of incorporation of eligible start-ups to 31st March, 2023.

21.3 Applicability: This amendment is effective from 1st April, 2022.

22 Faceless Schemes under the Act

22.1 The Central Government has undertaken a number of measures to make the processes under the Act electronic, by eliminating person to person interface between the taxpayer and the Department to the extent technologically feasible, and provide for optimal utilisation of resources and a team-based assessment with dynamic jurisdiction. A series of futuristic reforms have been introduced in the domain of Direct Tax administration for the benefit of taxpayers and economy. This started with faceless assessment in electronic mode involving no human interface between taxpayers and tax officials. The faceless procedures are being introduced in a phased manner in the Act.

22.2 As part of this process of making the tax administration transparent and efficient, provisions for notifying faceless schemes under sections 92CA, 144C, 253 and 264A were introduced in the Act through Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.11.2020 and under section 255, was inserted through Finance Act, 2021 with effect from 01.04.2021:

S.No.	Section	Scheme	Date of Limitation
1.	92CA	Faceless determination of arm's length price	31st day of March, 2022
2.	144C	Faceless Dispute Resolution Panel	31st day of March, 2022
3.	253	Faceless appeal to Appellate Tribunal	31st day of March, 2022
4.	255	Faceless procedure of Appellate Tribunal	31st day of March, 2023

22.3 Section 92CA and section 144C are principally related to the transfer pricing functions and international taxation which are presently out of the regime of faceless assessment. New schemes for these two functions are a part of the assessment function and should follow the faceless assessment procedure, wherein certain modifications are proposed which will have an impact on the information technology structure. Therefore, notification at this time shall result in delay in stabilization of the systems.

22.4 As for notification of scheme under section 255, the Appellate Tribunal is deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXXV of the Code of Criminal Procedure, 1898. Therefore, a scheme governing the procedures to be followed by such a body needs to be formulated after due consultations with Ministry of Law & Justice. Similarly, the scheme under section 253 have to follow the scheme under section 255.

22.5 In light of the above limitations, the date for issuing directions for the purposes of sections 92CA, 144C, 253 and 255 has been extended till 31st March, 2024.

22.6 Applicability: These amendments are effective from the 1st April, 2022.

23 Provisions to check bonus stripping and dividend stripping to be made applicable to securities and units

23.1 Section 94 of the Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, *inter alia*, include dividend stripping and bonus stripping.

23.2 Prior to the amendments made by FA 2022, provisions of sub-section (8) of section 94 of the Act did not apply to bonus stripping undertaken in case of securities. It was also not applicable to units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Fund (AIF) as the definition of the term “unit” was not amended subsequent to introduction of provisions relating to REITs, InvITs etc. Further, provisions of sub-section (7) of section 94 of the Act, i.e. provisions pertaining to dividend stripping were not applicable to the units of new pooled investment vehicles such as InvIT or REIT or AIF.

23.3 In view of the above, FA 2022 has amended sub-section (8) of section 94, pertaining to the prevention of tax evasion through bonus stripping, so as to make the said provision applicable to securities as well.

23.4 Further, *Explanation* to the said section has also been amended to amend the definition of unit, so as to include units of business trusts such as InvIT, REIT and AIF, within the definition of units.

23.5 Applicability: These amendments are effective from 1st April, 2023 and accordingly apply to the assessment year 2023-24 and subsequent assessment years.

24 Extension of the last date for commencement of manufacturing or production, under section 115BAB, from 31.03.2023 to 31.03.2024

24.1 Section 115BAB of the Act provides for an option of concessional rate of taxation at 15 per cent. for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.

24.2 Sub-section (2) of section 115BAB of the Act contains the conditions required to be fulfilled by such companies. Prior to amendments made vide FA 2022, clause (a) of said sub-section (2) provided that the new domestic manufacturing company is required to be set up and registered on or after 01.10.2019, and is required to commence manufacturing or production of an article or thing on or before 31st March, 2023.

24.3 The intent of the introduction of section 115BAB was to attract investment, create jobs and trigger overall economic growth. However, the cumulative impact of the persistence of the COVID-19 pandemic resulted in some delay in setting up/registration of new domestic companies and the commencement of manufacturing or production by such companies, if they have been set up and registered.

24.4 In order to provide relief to such companies, FA 2022 has amended section 115BAB so as to extend the date of commencement of manufacturing or production of an article or thing, from 31st March, 2023 to 31st March, 2024.

24.5 Applicability: This amendment is effective from the 1st April, 2022.

25 Withdrawal of concessional rate of taxation on dividend income under section 115BBD

25.1 Prior to amendments made vide FA 2022, section 115BBD of the Act provided for a concessional rate of tax of 15 % on the dividend income received by an Indian company from a foreign company in which the said Indian company holds 26 % or more in nominal value of equity shares (specified foreign company). This rate was aligned to the rate of tax provided under section 115-O of the Act.

25.2 Finance Act, 2020 abolished the dividend distribution tax provided in section 115-O to, *inter-alia*, provide that dividend shall be taxed in the hands of the shareholder at applicable rates plus surcharge and cess.

25.3 In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis a vis dividend received from domestic companies, FA 2022 has amended section 115BBD of the Act to provide that the provisions of this section shall not apply to any assessment year beginning on or after the 1st day of April, 2023.

25.4 Applicability: This amendment is effective from the 1st day of April, 2023 and accordingly, applies in relation to the assessment year 2023-24 and subsequent assessment years.

26 Rationalization of provisions of the Act to promote the growth of co-operative societies

26.1 Section 115JC of the Act, *inter alia*, provides for the alternate minimum tax (AMT) payable by co-operative societies, which is at the rate of 18.5%. However, *vide* the Taxation Laws (Amendment) Act, 2019, the Minimum Alternate Tax (MAT) rate for companies has been reduced to 15%. Therefore, in order to provide parity between co-operative societies and companies, sub-section (4) of section 115JC has been modified to reduce the AMT rate at which co-operative societies are liable to pay income-tax to 15%. Consequential amendment was also done in clause (b) of section 115JF in relation to the definition of “alternate minimum tax”.

26.2 Applicability: This amendment is effective from 1st April, 2023 and, accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years.

27 Amendment in the provisions of section 119 of the Act

27.1 Section 119 of the Act empowers the Board to issue orders, instructions and directions to other income-tax authorities for proper administration of the Act. Clause (a) of sub-section (2) of the said section gives powers to the Board to provide relaxation of provisions of certain sections of the Act such as 115P, 115S, 115WD, 139, 211, 234A, 234B, 234C, 234E etc. by way of general or special orders, in respect of any class of incomes or class of cases, for the purpose of proper administration of the work of assessment or collection of revenue or initiation of proceedings for the imposition of penalties and such other issues, in public interest.

27.2 Section 234F of the Act which falls under Chapter XVII-F provides that in case a person fails to furnish return of income under section 139 within the prescribed time, he shall be liable to pay a fee of five thousand rupees. Currently this section is not expressly mentioned in clause (a) of sub-section (2) of section 119 of the Act.

27.3 While this section acts as a deterrent against those who do not comply with obligations imposed under the Act, it also leads to an unintended consequence of levying fee on persons who face genuine difficulties in filing return of income within the specified time, like members of the armed forces stationed in remote regions with no access to the requisite infrastructure.

27.4 Therefore, considering the genuine hardships faced by certain classes of persons in filing return of income and not to impose a fee for a default which is beyond their control, section 119 has been amended to include section 234F to the list of sections mentioned in clause (a) of sub-section (2), so as to enable the Board to issue such orders or instructions, as deemed fit.

27.5 Applicability: This amendment is effective from 1st April, 2022.

28 Provisions for filing of updated return

28.1 Section 139 of the Act is related to the provisions for filing of Income Tax Return by taxpayers. Sub-section (1) of section 139 casts responsibility on the taxpayer to furnish a return within a definite time period or up to a particular date, that is, the due date which as per this section:

(a) for an assessee who is a company or a person (other than a company) whose accounts are required to be audited under the Act or under any other law for the time being in force, it is 31st day of October of the assessment year;

(b) for an assessee who is required to furnish a report under section 92E, it is 30th day of November of the assessment year; and

(c) for any other assessee, it is 31st day of July of the assessment year.

28.2 Alternatively, sub-section (4) of section 139 facilitates filing of a belated return after the expiry of due date, if such return is furnished before 3 months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Similarly, sub-section (5) of section 139 provides the taxpayer an opportunity to revise the return filed under sub-section (1) or sub-section (4) in case of any omission or wrong statement, after due date, which is to be filed 3 months before the end of the assessment year or before the completion of assessment, whichever is earlier. Hence, the object of section 139 is to give reasonable time to the taxpayer to file a correct statement of his income within the duration specified under the Act.

28.3 This provision provides an additional time of approximately 5 months to an individual assessee, 2 months to a company/auditable case and 1 month to an assessee who enters into an international transaction or specified domestic transaction respectively, in a financial year to file belated or revised return. This additional timeline for filing a revised/belated return may not be adequate when we factor in utilization of huge information and data available coupled with the “nudge approach” that motivates the taxpayer towards the desired objective of voluntary tax compliance, starting with filing of correct tax returns.

28.4 Hence, a new provision is introduced in section 139 for filing an updated return of income by any person, whether he has filed a return previously for the relevant assessment year, or not. This provision for updated return over a period longer than that is provided in the existing provisions of the Act would on the one hand bring use of huge data with the IT Department to a logical conclusion resulting in additional revenue realization and on the other hand, it will facilitate ease of compliance to the taxpayer in a litigation free environment.

28.5 Through this provision, taxpayers are given some more time under the Act to file particulars of their income for a previous year in an updated return. A payment of

additional tax by persons opting to furnish their returns in the newly provided timelines is also required. An amount equal to twenty five percent or fifty percent as additional tax on the tax and interest due on the additional income furnished would be required to be paid. The following amendments to the Act are introduced for incorporating the above provisions:

A. A new sub-section (8A) in section 139 has been introduced to provide for furnishing of updated return under the new provisions.

I. in section 139, —–

(a) insertion of sub-section (8A) in section 139 of the Act to provide that:

(i) any person, whether or not he has furnished a return under sub-section (1), sub-section (4) or sub-section (5), for an assessment year (herein referred to as the relevant assessment year), may furnish an updated return of his income or the income of any other person in respect of which he is assessable under the Act, for the previous year relevant to such assessment year, within twenty-four months from the end of the assessment year. Such return shall be furnished in the prescribed form and manner and shall contain prescribed particulars.

Accordingly, *vide* Notification no. 48/2022 (GSR 325E) dated 29.04.2022, Rule 12AC has been introduced in the Income-tax Rules prescribing the form ITR-U and the manner in which Updated return shall be furnished.

(ii) this sub-section (8A) of section 139 shall not apply, if the updated return, is a return of a loss or has the effect of decreasing the total tax liability determined on the basis of return furnished under sub-section (1), sub-section (4) or sub-section (5) or results in refund or increases the refund due on the basis of return furnished under sub-section (1), sub-section (4) or sub-section (5), of such person under the Act for the relevant assessment year.

(iii) A person shall not be eligible to furnish an updated return under sub-section (8A) of section 139, if: —

(a) search has been initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of such person, or

(b) a survey has been conducted under section 133A, other than sub-section (2A) of that section, in the case such person, or

(c) a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in the case of any other person belongs to such person, or

(d) a notice has been issued to the effect that any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person,

for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and two assessment years preceding such assessment year.

(iv) also, no updated return shall be furnished by any person for the relevant assessment year, where,
(a) an updated return has been furnished by him under sub-section (8A) of section 139 of the Act for that relevant assessment year, or
(b) any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year in his case, or
(c) the Assessing Officer has information in respect of such person for the relevant assessment year in his possession under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the same has been communicated to him, prior to the date of his filing of return under the proposed sub-section (8A) of section 139 of the Act, or
(d) information for the relevant assessment has been received under an agreement referred to in sections 90 or 90A of the Act in respect of such person and the same has been communicated to him, prior to the date of his filing of return under sub-section (8A) of section 139 of the Act, or
(e) any prosecution proceedings under Chapter XXII of the Act have been initiated for the relevant assessment year in respect of such person, prior to the date of his filing of return under sub-section(8A) of section 139 of the Act, or
(f) he is a person or belongs to a class of persons, as maybe notified by the Board in this regard.

(v) if any person has sustained a loss in any previous year and has furnished a return of loss under sub-section (1) of section 139 of the Act and verified it in the prescribed manner, he shall be allowed to furnish an updated return where it is a return of income.

(vi) if the loss or any part thereof carried forward under Chapter VI or unabsorbed depreciation carried forward under sub-section (2) of section 32 or tax credit carried forward under section 115JAA or under section 115JD is to be reduced for any subsequent previous year as a result of furnishing updated return for a previous year, an updated return is required to be furnished for each such subsequent previous year.
(b) Sub-section (9) of section 139 provides that a return filed under sub-section (8A) of the said section 139 shall be defective unless such return is accompanied by the proof of payment of tax as required under the new section 140B.

II. A new section 140B has been introduced to provide the tax required to be paid for opting to file a return under the new provisions i.e. sub-section (8A) of section 139 of the Act.

I. Where no return furnished earlier: where no return of income under sub-section (1) or sub-section (4) of section 139 has been furnished by an assessee, he shall before furnishing the return under sub-section (8A) of section 139, be liable to pay the tax due together with interest and fee payable under any provision of the Act for any delay in

furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax. The tax payable shall be computed after taking into account the following:-
(i) the amount of tax, if any, already paid as advance tax;
(ii) any tax deducted or collected at source;
(iii) any relief of tax claimed under section 89;
(iv) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;
(v) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and
(vi) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee.

II. In the case of an assessee, where, return of income under sub-section (1) or sub-section (4) or sub-section (5) of section 139 (referred to as earlier return) has been furnished by an assessee, he shall before furnishing the return under sub-section (8A) of section 139, be liable to pay the tax due together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid under the provisions of the Act in the earlier return. The tax payable shall be computed after taking into account the following:-
(i) the amount of relief or tax, referred to in sub-section (1) of section 140A, the credit for which has been taken in the earlier return;
(ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing total income and which has not been claimed in the earlier return;
(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;
(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been claimed in the earlier return;
(v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return.
The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.
The updated return, furnished under sub-section (8A) of section 139, shall be accompanied by proof of payment of such tax, additional tax, interest and fee.

III. The additional tax, payable at the time of furnishing the return under sub-section (8A) of section 139, shall be equal to twenty-five per cent of aggregate of tax and interest payable, as determined in sub-paragraphs I or II above, if such return is furnished after expiry of the

time available under sub-section (4) or sub-section (5) of section 139 and before completion of period of twelve months from the end of the relevant assessment year. However, if such return is furnished after the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year, the additional tax payable shall be fifty per cent of aggregate of tax and interest payable, as determined in sub- paragraphs I or II above.

It is clarified that all other subsequent non-compliances under the Act, if any, shall be dealt with as per the relevant provisions of the Act.

It is also clarified that for the purposes of computation of “additional income-tax”, tax shall include surcharge and cess, by whatever name called, on such tax.

IV. It is further provided that notwithstanding anything contained in the *Explanation* 1 to section 234B, in the cases where an earlier return has been furnished, interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax, where, "assessed tax" means the tax on the total income as declared in the return to be furnished under sub-section (8A) of section 139, after taking into account the following:

(i) the amount of relief or tax, referred to in sub-section (1) of section 140A, the credit for which has been taken in the earlier return;
(ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing such total income, and which has not been claimed in the earlier return;
(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been claimed in the earlier return;
(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been claimed in the earlier return;
(v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return.

The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

V. Where no earlier return has been furnished, the interest payable under section 234A shall be computed on the amount of the tax on the total income as declared in the return under sub-section (8A) of section 139. Further, interest payable under section 234C, where an earlier return has not been furnished, shall be computed after taking into account the income furnished in the return under sub-section (8A) of section 139 as the returned income. At the same time, for the computation of additional tax above, the interest payable shall be interest chargeable under any provision of the Act, on the income as per return

furnished under sub-section (8A) of section 139, as reduced by interest paid in the earlier return, if any. However, the interest paid in the earlier return shall be considered to be nil if no earlier return has been furnished.

VI. In view of the introduction of sub-section (8A) of section 139 and new section 140B, consequential amendments in section 144, section 153, section 234A, section 234B and 276CC have also been made.

28.6 Applicability: These amendments are effective from the 1st day of April, 2022.

29 Income-tax authorities for the purposes of section 133A of the Act

29.1 Section 133A of the Act enables an income-tax authority to enter any place of business or profession or any other place where charitable activity is carried on within his jurisdiction to verify the books of account or other documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under this Act. *Explanation* to section 133A provides the definition of an income tax authority for the purposes of this section.

29.2 Through Taxation and Other Laws (Amendment and Relaxation of Certain Provisions) Act, 2020, the *Explanation* was amended to provide that any income-tax authority who is subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be, shall only be considered as income-tax authorities for the purposes of section 133A.

29.3 *Explanation* to section 133A of the Act is amended to provide that income tax authority shall be sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.

29.4 Applicability: This amendment is effective from 1st April, 2022.

30 Amendment in Faceless Assessment under section 144B

30.1 The Central Government has undertaken a number of measures to make the processes under the Act electronic, by eliminating person to person interface between the taxpayer and the Department to the extent technologically feasible, and provide for optimal utilisation of resources and a team-based assessment with dynamic jurisdiction. As part of this policy, *vide* Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 144B was inserted in the Act to provide for the procedure for faceless assessment with effect from 01.04.2021 and the Faceless Assessment Scheme, 2019 ceased to operate from that date.

30.2 However, various difficulties are being faced by the administration and the taxpayers in the operation of the faceless assessment procedure. In view of the above, the existing

provisions of the section 144B of the Act are amended to streamline the process of faceless assessment in order to address the various legal and procedural problems being faced in the implementation of the said section.

30.3 (I) Therefore, section 144B of the Act was substituted to provide that—

(a) the provisions of the section shall apply for faceless assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147 of the Act, as the case may be, in the cases specified therein.

(b) the National Faceless Assessment Centre (NaFAC) shall assign the case selected for the purposes of faceless assessment to a specific Assessment Unit (AU) and intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down in the section.

(c) the assessee shall be served a notice under sub-section (2) of section 143 or under sub-section (1) of section 142 of the Act, through the NaFAC. The assessee may file his response to the aforementioned notice under sub-section (3) of section 143, within the date specified in such notice in this regard, to the NaFAC, which shall forward the reply to the AU.

(d) Thereafter, the AU may make a request, through the NaFAC, for obtaining such further information, documents or e*vide*nce from the assessee or any other person, as it may specify and the NaFAC shall serve appropriate notice or requisition on the assessee or any other person for obtaining such information, documents or e*vide*nce. The AU may also make a request, through the NaFAC, for conducting enquiry or verification by Verification Unit (VU) and the request shall be assigned by the NaFAC to a VU through an automated allocation system. The AU may also similarly make a request in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the Technical Unit (TU) and the request shall be assigned by the NaFAC to a TU through an automated allocation system.

(e) The assessee or any other person, as the case may be, shall file his response in compliance to the said notice served by NaFAC, at the request of AU, to the NaFAC which shall forward the reply to the AU. If the assessee fails to comply with the said notice seeking information served by NaFAC, or the earlier notice under sub-section (2) of section 143 or under sub-section (1) of section 142, the NaFAC shall intimate the same to the AU. The AU shall serve upon the assessee, through NaFAC, a show cause notice under section 144 giving him the opportunity to explain as to why the assessment in his case should not be completed to the best of its judgement. Further any report received by the NaFAC, from the VU or TU shall also be forwarded to the AU.

(f) The assessee shall file his response to the show-cause notice under section 144 of the Act, within the time specified in such notice, to the NaFAC which shall forward the same to the AU. If the assessee fails to respond, the NaFAC shall intimate the same to the AU.

(g) The AU shall, after taking into account all the relevant material available on the record, prepare in writing, an income or loss determination proposal where no

variation prejudicial to assessee is proposed and send the same to the NaFAC. If a variation is being proposed then a show cause notice is served on the assessee stating the variations proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made, through the NaFAC.

(h) The assessee shall file his reply to the show cause notice to the NaFAC, on date and time as specified, which shall forward the reply to the AU. If the assessee fails to respond within the specified time, the NaFAC shall intimate the same to the AU. After considering the response of the assessee or the intimation of failure of the assessee to file a response received from NaFAC and all relevant material available on the record, the AU shall prepare an income or loss determination proposal, in writing, and send the same to the NaFAC.

(i) Upon receipt of the income or loss determination proposal, with or without any variations proposed to the income of the assessee, as the case may be, the NaFAC may, on the basis of guidelines issued by the Board, convey to the AU to prepare draft order in accordance with such income or loss determination proposal, which shall thereafter prepare a draft order, or assign the income or loss determination proposal to a Review Unit (RU) through an automated allocation system, which shall conduct a review of such order, prepare a review report and send it to NaFAC.

(j) The NaFAC shall forward the review report received from the RU to the AU which had proposed the income or loss determination proposal. The AU may accept or reject some or all of the modifications proposed in such review report, prepare a draft order accordingly, and send it to NaFAC. The AU shall record reasons in writing if it is rejecting the modifications proposed by the RU.

(k) The NaFAC shall, upon receiving draft order in a case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee under sub-section (1) of section 144C for reference to Dispute Resolution Panel, serve such draft order on the assessee. In any case, other than that of eligible assessee under section 144C, the NaFAC shall convey to the AU to complete the assessment in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the NaFAC. The NaFAC shall serve a copy of such final assessment order, notice for initiating penalty proceedings, if any and the demand notice, specifying the sum payable by, or refund of any amount due to the assessee on the basis of such assessment, to the assessee.

(l) An eligible assessee, as referred to in section 144C, shall, upon receiving the draft order served on him as above, shall file his acceptance of the variations proposed in such draft order or file objections, if any, to such variations, with the Dispute Resolution Panel, under section 144C and the NaFAC, within the period specified in sub-section (2) of section 144C.

(m) In case the variations proposed in the draft order are accepted by the assessee or not objected to within the time given in sub-section (2) of section 144C, the NaFAC shall intimate the AU of the same, which shall complete the assessment, on the basis of the draft order, within the time allowed under sub-section (4) of

section 144C and initiate penalty proceedings, if any, and send the order to the NaFAC.

(n) Where the eligible assessee files objections with the Dispute Resolution Panel, against the variations proposed in the draft order in his case, the NaFAC shall send such intimation along with a copy of such objections to the AU. Upon receipt of the directions issued by the Dispute Resolution Panel in the case of an eligible assessee under section 144C, the NaFAC shall forward such directions to the AU. The AU shall complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, and send a copy of such order to the NaFAC.

(o) The NaFAC shall, upon receipt of final assessment order, in the case of an eligible assessee under section 144C or in other cases, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment. The NaFAC shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

(p) The section also provides that faceless assessment shall be made in respect of persons or class of persons, or incomes or class of incomes, or cases or class of cases or such territorial area, as may be specified by the Board.

(q) The section also provides that Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:—

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) assessment units (referred to as AU), as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment and the term “assessment unit”, wherever used in section 144B, shall refer to an Assessing Officer having powers to the extent so assigned by the Board;

(iii) verification units (referred to as VU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term “verification unit”, wherever used in section 144B, shall refer to an Assessing Officer having powers so assigned by the Board;

Further, the function of VU under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of the Act and the request for verification may also be assigned through the National Faceless Assessment Centre to such VU;

(iv) technical units (referred to as TU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under the Act or an agreement entered into under sections 90 or 90A of the Act, which may be required in a particular case or a class of cases and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(v) review units (referred to as RU), as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xix) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues on which addition or disallowance should be made have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

(r) AU, VU, TU and the RU shall have the following authorities, namely:—

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

(s) The section also provides that all communication among the AU, RU, VU or TU or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the NaFAC, between the NaFAC and the assessee, or his authorised representative, or any other person and all internal communications between the NaFAC and various units shall be exchanged exclusively by electronic mode. However, this provision shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this regard.

(t) It is further provided that for the purposes of faceless assessment, an electronic record shall be authenticated by the NaFAC by way of an electronic communication, by the AU or VU or TU or RU, as the case may be, by affixing digital signature and by the assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered

account in the designated portal. Every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the registered account of the assessee or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative or by uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert.

(u) The section further seeks to provide that the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the NaFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated. The time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000.

(v) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under the section.

(w) Further, in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit. Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through NaFAC, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board. Any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

(x) The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end. The Principal Chief Commissioner or the Principal Director General, as the case may be, in

charge of the NaFAC shall, with the prior approval of the Board, lay down the standards, procedures and processes in the specified manner for effective functioning of the NaFAC and the units set up, in an automated and mechanised environment.

(y) The section also seeks to provide that if at any stage of the proceedings before it, the AU 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, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the NaFAC stating that the provisions of sub-section (2A) of section 142 may be invoked in the case. The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the NaFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case, forward the reference received from the AU to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the AU accordingly. Such case shall also be taken up for transfer to the jurisdictional Assessing Officer with the approval of the Board. Where a reference has been received, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, shall direct the Assessing Officer having jurisdiction over such case to invoke the provisions of sub-section (2A) of section 142. However, where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over such case, the AU shall proceed to complete the assessment in accordance with the procedure laid down in the section.

(z) It is also provided that the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case, in addition to a case referred to in (y) to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board. Terms such as electronic verification code, assessment unit, technical unit, verification unit, review unit etc used in the section are defined.

(II) Sub-section (9) of erstwhile section 144B of the Act provided that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. The said sub-section refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under the sub-section involving technical issues arising due to use of information technology, leading to unnecessary litigation. It is, therefore, omitted from its date of inception.

30.4 Applicability: In view of the above, the amendments in the provisions of section 144B of the Act are effective, —

(i) from 1st April, 2022, in case of proposal in sub-paragraph (I);
(ii) retrospectively from 1st April, 2021, in case of proposal in sub-paragraph (II).

31 Rationalization of provisions relating to assessment and reassessment

31.1 The Finance Act, 2021 amended the procedure for assessment or reassessment of income in the Act with effect from the 1st April, 2021. The said amendment modified, *inter alia*, sections 147, section 148, section 149 and also introduced a new section 148A in the Act. In cases where search is initiated under section 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, on or after 1st April, 2021, assessment or reassessment is now made under sections 143 or 144 or 147 of the Act after the amendment of the Act by Finance Act, 2021.

31.2 As a part of the government's policy related to simplification of procedures under the Act, amendments have now been brought in through FA 2022 to—

(i) insert a new proviso in section 148 of the Act to the effect that approval to issue notice under that section shall not be required to be taken by the Assessing Officer if he has passed an order under section 148A(d) with the prior approval of the specified authority in that case stating that the income is escaping assessment.

(ii) to omit the requirement of approval of specified authority in clause (b) of section 148A.

Applicability: These amendments are effective from 1st April, 2022.

31.3 To correct the inadvertent drafting errors and align the provisions with the intent of the section, amendments have been made,

(i) in section 148 to omit the word "flagged" from clause (i) of *Explanation* 1,

(ii) in clause (ii) of *Explanation* 2 to section 148 to omit the reference of sub-section (5) of section 133A made therein.

Applicability: These amendments are effective from 1st April, 2022.

(iii) in *Explanation* 2 of section 148 to omit the reference to three assessment years preceding the assessment year relevant to the year of search;

(iv) in section 153B by inserting sub-section (4) to provide that nothing contained in the said section shall apply to any search initiated under section 132 or requisition made under section 132A on or after the 1st day of April, 2021.

(v) in the first proviso to sub-section (1) of section 149 to provide that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being

beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

Applicability: These amendments are effective from 1st April, 2021.

31.4 In order to align the scheme of search assessments with the intent of the Act, changes have been made to—

(i) amend sub-section (8) of section 132 to make the provisions of that section also applicable to assessment or reassessment or recomputation under sub-section (3) of 143 or section 144 or section 147, as the case may be,

(ii) amend clause (i) of sub-section (1) and sub-section (4) of section 132B to provide that these provisions shall also apply to assessment or reassessment or recomputation.

Applicability: These amendments are effective from 1st April, 2022.

(iii) insert a new section 148B to provide that no order of assessment or reassessment or recomputation under the Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, in respect of assessments consequent to search, survey and requisition to reduce avoidable inaccuracies.

Applicability: This amendment is effective from 1st April, 2022.

(iv) amend section 153, by inserting a new clause to provide for exclusion of the period of limitation for the purpose of assessment, reassessment or recomputation, (not exceeding one hundred eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated or such requisition is made or to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or to whom any books of account or documents seized or requisitioned, pertains or pertain to, or any information contained therein, relates to;

(v) amend section 153B, by inserting a new clause to provide for exclusion of the period (not exceeding one hundred eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion , jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the

Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A.

Applicability: These amendments are effective retrospectively from 1st April, 2021.

(vi) consequential changes have also been made in section 271AAB of the Act.

Applicability: This amendment is effective from the 1st April, 2022.

31.5 In order to bring clarification in the existing provisions and to align them with the intent of the Act, amendments are made to—

(i) clarify what constitutes information under *Explanation* 1 to section 148 so as to include any audit objection, or any information received from a foreign jurisdiction under an agreement, or directions contained in a court order, or information received under a scheme notified under section 135A etc.

(ii) to amend the clause (b) of sub-section (1) of the section 149 to provide that a notice under section 148 shall be issued only for the relevant assessment year after three years but not exceeding ten years from the end of the relevant assessment year where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of

(a) an asset; or
(b) expenditure in respect of a transaction or in relation to an event or occasion; or
(c) an entry or entries in the books of account,

which has escaped assessment amounts to or likely to amount to fifty lakh rupees or more.

(iii) insert a new sub-section (1A) in section 149 to provide that notwithstanding anything contained in sub-section (1) of the said section, where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1) of the said section, has escaped assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1) of the said section, notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

(iv) to provide that the provisions of the section 148A shall not apply in cases where the Assessing Officer has received any information under the scheme notified under section 135A, pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Applicability: These amendments are effective from 1st April, 2022.

32 Amendment of section 153 to extend time barring date in assessment

32.1 Sub-section (1) of the section 153 of the Act provides the time-line for completion of assessment proceedings under sections 143 and 144 of the Act. As per the provisions of the said section the time-limit for completion for assessment for A.Y. 2020-21 is 12 months from the end of the relevant A.Y., that is 31st March, 2022. The assessment is now being conducted in a faceless manner as per the provisions of section 144B of the Act. The proceedings are carried out on the ITBA and the shift to faceless assessment has mandated new functionalities in the ITBA. The development as well as implementation of these functionalities has been delayed which has resulted in loss of time for completion of assessment proceedings.

32.2 Representations were received requesting extension of the date of time barring for the A.Y. 2020-21 citing technical glitches which have severely hampered the conduct of assessment proceedings. Completion of assessment in undue haste due to the approaching limitation date would have caused discomfort to the taxpayers as they would have been unable to present their case to their satisfaction and this would have led to increase in taxpayer discontent as well as litigation.

32.3 Therefore, second proviso of sub-section (1) of section 153 of the Act has been amended to further provide that no order of assessment shall be made under section 143 or section 144 at any time after the expiry of eighteen months from the end the relevant assessment year i.e., AY 2020-21, commencing on the 1st day of April, 2020.

32.4 Applicability: This amendment is effective retrospectively from 1st April 2021.

33 Amendment of section 153B to extend time barring date in search cases

33.1 As per the existing provisions of the Act, in cases where search or requisition were concluded during the Financial Year 2020-21 or in case of other person referred to in section 153C, the books of account or document or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person during the financial year 2020-21, assessment or reassessment is required to be completed by 31st March, 2022.

33.2 However, the extended due date of 15th March, 2022 for filing ITR may also be applicable in cases where searches have been concluded or in case of other person referred to in section 153C, the books of account or document or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person during the financial year 2020-21. This led to situations where Assessing Officers have less than 15 days to conclude assessment in cases of taxpayers who choose to file the return on 15th March, 2022.

33.3 Therefore, a sixth proviso to sub-section (1) is introduced in section 153B of the Act to provide that in cases where the last of the authorisations for search or for requisition was executed during FY 2020-21 or in case of other person referred to in section 153C,

the books of account or document or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person during the financial year 2020-21, the assessment in such cases shall be made on or before 30th September, 2022 as opposed to 31st March, 2022.

33.4 Applicability: This amendment is proposed to be effective retrospectively from 1st April 2021.

34 Litigation management when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court.

34.1 Section 158AA of the Act provides that where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is identical with a question of law arising in his case for another assessment year (other case) which is pending in appeal before the Supreme Court against an order of High Court which was in favour of assessee, he may direct the Assessing Officer to make an application to the Appellate Tribunal stating that an appeal on the question of law in the relevant case may be filed when the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the assessee.

34.2 If such a principle could be applied to cases where a question of law is common and where a decision of the jurisdictional High Court, on the same question of law is available, the filing of appeal in such cases can be avoided to reduce the amount of litigation.

34.3 Therefore, to provide a procedure when an appeal by revenue is pending on an identical question of law, a new section 158AB has been inserted in the Act, to provide that where the collegium is of the opinion that any question of law arising in the case of an assessee for any assessment year ("relevant case") is identical with a question of law already raised in his case or in the case of any other assessee for an assessment year, which is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such assessee ("other case"), it may, decide and intimate the Commissioner or Principal Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section (2) of section 253 or to the High Court under sub-section (2) of section 260A against the order of the Commissioner (appeals) or the Appellate Tribunal, as the case may be**.**

34.4 Further, the Commissioner or Principal Commissioner shall, on receipt of a communication from the collegium, direct the Assessing Officer to make an application to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form within one hundred and twenty days from the date of receipt of the order of the Commissioner (Appeals) or within one hundred and twenty days from the date of receipt of the order of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question

of law becomes final in the other case. The Commissioner or Principal Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case, and in case no such acceptance is received, the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in sub-section (2) of section 253 or in sub-section (2) of section 260A.

34.5 Accordingly, *vide* Notification no. 83/2022 (GSR 537E) dated 12.07.2022, rule 16 has been inserted in the Income-tax Rules to prescribe Form no. 8A for making an application under this provision.

34.6 Furthermore, where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, in the relevant case is not in conformity with the final decision on the question of law in the other case as and when such order is received, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal within sixty days to the Appellate Tribunal or within one hundred and twenty days to the jurisdictional High Court or the Supreme Court, as the case may be, against such order.

34.7 For the purposes of the proposed section, "collegium" shall comprise of two or more Chief Commissioners or Principal Commissioners or Commissioners of Income-tax, as specified by the Board in this regard. Consequently, an order dated 28.09.2022 was issued by CBDT specifying that such collegium shall be constituted by Pr.CCIT (IT&TP) for IT&TP jurisdiction, Pr. CCIT (Exemption) for exemption charges, CCIT (Central) or DGIT (Inv) for Central charges and Pr.CCIT (CCA) in all other cases. The Collegium shall comprise of 3 members of PCIT/CIT rank, including jurisdictional PCIT/CIT.

34.8 In order to illustrate the point, it may be supposed that a question of law $(Q1)_{A1}$ has arisen in case of an assessee (A1) and A1 has received a favourable decision on $Q1_{A1}$ from the Commissioner (Appeals). Further, in case of another assessee (A2), where Department's appeal on identical question of law $(Q1)_{A2}$ is pending before the jurisdictional High Court or the Supreme Court and the collegium is of the opinion that $Q1_{A1}$ and $Q1_{A2}$ are identical questions of law, then in this situation, provisions of proposed section 158AB can be invoked by Revenue to defer filing of appeal for decision on $Q1_{A1}$ to the higher appellate authority ITAT till a decision on $Q1_{A2}$ is communicated to Assessing Officer having jurisdiction over the assessee, A1. Such a decision on deferment will be subject to acceptance by the assessee A1 that question of law in his case $Q1_{A1}$ is identical to $Q1_{A2}$ in the case of the assessee A2.

34.9 With the introduction of section 158AB, a sunset clause is inserted in sub-section (1) of section 158AA to provide that no direction shall be given under the said sub-section on or after 1st April, 2022, as the same has been subsumed under section 158AB.

34.10 Applicability: This amendment is effective from 1st April, 2022.

35 Amendments related to successor entity subsequent to business reorganisation

35.1 Chapter XV of the Act refers to liability in certain special cases. Section 170, *inter alia*, governs the procedure of taxation in case of succession to business in the event of reorganisation or restructuring of the business which is discussed in the following paragraphs.

35.2 Though section 170 provides for assessment in cases of succession otherwise than by death, in practice once an entity starts the process of reorganisation by filing an application with the adjudicating authority or tribunal or any High Court, the period of time involved in coming to a conclusion with respect to such reorganisation is found to be a long-drawn process and is not time-bound. The effective date of reorganisation often is from an earlier date. During the pendency of the court proceedings, the income tax proceedings and assessments are carried on and are often completed on the predecessor entities only. Courts have held such proceedings and consequent assessments illegal as the predecessor assessee ceases to exist in the midst of a perfectly valid and legal proceeding.

35.3 Hence, till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and such proceedings once completed, cannot become illegal as a result of subsequent order of any court. Therefore, with a view to clarify that such proceedings under the Act are valid, a new sub-section (2A) is inserted in section 170, to provide that the assessment or other proceedings pending or completed on the predecessor in the event of a succession, shall be deemed to have been made on the successor.

35.4 Further, it is seen that post such reorganisation, the affairs of the successor entity go through a complete change with effect from the date from which such reorganisation takes place. However, due to the indefinite timeline involved in issuing such orders, there is a gap between the effectivity of such order and the date on which such order is issued by the competent authority. This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganisation. Hence, in order to remove this anomaly, a new section 170A has been inserted in the Act, to enable for the entities going through such business reorganisation, for filing of modified returns for the period between the date of effectivity of the reorganisation and the date of issuance of final order of the competent authority, in the form and manner as may be prescribed. Accordingly, *vide* Notification no. 110/2022 (GSR 709E) dated 19.09.2022, Rule 12AD has been inserted in the Income-tax Rules prescribing the form ITR-A and the manner for furnishing such return and this would come into effect from 01.11.2022. Further, in order to address genuine hardship and provide adequate time to taxpayers for furnishing of such return, an order under section 119 was issued by CBDT on 26.09.2022 to provide that where the order of business reorganisation was issued between 01.04.2022 and 30.09.2022, the time available to furnish modified returns under this section shall stand extended to 31.03.2023.

35.5 Further, it has been noted that in the cases of business reorganisation, instances have been found where the Adjudicating Authority, as defined in clause (1) of section (5) of

the Insolvency and Bankruptcy Code, 2016, as a part of the restructuring process, recast the entire liability to ensure future viability of such sick entities and in the process, modify the demand created *vide* various proceedings in the past, by the Income Tax department as well, amongst other things.

35.6 However, it is observed that there is no procedure or mechanism provided in the Act to reduce such demands from the outstanding demand register. Hence, in order to remove this anomaly, a new section 156A is inserted in the Act to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.

35.7 Applicability: These amendments are effective from 1st April, 2022.

36 Amendment in the provisions of section 179

36.1 Section 179 of the Act contains provisions which enables income-tax authorities to recover tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself. The section makes each director of the private company jointly and severally liable for the payment of such tax with certain conditions. However, the title of the section inadvertently refers to the liability of directors of private company in liquidation.

36.2 The liability of directors of a private company under this section is not conditional upon the company being in liquidation and the section makes no reference to liquidation. Therefore, to make the title of the section uniform with its provisions, the title of the section is amended to "*Liability of directors of private company*".

36.3 Further, *Explanation* to the section clarifies that the expression "tax due" in the section includes penalty, interest or any other sum payable under the Act. In order to avoid unnecessary litigation and to provide further clarity, the word "fees" is inserted in the scope of the expression "tax due" under *Explanation* to the section.

36.4 Applicability: These amendments are effective from 1st April, 2022.

37 Consequence for failure to deduct/collect or payment of tax

37.1 Computation of interest under section 201 of the Act deals with the consequences of persons who fail to deduct tax or after deducting, fail to deposit the same to the credit of the Central Government. Sub-section (1A) of the said section provided that if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay the same to the credit of the Central Government, then he shall be liable to pay simple interest at the rates specified therein. Similarly, sub-section (7) of section 206C of the Act provided that if any person who is liable to collect tax at source does not collect it or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein.

37.2 It was observed that computation of interest under the said provisions in case where the default for deduction/collection of tax or payment of tax continues is subject matter of frequent litigation.

37.3 In order to make the intention of the legislation clear and to make it free from any misinterpretation, the following amendments have been made:

(i) sub-section (1A) of section 201 of the Act has been amended to provide that where any order is made by the Assessing Officer for the default under sub-section (1) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard;
(ii) sub-section (7) of section 206C of the Act has been amended to provide that where any order is made by the Assessing Officer for the default under sub-section (6A) of the said section, the interest shall be paid by the person in accordance with the order made by the Assessing Officer in this regard.

37.4 Applicability: These amendments take effect from 1st April, 2022.

38 Rationalization of provisions of section 206AB and 206CCA to widen and deepen tax-base

38.1 In order to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income, Finance Act, 2021 inserted sections 206AB and 206CCA in the Act. The said sections provide for special provision for deduction and collection of tax at source respectively, in case of specified persons at higher rates specified therein.

38.2 "Specified person" was defined to mean a person who has not filed the returns of income for both the two assessment years relevant to the two previous years immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under sub-section (1) of section 139 of the Act has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years. Government has provided online utility to taxpayers to check whether the person is specified person or not.

38.3 Further, the provisions of section 206AB of the Act were not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

38.4 In order to ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, the two years requirement has been reduced to one year by amending sections 206AB and 206CCA of the Act. It has been provided that "specified person" means a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, as the case may be, and the amount of tax collected and deducted at source is Rs. 50,000 or more in the said previous year.

38.5 However, in order to reduce the additional burden on individual and Hindu undivided family (HUF) taxpayers covered under section 194-IA, 194-IB and 194M of the Act for whom simplified tax deduction system has been provided without requirement of TAN, it has been provided that the provisions of section 206AB will not apply in relation to transactions on which tax is to be deducted under the said sections of the Act.

38.6 In addition to above, a drafting error in sections 206AB and 206CCA has been rectified wherein the terms "deductor" and "collectee" respectively were used incorrectly. Further, since the returns are now being furnished electronically, in place of 'filing' of return, the term 'furnishing' of return has been substituted.

38.7 Further, as a consequential amendment in section 194-IB, the reference of section 206AB from sub-section (4) of the said section has been omitted.

38.8 Subsequently, Circular no. 10/2022 dated 17.05.2022 regarding use of functionality under section 206AB and 206CCA of the Act has been issued to provide clarity to deduction about these principles and the departmental utility has been developed to ease compliance.

38.9 Applicability: These amendments take effect from 1st April, 2022.

39 Rationalization of provisions of TDS on sale of immovable property

39.1 Section 194-IA of the Act provides for deduction of tax on payment on transfer of certain immovable property other than agricultural land. Sub-section (1) of the said section provided for deduction of tax by any person responsible for paying to a resident any sum by way of consideration for transfer of any immovable property (other than agricultural land) at the time of credit or payment of such sum to the resident at the rate of one per cent. of such sum as income-tax thereon. Sub-section (2) provided that no deduction of tax shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

39.2 As per the provisions of the said section, TDS is to be deducted on the amount of consideration paid by the transferee to the transferor. This section did not take into account the stamp duty value of the immovable property, whereas, as the provisions of section per 43CA and 50C of the Act, for the computation of income under the head "Profits and gains of business or profession" and "capital gains" respectively, the stamp duty value is also to be considered. Thus, there was inconsistency in the provisions of section 194-IA and sections 43CA and 50C of the Act.

39.3 In order to remove inconsistency, section 194-IA of the Act has been amended to provide that in case of transfer of an immovable property (other than agricultural land), tax is to be deducted at source at the rate of one per cent. of such sum paid or credited to the resident or the stamp duty value of such property, whichever is higher. In case the consideration paid for the transfer of immovable property and the stamp duty value of such property are both less than fifty lakh rupees, then no tax is to be deducted under section 194-IA.

39.4 Stamp duty value shall have the meaning assigned to it in clause (f) of the *Explanation* to clause (vii) of sub-section (2) of section 56 of the Act.

39.5 Form 26QB (challan-cum-statement) of deduction of tax under section 194-IA has been updated *vide* Notification no. 67/2022 (GSR 463E) dated 21.06.2022.

39.6 Applicability: This amendment is effective from 1st April, 2022.

40 TDS on benefit or perquisite of a business or profession

40.1 As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession is to be charged as business income in the hands of the recipient of such benefit or perquisite. However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income. Similarly, there are benefits or perquisites received in the course of business / profession which are taxable under some other provisions of "profits and gains of business or profession" or other sections of the Act.

40.2 Accordingly, in order to widen and deepen the tax base, a new section 194R has been inserted in the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite. For the purposes of this section, the expression 'person responsible for providing' means a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.

40.2.1 Further, in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

40.2.2 No tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a resident does not exceed twenty thousand rupees during the financial year.

40.2.3 Further, the provisions of the said section shall not apply to an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided.

40.2.4 The Board has been empowered to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to the provisions of section 194R of the Act and every such guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.

40.3 *Vide* circular no 12 of 2022 of CBDT dated 16.06.2022 and circular no. 18 of 2022 dated 13.09.2022, the Central Government has issued guidelines for removal of difficulties for operation of section 194R of the Act. Circular no 12 of 2022 dated 16.6.2022 was laid before the Rajya Sabha on 26th July, 2022 and the Lok Sabha on 1st August, 2022.

40.4 Form 26Q and rule 31A of Income-Tax Rules 1962 have been amended *vide* G.S.R. 463(E) Notification no. 67/2022 dated 21.06.2022 to also capture details of TDS under section 194R of the Act on benefits and perquisites given in kind.

40.5 Applicability: This amendment is effective from 1st July, 2022.

41 Amendment in section 245MA of the Act related to Dispute Resolution Committee

41.1 Finance Act, 2021 introduced a new Chapter XIX-AA in the Act consisting of section 245MA for constituting Dispute Resolution Committee ("DRC") for specified persons who may opt for dispute resolution under the said section and who fulfil specified conditions mentioned in the said section.

41.2 After the resolution of the dispute by the DRC the assessed income of the person who had applied to DRC has to be determined, which will be followed by, *inter alia*, initiation of penalty proceedings, if any and issuance of demand notice under section 156 of the Act. However, the existing provisions of the said section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of the Dispute Resolution Committee under the said section.

41.3 Therefore, a new sub-section has been inserted in this section to enable the Assessing Officer to pass an order giving effect to the resolution of dispute by the DRC. However, since DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under section 144C of the Act or the DRC under section 245MA of the Act, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee.

41.4 Applicability: The amendment is effective from 1st April, 2022.

42 Amendment in the provisions of section 248 of the Act and insertion of new section 239A

42.1 Section 248 of the Act provides that in a case where, under an agreement or other arrangement, a person who has deducted tax on any income paid to a non-resident, other than interest under section 195 of the Act, he may appeal to the Commissioner (Appeals)

for a declaration that no tax was deductible on such income, if he claims that such tax is to be borne by him since no tax was required to be deducted on such income. Such appeal can be filed after making payment of tax so deducted to the credit of the Government account. Further, section 249 of the Act lays down that an appeal under section 248 of the Act should be filed within 30 days of making payment of such tax to the Government account.

42.2 To obtain a refund of the tax deducted and paid by a person, where it was not deductible, as per the provisions of section 248 of the Act, a taxpayer has no recourse to approach the Assessing Officer with such request. He has to necessarily enter the appellate process by filing an appeal before the Commissioner (Appeals). At the same time, the agreement or arrangement, under which the tax has been deducted and paid, is not brought on the record of the Assessing Officer or examined by him.

42.3 In view of the above, a new section 239A has been inserted in the Act to, *inter alia*, provide that such a person, who has made the deduction of tax under an agreement or arrangement in writing and borne the tax liability, when no tax deduction was required, may file an application for refund of such tax deducted before the Assessing Officer, in such form and such manner as may be prescribed. Accordingly, *vide* Notification no. 98/2022 (GSR 634E) dated 17.08.2022, Rule 40G has been inserted in the Income-tax Rules prescribing Form 29D in which such application shall be made.

42.4 Such person can, if he is not satisfied with the order of the Assessing Officer, go into appeal against such order before the Commissioner (Appeals), under section 246A of the Act. Accordingly, the provisions of section 248 of the Act will not apply in cases where the date of tax payment to the credit of Central Government is on or after 01.04.2022.

42.5 Applicability: These amendments are effective from 1st April, 2022.

43 Amendment in the provisions of section 263

43.1 Section 263 of the Act contains the provision for revision of an order passed by the Assessing Officer which is erroneous in so far as it is prejudicial to the interests of revenue. An order under section 263 of the Act can be passed within two years from the end of the financial year in which the order sought to be revised was passed.

43.2 As per provisions of section 92CA, if the Assessing Officer considers it necessary or expedient, he may, with the approval of the Principal Commissioner or Commissioner refer the computation of arm's length price (ALP) in relation to the international transaction or specified domestic transaction entered into by an assessee, to the Transfer Pricing Officer (TPO). The TPO passes an order determining the ALP in an international transaction or specified domestic transaction under the provisions of section 92CA and sends it to the Assessing Officer for final income determination. However, it is not clear as to who has the power under section 263 to revise the order of the TPO passed under section 92CA.

43.3 Therefore, the provisions of section 263 of the Act have been amended so as to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner who is assigned the jurisdiction of transfer pricing may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO.

43.4 Further, section 153 of the Act is amended by inserting sub-section (5A) to provide that where the Transfer Pricing Officer gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him. Further, consequential amendments to sub-sections (3), (5) and (6) have also been carried out.

43.5 Applicability: This amendment is effective from 1st April, 2022.

44 Rationalization of the provisions of sections 271AAB, 271AAC and 271AAD

44.1 Sections 271AAB, 271AAC and 271AAD of the Act under Chapter XXI of the Act contain provisions which give powers to the Assessing Officer to levy penalty in cases involving undisclosed income in cases where search has been initiated u/s 132 or otherwise, or for false entry etc. in books of account.

44.2 Under Chapter XXI of the Act which deals with penalties, Commissioner (Appeals) has concomitant powers with Assessing Officer to levy penalty in eligible cases under section 270A, section 271, section 271A, section 271AA, section 271G, section 271J which deal with deliberate concealment, non-disclosure and omission by an assessee to evade tax.

44.3 Similarly, sections 271AAB, 271AAC, 271AAD penalise actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts. Therefore, in order to make deterrence more effective against non-compliance among tax payers, sections 271AAB, 271AAC and 271AAD are amended by enabling the Commissioner (Appeals), in addition to the Assessing Officer, to levy penalty under these sections.

44.4 Applicability: These amendments are effective from 1st April, 2022.

45 Amendment in the provisions of section 271C

45.1 Section 271C of the Act provides for penalty for failure to deduct tax at source as per provisions of Chapter XVII-B of the Act or failure to pay the tax as required by or under the second proviso to section 194B.

45.2 Section 194B was amended *vide* Finance Act 1999 w.e.f. 01.04.2000 by which the first proviso to the section was omitted and the section currently has only one proviso and consequential amendment was left to be carried out.

45.3 Therefore, to avoid ambiguity and to align the provisions of the Act, sections 271C has been amended to omit the reference of second proviso to section 194B in sub-clause (ii) of clause (b) of sub-section (1) of the section.

45.4 Applicability: This amendment is effective from 1st April, 2022.

46 Amendment in the provisions of section 272A

46.1 Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. At present, the amount of penalty for failures listed under sub-section (2) of section 272A is one hundred rupees for every day during which the failure continues.

46.2 Section 272A ensures compliance with various obligations under the Act by penalising non-compliance and acting as a deterrent.

46.3 However, the penalty of one hundred rupees had been commented upon by the CAG in their report on the entertainment sector as being too low. The penalty had not been increased since the section was introduced in 1999 and does not have an adequate deterrence value.

46.4 Therefore, the amount of penalty for failures listed under sub-section (2) of section 272A has been increased to five hundred rupees from the existing sum of one hundred rupees, through an amendment made in the section.

46.5 Applicability: This amendment is effective from 1st April, 2022.

47 Alignment of the provisions relating to Offences and Prosecutions under Chapter XXII of the Act

47.1 Sections 269UC/UE/UL of the Act along with other provisions of Chapter XX-C have been made inapplicable with effect from 01.07.2002. *Vide* Finance Act, 2002, section 269UP was introduced providing that the provisions of the Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after 01.07.2002. Consequently, prosecution provisions u/s 276AB are not relevant, as launching prosecution against offences committed more than twenty years ago, that is prior to 2002 would be beyond reasonable time.

47.2 Since such cases involve transfer of immovable property, it is not improbable that prosecution cases launched previously while the relevant provisions were still in effect might be ongoing. Therefore, in order to take those cases to logical conclusion without any interpretational issue arising on applicability of the section or otherwise, section 276AB is

amended to align it with the provisions of the Act that have been made inapplicable, by providing a sunset clause. Consequently, no fresh prosecution proceeding shall be initiated under this section on or after 1st April, 2022.

47.3 Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. Under this section, a person shall be punishable for failure to

a) deduct the tax as required under the provisions of Chapter XVII-B which deals with deduction of tax at source, or

b) to pay the tax, as required by or under—

(i) sub-section (2) of section 115-O or

(ii) *the second proviso to section 194B*.

47.4 Section 194B was amended *vide* Finance Act 1999 w.e.f. 01.04.2000 by which the first proviso to the section was omitted and the section currently has only one proviso and consequential amendment was left to be carried out.

47.5 Therefore, to avoid ambiguity, section 276B is amended to omit the reference of second proviso to section 194B in sub-clause (ii) of clause (b) of sub-section (1) of the section.

47.6 Section 278A provides for punishment for second and subsequent offences from 6 months to seven years of rigorous imprisonment with fine, in case of persons convicted of offence under various sections of the Act. Section 278AA provides that a person shall not be punishable for failure under certain sections of the Act if he proves that there was reasonable cause for such failure. Both these sections are applicable to proceedings under section 276B which is related to failure to pay tax deducted at source to the credit of Central Government under Chapter XVII-B of the Act.

47.7 Section 276BB of the Act makes similar provisions in case of persons who fail to pay tax collected at source to the credit of the Central Government. Considering the similar nature of offences under sections 276B and 276BB, sections 278A and 278AA have been amended to make them applicable to offences under section 276BB.

47.8 Applicability: These amendments are effective from 1st April, 2022.

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

48.1 Under section 285B of the Act, the producer of cinematographic films was obliged to furnish within 30 days from the end of the financial year or from the date of completion of the film, whichever is earlier, a statement containing particulars of all payments over Rs. 50,000/- in the aggregate made by him or due from him to each person engaged by him.

48.2 The scope of section 285B of the Act has been widened to include persons engaged in specified activities to expand the reporting requirements in Form 52A. “Specified

Activities" means event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

48.3 *Vide* Notification no. 109/2022 (GSR 697E) dated 14.09.2022, Rule 121A has been amended and Form 52A has been notified to furnish the details of expenditure as per the amended section 285B of the Act.

48.4 Applicability: This amendment takes effect from 1st April, 2022.

(P. Amrutha Varshini)
DCIT (OSD) (TPL)-IV
Dated 03.11.2022

[F. No. 3701142/48/202-TPL]

Copy to:-

1. PS to FM/OSD to FM/ OSD to MoS (R).
2. PS to Secretary (Revenue)/ OSD to Advisor to FM.
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/ Director General of Income-tax – with a request to circulate amongst all officers in their regions/ charges.
5. DGIT (International Taxation)/ DGIT (Systems)/ DGIT (Vigilance)/ DGIT (Admn.)/ DGIT (NADT)/ DGIT (L&R).
6. Media Co-ordinator and official spokesperson of CBDT.
7. DIT (IT)/ DIT (RS&PR)/ DIT (Audit)/ DIT (Vig.)/ DIT (Systems)/ DIT (O&MS)/ DIT (Spl. Inv.).
8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of Law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list. PS to FM/OSD to FM/ OSD to MoS (R).

(P. Amrutha Varshini)
DCIT (OSD) (TPL)-IV