I N D E X

PART - I

THE FINANCE ACT, 2022

[CA P. N. SHAH AND CA (MS.) ARTI SHAH]

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1. BACKGROUND:

Smt. Nirmala Sitharaman, our Finance Minister, presented her 4th regular Budget in the Parliament on 1st February,2022. In her Budget speech she has laid emphasis on four priorities viz. (i) PM Gatishakti, (ii) Inclusive Development, (iii) Productivity Enhancement & Investment, Sunrise Opportunities, Energy Transition and Climate Action and (iv) Financing of Investments. The Finance Minister has given detailed explanation about the measures that the Government proposes to take in the coming years.

The Finance Minister has also introduced the Finance Bill, 2022, containing 84 sections amending various sections of the Income tax Act. Before the passages of the Bill 39 amendments to the Bill were introduced in the Parliament. The Bill with the amendments was passed by the Parliament on 29th, March, 2022. The Finance Act, 2022, has received the assent of the President on 30th, March, 2022. By this Act, several amendments are made in the Income tax Act which will increase the burden of compliance for tax payers. However, there are some amendments which will give some relief to tax payers. Contrary to the declared policy of the Government, there are some amendments which will have retrospective effect. In this Article some of the important amendments in the Income tax Act (Act) are discussed.

2. RATES OF TAXES:

2.1 The slab rates of taxes for A.Y. 2023-24 (F.Y. 2022-23) for an Individual, HUF, AOP, BOI etc., are the same as in A.Y. 2022-23. Similarly, the tax rates for FIRM (including LLP), Co-operative Societies and Local Authority for A.Y. 2023-24 are the same as in A.Y. 2022-23. In the case of a Domestic Company the rate of tax for A.Y. 2023-24 (F.Y. 2022-23) will be 25% if the total turnover or gross receipts of the Company for F.Y. 2020-21 was less than ₹400 Crore. In the case of other larger Companies the rate of tax for A.Y. 2023-24 will be 30% as in earlier years. The rate of 4% of the tax for Health and Education Cess will continue in A.Y. 2023-24 as in earlier years for all assessees. Apart

from what is stated in Para 2.3, the rates of surcharge are the same as in earlier years.

2.2 It may be noted that the reduction in rates of taxes for individuals and HUF as provided in Section 115 BAC as introduced in A.Y. 2021-22 will continue in A.Y. 2023-24 (F.Y. 2022-23) also. Similarly, the reduction in the rate of tax at 22% in the case of a Domestic Company complying with the conditions of Section 115 BAA will continue in A.Y. 2023-24. As regards a Domestic Company complying with the conditions of Section 115 BAB the rate of tax of 15% will continue in the A.Y. 2023-24. There is one amendment in Section 115 BAB. The existing provision is that for availing this benefit the company should be set up and registered on or after 01.10.2019 and should have commenced manufacturing activity on or before 31.03.2023. By an amendment of this section the above concessional rate will be available even if the manufacturing activity is started by such a company on or before 31.03.2024. The concessional rate of 22% as provided in Section 115 BAD will continue in the A.Y. 2023-24 in the case of a Co-operative Society complying with the provisions of the said section.

2.3 It may be noted that some relief in rates of Surcharge is given in A.Y. 2023-24 (F.Y. 2022-23). The revised rates of Surcharge are as under.

(i) <u>Individual, HUF, AOP / BOI</u>

There is no change in the rates of Surcharge on slab rates in A.Y. 2023-24. However, Surcharge on income taxable under sections 111A, 112A and income from long-term capital gains from all assets and dividend income will not exceed 15%. In earlier years this concessional rate of surcharge was applicable to long-term capital gains from transfer of listed shares and units of equity oriented mutual funds under section 112A and dividend income.

(ii) <u>AOP (having Corporate Members only)</u>

In the case of AOP having only corporate members, the rate of surcharge will be 7% if the income exceeds ₹1 Crore, but does not exceed ₹10 Crores. The rate of Surcharge will be 12% if the income exceeds ₹10 Crores.

(iii) Co-operative Societies:

The rate of Surcharge is reduced for A.Y. 2023-24 to 7% in case the income is more than ₹1 Cr., but less than ₹10 Cr. In respect of income exceeding ₹10Cr. the rate of Surcharge is unchanged at 12%.

2.4 Thus the rates for Surcharge on tax for various assessees for A.Y. 2023-24 (F.Y. 2022-23) will be as under:

(i) Individual, HUF, AOP, BOI etc.

Income Range	Surcharge
Between ₹ 50 Lakhs and ₹ 1 Cr.	10%
Between ₹ 1 Cr and 2 Cr.	15%
Between ₹ 2Cr. and 5 Cr.	25%
Above ₹ 5 Cr.	37%

Income taxable under Section 111A and 112A, Long term Capital Gains and Dividend Income in a case where Total Income exceeds ₹ 2 Cr the Surcharge will be 15%.

(ii) Other Assessees

Assessee	Income Range Between ₹1 Cr and ₹10 Cr.	Above ₹ 10 Cr.
(a) A domestic Company	7%	12%
(b) A domestic Company exercising option u/s 115 BAA and 115 BAB	10%	10%
(c) AOP having all corporates as members	7%	12%
(d) A Co-operative Society	7%	12%

2.5 Alternate Minimum Tax:

In the case of Co-operative Societies the Alternate Minimum Tax (AMT) payable under section 115JC is reduced from 18.50% to 15% from A.Y:2023-24 (F.Y:2022-23).

3. TAX DEDUCTION AND COLLECTION AT SOURCE (TDS AND TCS):

3.1 Section 194-IA: This section requires that, if the consideration for the transaction is ₹50 Lakhs or more, the buyer shall deduct tax at the rate of 1% of the consideration for transfer of immovable property. Effective from 1.4.2022, this Section is amended to provide that the tax at 1% is to be deducted from the amount determined for the Stamp Duty Valuation if that amount is higher than the consideration for transfer of the immovable property. If the consideration for transfer and the Stamp Duty Valuation is less than ₹ 50 Lakhs no tax is required to be deducted.

3.2 Section 194R:

(i) This is a new Section which comes into force from 1.4.2022. The section provides that tax shall be deducted at source at the rate of 10% of the value of the benefit or perquisite arising from business or profession if the value of such benefit or perquisite in a financial year exceeds ₹20,000/-What will be considered as a benefit or perquisite is not explained.

(ii) The provisions of this Section are not applicable to an Individual or HUF whose Sales, Gross Receipts or Turnover does not exceed ₹ 1Cr. in the case of business or ₹ 50 Lakhs in the case of profession during the immediately preceding financial year.

(iii) The section also provides that if the benefit or perquisite is wholly in kind or partly in kind and partly in cash and the cash portion is not sufficient to meet the TDS amount, then the person providing such benefit or perquisite shall ensure that tax is paid in respect of the value of the benefit or perquisite before releasing such benefit or perquisite.

(iv) In the Memorandum explaining the provisions of the Finance Bill, 2022, it is clarified that Section 194 R is added to cover cases where value of any benefit or perquisite arising from any business or profession is chargeable to tax under section 28(iv) of the Act. Therefore, this new TDS provision will apply only in such cases where the value of the benefit or perquisite is chargeable to tax in the hands of the person engaged in the business or profession under Section

28(iv). It is also provided that the Central Government shall issue guidelines to remove any difficulty that may arise in implementation of this section.

3.3 Section 194-S: (i) This is a new section which will come into force on 1.7.2022. The section provides that any person paying to a resident consideration for transfer of any Virtual Digital Asset (VDA) shall deduct tax at 1% of such sum. In a case where the consideration for transfer of VDA is (a) wholly in kind or in exchange of another VDA, where there is no payment in cash or (b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of TDS in respect of whole of such transfer, the payer shall ensure that tax is paid in respect of such consideration before releasing the consideration. However, this TDS provision does not apply if such consideration does not exceed ₹10,000/- in the financial year.

(ii) Section 194-S defines the term "Specified Person" to mean a person of any VDA (i) being an Individual or a HUF, whose total sales, gross receipts or turnover from business or profession does not exceed ₹ 1 Cr. in case of business or ₹ 50 Lakhs in the case of profession, during the financial year immediately preceding year in which such VDA is transferred or (ii) being an Individual or a HUF who does not have income under the head " Profits and Gains of Business or Profession". In the case of a Specified Person –

(a) The provisions of Section 203A relating to Tax Deduction and Collection Account Number and 206AB relating to Special Provision for TDS for non-filers of Income-tax Return will not apply.

(b) If the value or the aggregate value of such consideration for VDA does not exceed Rs.50000/- during the financial year no tax is required to be . In the case of a transaction to which Section 194-O and 194-S is applicable, then tax is to be deducted under section 194-S and not under section 194-O.

(iii) In the case of a transaction to which Sections 194-O and 194-S are applicable then tax is to be deducted under Section 194-S and not under Section 194-O.

3.4 Sections 206AB and 206CCA:

These sections deal with higher rate of TDS and TCS in cases where the payee has not filed his Income tax Returns for two preceding years and in whose case aggregate TDS/TCS exceeds Rs.50,000/-. At present Section 206AB is not applicable in respect of TDS under Sections 192, 192A, 194B, 194BB, 194BL and 194N. By amendment, effective from 1/4/2022, it is now provided that TDS/TCS at higher rates in such cases will not apply under section 194IA, 194IB and 194M where the payer is not required to obtain TAN. Further, the test of non-filing the Income tax Returns under sections 206AB/206CCA has been now reduced from 2 preceding years to one preceding year.

4. EXEMPTIONS AND DEDUCTIONS:

4.1 Sections 10(8), (8A), (8B) and (9): These provisions relate to exemption given to an Individual who is assigned duties in India in connection with Co-operative Technical Assistance Programmes and Projects in respect of which the Indian Government has entered into an agreement with a Foreign Government. The exemption is also given to remuneration received by an Individual from a Foreign State under specified conditions. Similar exemption is given to consultants, as well as their employees and family members complying with the specified conditions. These sections are now amended and the exemption given to such Individuals is withdrawn effective from A/Y:2023-24 (F.Y:2022-23).

4.2 Section 80CCD: At present, the deduction for employer's contribution to National Pension Scheme (NPS) is allowed to the extent of 14% of the salary in the case of Central Government Employees. For others, the deduction is restricted to 10% of the salary. In order to give benefit to State Government Employees, Section 80CCD(2) is amended with retrospective effect from A.Y:2020-21 (F.Y:2019-20). By this amendment the State Government Employees will now get deduction for employer's contribution to NPS to the extent of 14% with retrospective effect.

4.3 Section 80DD: At present deduction is allowed in respect of the contribution to a prescribed scheme for maintenance of a dependent disabled person if such scheme provides for payment of annuity or lump sum to such dependent person in the event of death of the assessee contributing to the Scheme i.e. the parent or guardian. This section is amended effective from A/Y:2023-24 (F.Y:2022-23) to allow deduction for such contribution even where the scheme provides for payment of annuity or lump sum to the disabled dependent when the assessee contributor has attained the age of 60 years or more and the deposit to such Scheme has been discontinued. It is also provided by the amendment that such receipt of annuity or lump sum by the disabled dependent shall not result in the contribution made by the assessee to Scheme taxable.

4.4 Section 80-IAC: At present, eligible Start-UP incorporated on or after 1/4/2016 but before 1/4/2022, is entitled to claim exemption of profits for three consecutive assessment years out of ten years from the year of incorporation. For this purpose the conditions laid down in this section should be complied with. This section is now amended to provide that the above benefit will be available to a Start-Up Company incorporated on or before 31/3/2023.

4.5 Section 80LA: This Section provides for specified deduction in respect of income arising from the transfer of an "Aircraft" leased by an Unit in International Financial Services Centre if the Unit has commenced operation on or before 31/3/2024. By amendment of this Section, effective from A.Y:2023-24 (F.Y:2022-23), this benefit is extended to a "ship".

5. CHARITABLE TRUSTS AND INSTITUTIONS:

Significant amendments were made in the procedural provisions relating to Charitable Trusts and Institutions contained in Sections 10(23C), 12A and 12AA of the Income tax Act by the Finance Act 2020 and 2021. A new Section 12AB was added in the Income tax Act. This year, far reaching amendments are made in Sections 10(23C), 11 and 13 dealing with Specified Universities, Educational Institutions, Hospital etc. (herein referred to as "Institutions") and Charitable and Religious Trusts (herein referred to as "Charitable Trusts"). These amendments are as under.

5.1 Institutions Claiming Exemptions Under Section 10(23C)

Section 10(23c) of the Act provides for exemption to specified University, Educational Institutions, Hospitals etc., (Institutions). This Section is amended as under:

(i) Section 10(23C)(v) grants exemption to an approved Public Charitable or Religious Trusts. It is now provided that if any such Trust includes any temple, mosque, gurudwara, church or other notified place and the Trust has received any voluntary contribution for the purpose of renovation or repair of these places of worship, the Trust will have option to treat such contribution as part of the Corpus of the Trust. It is also provided that this Corpus amount shall be used only for this specified purpose and the amount not utilized shall be invested in specified investments listed in Section 11(5) of the Act. It is also provided that if any of the above conditions are violated, the amount will be considered as income of the Trust for the year in which such violation takes place. This provision will come into force from A.Y.2021 – 22 (F.Y. 2020-21).

It may be noted that similar provision is added, effective A.Y:2021-22 (F.Y:2020-21), in Section 11 in respect of Charitable or Religious Trusts claiming exemption under Section 11 of the Act.

(ii) At present an Institution claiming exemption under Section 10(23C) is required to utilise 85% of its income every year. If this is not possible it can accumulate the unutilized income within next 5 years. However, there is no provision for any procedure to be followed for such accumulation. The amendment of Section 10(23C), effective from A.Y.2023-24 (F.Y.2022-23), now provides that the Institution should apply to the A.O. in the prescribed form before the due date for filing the Return of Income for accumulation of unutilized income within a period of 5 years. The Institution has to state the purpose for which the Income is being accumulated. By this amendment the provisions of Section 10(23C) are brought in line with the provisions of Section 11 of the Act.

(iii) At present Section 10(23C) provides for audit of accounts of the Institution. By amendment of this Section it is now provided that, effective from A.Y. 2023-24 (F.Y. 2022-23),the Institution shall maintain its accounts in such manner and at such place as may be prescribed by the Rules. Such Accounts will have to be audited by a Chartered Accountant and report in the prescribed form will have to be given by him.

(iv) Section 10(23C) is also Amended by replacing the existing Proviso XV to give very wide powers to the Principal CIT to cancel Approval or Provisional Approval given to the Institution for claiming exemption. If the Principal CIT comes to know about Specified Violations by the Institution he can conduct inquiry and after giving opportunity to the Institution cancel the Approval or Provisional Approval. The term "Specified Violations" is defined in this amendment.

(v) By another amendment of Section 10 (23C), effective from A.Y. 2023-24 (F.Y. 2022-23), it is provided that the Institution shall file its Return of Income by the due date specified in Section 139(4C).

(vi) A new Proviso XXI is added in Section 10(23C) to provide that if any benefit is given to persons mentioned in Section 13(3) i.e. Author of the Institution, Trustees or their related persons such benefit shall be deemed to be the income of the Institution. This will mean that if a relative of a trustee is given free education in the Educational Institution the value of such benefit will be considered as income of the Institution. In this case tax will be charged at the rate of 30% plus applicable surcharge and cess under Section 115BBI.

(vii) It may be noted that Section 56(2)(x) has been amended from A.Y:2023-24 (F.Y:2022-23) to provide that if the Author, Trustees or their related persons as mentioned in Section 13(3) receive any unreasonable benefit from the Institution or Charitable Trust, exempt under sections 10(23C) or 11, the value of such benefit will be taxable as Income from Other Sources.

(viii) At present the provisions of Section 115TD applies to a Charitable or Religious Trust registered under Section 12AA or 12AB. Now, effective from A.Y. 2023-24 (F.Y. 2022-23), the provisions of Section 115TD will

apply to any University, Educational Institution, Hospital etc., claiming exemption under Section 10(23C) also. Section 115TD provides that if the Institution looses exemption under section 10(23C) due to cancellation of its approval or due to conversion into non-charitable organization or other reasons the market value of all its assets, after deduction of liabilities, will be liable to tax at the rate of 30% plus applicable surcharge and cess.

5.2 Charitable Trusts Claiming Exemption Under Section 11

Sections 11, 12 and 13 of the Act provide for exemption to Charitable Trusts (including Religious Trusts) which are registered Under Section 12A, 12AA or 12AB of the Act. Some amendments are made in these and other sections as stated below:

(i) As stated above, if a Charitable Trust owns any temple, mosque, gurudwara, church etc., it can treat any contribution received for repairs or renovation of such place of worship as Corpus donation. This amount should be used for the specified purpose. The unutilized amount should be invested as provided in Section 11(5). This provision will come into force from A.Y. 2021-22 (F.Y.2020-21)

(ii) At present, if a Charitable Trust is not able to utilise 85% of its income in a particular year it can apply to the A.O. for permission for accumulation of such income for 5 Years. If any amount out of such accumulated income is not utilized for the objects of the Trust upto the end of the 6th year, it is taxable as income in the Sixth Year. This provision has now been amended, effective from A.Y. 2023-24 (F.Y. 2022-23),to provide that if the entire amount of the accumulated income is not utilized upto the end of the 5th Year, the unutilized amount will be considered as income of the fifth year and will become taxable in that year.

(iii) If a Charitable Trust is maintaining accounts on accrual basis of accounting, it is now provided that any part of the income which is applied to the objects of the Trust, the same will be considered as application for the objects of the Trust only if it is actually paid in that year. If it is paid in a subsequent year, it will be considered as application of income in the subsequent year. This amendment will come into force from A.Y. 2022-23 (F.Y. 2021-22).

(iv) Section 13 deals with the circumstances in which exemption under Section 11 can be denied to the Charitable Trusts. At present, if any income or property of the trust is utilized for the benefit of the Author, trustee or related persons stated in Section 13(3), the exemption is denied to the Trust. Now, effective from A.Y. 2023-24 (F.Y. 2022-23), this section is amended to provide that only that part of the income which is relatable to the unreasonable benefit allowed to the related person will be subjected to tax in the hands of the Charitable Trust. This tax will be payable at the rate of 30% plus applicable surcharge and cess.

(v) At present, Section 13(1)(d) provides that if any funds of the Charitable Trust are not invested in the manner provided in Section 11(5), the Trust will not get exemption under Section 11. This Section is now amended, effective from A.Y. 2023-24 (F.Y. 2022-23), to provide that the exemption will be denied only in respect of the income from such prohibited investments. Tax on such income will be chargeable at the rate of 30% plus applicable surcharge and cess.

(vi) Section 12A has been amended, effective from A.Y. 2023-24 (F.Y. 2022-23) to provide that the Charitable Trust shall maintain its accounts in the manner as may be prescribed by Rules. These accounts will have to be audited by a Chartered Accountant.

(vii) In line with the amendment in Section 10(23C) Proviso XV, vary wide powers are now given by amending Section 12AB (4) to the Principal CIT to cancel Registration given to a Charitable Trust for claiming exemption. If the Principal CIT comes to know about specified violations by the Charitable Trust he can conduct inquiry and after giving opportunity to the Trust cancel its Registration. The term "Specified Violations "is defined by this amendment.

5.3 Special Rate of Tax :

A new Section 115BBI has been added, effective from A.Y. 2023-24 (F.Y. 2022-23), for charging tax at the rate of 30% plus applicable Surcharge and Cess. This rate of tax will apply to Registered Charitable Trusts, Religious

Trusts, Educational Institutions, Hospitals etc., in respect of the following specified income.

(i) Income accumulated in excess of 15% of the Income where such accumulation is not allowed.

(ii) Where the income accumulated by the Charitable Trust or Institution is not utilised within the permitted period and is deemed to be the income of the year when such period expires.

(iii) Income which is not exempt under Section 10(23C) or Section 11 by virtue of the provisions of Section 13(1)(d). This will include value of benefit given to related persons, income from Investments made otherwise then what is provided in Section 11(5) etc.

(iv) Income which is not excluded from the Total income of a Charitable Trust under Section 13(1) (c). This refers to the value of benefit given to related persons.

(v) Income which is not excluded from the Total Income of a Charitable Trust under Section 11(1) (c). This refers to income of the Trust applied to objects of the Trust outside India.

5.4 New Provisions for Levy of Penalty :

New Section 271 AAE is added in the Income tax Act for levy of Penalty on Charitable Trusts and Institutions claiming exemption under Sections 10(23C) or 11. This penalty relates to benefits given by the Charitable Trusts or Institutions to related persons. The new section provides that If an Institution claiming exemption under Section 10(23C) or a Charitable Trust claiming exemption under Section 11 gives an unreasonable benefit to the Author of the Trust, Trustee or other related persons in violation of proviso XXI of Section 10(23C) or section 13(1) (c), the A.O. can levy penalty on the Trust or Institution as under:

(i) 100% of the aggregate amount of income applied for the benefit of the related persons where the violation is noticed for the first time.

(ii) 200% of the aggregate amount of such income where the violation is noticed again in the subsequent year.

6. INCOME FROM BUSINESS OR PROFESSION:

6.1 Section 14A:- At present, expenditure incurred in relation to exempt income is not allowed as a deduction. There was a controversy as to whether Section 14A will apply when there was no income from a particular investment. This section is now amended effective from A.Y. 2022 – 23 (F.Y. 2021-22) to clarify that the disallowance under this section can be made even in a case where no exempt income had accrued or was received and expenditure was incurred. It is also clarified that the provisions of Section 14A will apply notwithstanding anything to the contrary contained in the Income tax Act.

6.2 Section 35 (1A) :- Section 35 allows deduction of expenditure on Scientific Research. Under Section 35(1A) such deduction is denied under certain circumstances. This section is now amended effective from A.Y. 2021-22 (F.Y. 2020-21) to provide that the donor will not be allowed deduction in respect of the donation for Reach are Under Section 35 if the donee has not filed statement of donations before the specified authorities.

6.3 Section 17:- This section is amended effective from A.Y. 2020-21 (F.Y.2019-20) to provide that any sum paid by the employer in respect of any expenditure actually incurred by the employee on medical treatment of the employee or any of his family member for treatment relating to COVID-19 shall not be regarded as taxable perquisite. This will be subject to such conditions as may be notified by the Central Government.

6.4 Section 37(1):- At present, Explanation 1 to Section 37(1) provides that any expenditure incurred for any purpose which is an offence or which is prohibited by law shall not be allowed as deduction from income of the Business or Profession. Now Explanation – 3 is added from A.Y. 2022-23 (F.Y.2021-22) to clarify that the following types of expenses shall not be allowed the assesse -

(i) Expenditure incurred for any purpose which is an offence under, or which is prohibited by, any law in India or outside India, or

(ii) Any benefit or perquisite provided to a person, whether or not carrying on business or profession, where its acceptance is in violation of any

law or rule or regulation or guidelines governing the conduct of such person, or

(iii) Expenditure incurred to compound an offence under any law, in India or outside India.

It may be noted that this amendment may affect the benefits or perquisites provided by pharmaceutical companies to medical professionals. If any benefit or perquisite is received by a medical professional from a pharmaceutical company the same is taxable as the income of the medical professional under section 28 (iv). This will now suffer TDS at 10% of the value of such benefit or perquisite under new Section 194R. Further, it will be difficult to find out whether a particular benefit is prohibited by law in a foreign country.

6.5 Section 40(a) (ii): (i) Tax levied on Profits and Gains of Business or Profession is not allowed as deduction under this section. In the case of Sesa Goa Ltd V/s JCIT 117 taxmann.com 96, the Bombay High Court held that the term "tax" will not include" Cess" levied on tax. Similar view was taken by Rajasthan High Court also. This section is now amended retrospectively effective from A.Y. 2005-06 (F.Y. 2004-05) and it is now provided that the term "tax" shall include any surcharge or Cess on such tax. Thus no deduction will be allowable for "Cess" on the basis of the above High Court decisions.

(ii) It may be noted that Section 155 has been amended from 1-4-2022 to provide for amendment of the computation of Income/Loss in a case where surcharge or cess has been claimed and allowed as a deduction in computing total income. This amendment is as under:-

(a) If the assesse has claimed the deduction for surcharge or cess as business expenditure the A.O can rectify the computation of income or loss under section 154. He can also treat this deduction as under-reported income under section 270A(3) and levy penalty under that section. For this purpose the limitation period of 4 years under section 154 shall be counted from 31/3/2022. This will mean that such rectification order can be passed on or before 31/3/2026.

(b) However, if the assesse makes an application to the A.O. in the prescribed form and within the prescribed time, requesting for recomputation of the income by excluding the above claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, no penalty under section 270A will be levied. It appears that interest will also be payable with the tax.

(iii) This is a retrospective legislation. The claim for deduction of surcharge or cess may have been made by some assesses in view of the High Court decision. To levy penalty under section 270A for such claim made in earlier years is a very harsh provision.

6.6 Section 43B:- This Section provides that interest payable on existing loan or borrowing from Financial Institutions shall be allowed only in the year of actual payment. The Supreme Court in the case of M.M. Aqua Technologies Ltd. V/S CIT reported in 436 ITR 582 held that if the interest payable in such a case can be considered to have been actually paid if the liability to pay interest is converted in to Debentures. The Explanation 3C, 3CA and 3CD of Section 43B has been amended from A.Y. 2023–24 (F.Y. 2022-23) to provide that if such interest payable is converted into Debenture or any other Instrument, by which the liability to pay is deferred to a future date, shall not be considered as actual payment is made on such maturity.

6.7 Section 50:- This section was amended by the Finance Act, 2021, From A.Y. 2021-22 (F.Y. 2020-21). Now an Explanation is added from A.Y. 2021-22 to clarify that reduction of the amount of Goodwill of a Business or Profession from the Block of Assets as provided in Section 43(6) (c) (ii) (B) shall be deemed to be transfer of Goodwill.

6.8 Section 79A:- At present, there is no restriction on set off of any loss or unabsorbed depreciation against undisclosed income detected during a search or survey proceedings under Sections 132, 13A or 133A (other than 133A (2A)). Now a new section 79A is added from the A.Y. 2022-23 (F.Y. 2021-22) to provide that any loss, either of the current year or brought forward loss or unabsorbed depreciation, cannot be adjusted against the undisclosed income which is defined as under.

(i) Any income of the relevant year or any entry in the books of accounts or other documents or transactions, detected during a Search, Requisition or Survey, which has not been recorded in the Books of Accounts or has not been disclosed to the Principal Chief CIT, Chief CIT, Principal CIT or CIT before the date of Search, Requisition or Survey, or

(ii) Any expenditure recorded in the Books, of Accounts or other documents are found to be false and would not have been detected but for the Search, Repulsion or Survery.

7. TAXATION OF VIRTUAL DIGITAL ASSETS:

In this year's Budget no ban has been imposed on dealing in Crypto Currencies or other similar Digital Currencies. In para III of the Budget Speech the Finance Minister has stated that "Introduction of Central Bank Digital Currency (CBDC) will give a big boost to digital economy Digital Currency will also leas to a more efficient and cheaper management system. It is, therefore, proposed to introduce Digital Rupee, using block chain and other technologies, to be issued by the Reserve Bank of India starting 2022-23".

Further, in Para 131 of the Budget Speech the Finance Minister has stated that "There has been a phenomenal increase in transactions in virtual digital assets. The magnitude and frequency of these transactions have made it imperative to provide for a specific tax regime. Accordingly, for taxation of virtual digital assets, I propose to provide that any income from transfer of any virtual digital assets shall be taxed at the rate of 30 per cent".

To implement this decision the following amendments are made in various sections of the Income tax Act effective from A.Y. 2023-24 (F.Y. 2022–23).

7.1 Section 2(47A):- This is a new section which defines the term "Virtual Digital Asset" (VDA) to mean any information or code or number or token (other than an Indian currency or a Foreign currency) generated through cryptographic means in 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. This definition also includes Non-fungible token or any other token of a similar nature. It also includes any other digital asset as may be notified by the Central Government. This definition comes into force from 1.4.2022.

7.2 Section 115BBH:- This is a new section which comes into force from A.Y. 2023-24. It provides as under:

(i) Where the total income of an assessee includes any income from transfer of VDA, income tax on such income is payable at the rate of 30% plus a surcharge and Cess. It may be noted that in this provision no distinction is made between income from transfer VDA in course of trading or VDA held as capital asset. However, it is clarified that the definition of the term "Transfer" in Section 2(47) shall apply whether VDA is a Capital Asset or not.

(ii) 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 Income tax Act in computing income from transfer of such VDA.

(iii) No set off of loss from transfer of the VDA shall be allowed against income computed under any provision of the Income tax Act and such loss shall not be allowed to be carried forward.

7.3 Section 56(2)(x):- Gift of VDA received by a non-relative will be taxable under section 56(2) (x) as Income from Other Sources. If a person receives gift of VDA of the aggregate market value exceeding Rs.50,000/- or VDA in transferred to him for a consideration where the difference between the consideration paid and its market value is more than ₹50,000/-, tax will be payable by him as provided in section 56(2) (x). Amendment in Section 56(2) (X) provides that the expression "Property" includes "VDA". The CBDT will have to frame Rules for determination of Market Value of VDA for the purposes of Section 56(2) (x).

7.4 Section 194-S:- Thus a new section which provides for deduction of TDS @1% from the consideration for VDA. The provisions of this sections are discussed in Para 3.3 above. This provision comes into force on 1.7.2022.

7.5 General: - In the Memorandum explaining the provisions of the Finance Bill, 2022, it is stated that "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 transfer of virtual digital assets can be made through another such asset. Accordingly, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill".

Reading the above amendments some issues arise for consideration.

(i) The new provisions do not clarify as to under which head the income from transfer of VDA will be taxable i.e. whether it is income from Business or Capital Gain or Income from Other Sources.

(ii) A transfer of VDA in exchange of another VDA is liable to tax. It is not clear as to how the market value of the VDA received in exchange will be determined. The Central Government will have to frame Rules for this purpose.

(iii) VDA is defined under section 2(47A) and this definition comes into force on 1.4.2022. A question will arise as to whether income from transfer of similar VDA prior to 1.4.2022 will be taxable and if so whether it will be considered as a "Capital Asset" as defined in Section 2(14). Under this definition" Capital Asset" means "Property of any kind held by an assessee, whether or not connected with his business or profession".

(iv) If income arising from transfer VDA before 1.4.2022 is considered as taxable, a question will arise whether loss in such transactions will be allowed to be adjusted against other income and carried forward loss will be allowed to be adjusted against income in subsequent years.

We will have to wait for some clarification from CBDT on all the above issues.

8. CAPITAL GAINS:

8.1 Section 2(42C):- This section defines "Slump Sale" Finance Act, 2021, had widened this definition to cover a case of transfer of an undertaking "by any means" which till then restricted to a case of transfer "as a result of the sale". There was some doubt about the interpretation of this provision. Therefore, this definition is now amended from the A.Y. 2021-22 (F.Y. 2020-

21) to substitute the word “Sales” by the word “transfer”. Thus, the definition now covers a case of transfer of any undertaking by means of a lump sum consideration without assigning individual values to assets and liabilities for such transfer.

8.2 Surcharge on Capital Gains: As stated in Para 2.3 above Surcharge on tax on long term capital gains under section 111A, 112 and 112 A in the case of Individual, HUF, AOP, BOI etc. will not exceed 15% of tax from the A.Y. 2023-24 (F.Y. 2022-23)

9. INCOME FROM OTHER SOURCES:

9.1 Section 56(2)(x): According to the declared policy of the Government amount received by a person for medical treatment of COVID -19 illness should not be made liable to any tax. Therefore, section 56(2) (x) has been amended to provide as under:

(i) Any sum of money received by an Individual from any person in respect of medical treatment of himself or any member of his family for any illness related to COVID -19, to the extent of the expenditure actually incurred will not be taxable.

(ii) Any amount received by a member of the family of a deceased person from the employer of the deceased person will not be taxable.

(iii) An amount upto ₹10 Lakhs received from any person by a member of the family of the deceased person, whether the cause of death of such person was illness related to COVID -19 will not be taxable. However, such amount should be received within 12 months of the date of the death and such other conditions as may be notified by the Central Government are satisfied.

It may be noted that for the purpose (ii) and (iii) the word “family” is given the meaning as defined in Section 10(5). This word will, therefore, mean (a) the Spouse, (b) Children of the Individual and (c) Parents, Brothers and Sisters of the Individual or any of them who is wholly or mainly depended on the Individual.

The above amendments are made from A.Y. 2020-21 (F.Y. 2019-20).

9.2 Section 68: This section provides that any sum credited in the books of the assessee shall be considered as income if the assessee does not offer an explanation about the nature and source of such sum. Even if the explanation is offered by the assessee but the A.O. is of the opinion that the explanation offered by the assessee is not satisfaction the A.O. can treat such sum as income of the assessee. This section is now amended from A.Y. 2023-24 (F.Y. 2022-23). The amendment now provides that where the amount received by the assessee consists of loan or borrowing or otherwise, by whatever name called, the assessee will have to give satisfactory explanation to the A.O. about the source from which the person in whose name the amount is credited obtained the money. In other words the assessee will now have to prove the source of funds in the hands of the lender. However, this provision will not if the amount is credits in the name of a Venture Capital, Capital or a Venture Capital Fund.

It may be noted that this new provision will create many practical difficulties for the assessee. If the lender does not co-operate and share the details; of source of his funds, the assessee borrower will suffer. Further, it is not clear whether this new provision will apply to borrowings made on or after 1.4.2022 or to old borrowing also. There is also no clarity whether the assessee will have to prove the source of funds borrowed from a Financial Institution, Banks of Co-operative Societies etc.

9.3 Dividend from Foreign Subsidiary Company: At present Dividend Income earned by an Indian Company from a Foreign Company in which it holds 26% or more of the equity share capital is taxed at the concessional rate of 15%. This provision is contained in Section 115BBD. By amendment of this section from A/Y:2023-24 (F.Y:2022-23) this concession is withdrawn from 1/4/2022. Thus such dividend will be taxed at the normal rate of 30%. However, the Indian Company will be able to take benefit of deduction under section 80M if it declares dividend out of such dividend in the Foreign Company.

10. INTERNATIONAL FINANCIAL SERVICE CENTRE:

This Government has been extending tax concessions to units located in International Financial Services Centre (IFSC) for the last few years. This year the following further incentives are introduced effective from A/Y:2023-24 (F.Y:2022-23).

10.1 Section 10(4E): The exemption under this section in respect of income arising to a Non-Resident from transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC has been extended to income from transfer of offshore derivative instruments or Over-the-counter derivatives.

10.2 Section 10(4F): The exemption in respect of a Non-Resident by way of Royalty or Interest on account of lease of an Aircraft or its engine or any part thereof paid by an Unit of IFSC if the Unit has commenced its operations on or before 31/3/2024, has been extended to lease of a Ship or Ocean Vessel, its engine or any part thereof.

10.3 Section 80LA (2)(d): This section gives 100% deduction for income arising from transfer of Aircraft, its engine or its part which is leased to an unit of IFSC to any person before such transfer, subject to the condition that the unit has commenced its operations on or before 31/3/2024. This exemption is now extended to transfer of a Ship or Ocean Vessel, its engine or any part thereof.

10.4 Section 10(G): This is a new section which grants 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 the Non-Resident, in an account maintained with an off-shore Banking Unit in IFSC. This is restricted to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

10.5 Section 56(2)(viib): This section deals with taxation of excessive premium received by a closely held company. Proviso to the section excludes consideration for issue of shares received by a Venture Capital Undertaking from a Venture Capital Company or a Venture Capital Fund or a Specified Fund. For this purpose Specified Fund is defined to mean a fund established or incorporated in India in the form of a Trust or a Company/LLP/Body Corporate registered as a Category I or II Alternative Investment Fund regulated by SEBI. By amendment of this section it is now provided from A/Y:2023-24 (F.Y:2022-23) that the Specified Fund for this purpose shall include Category I or II Alternative Investment Fund regulated by IFSC.

11. ASSESSMENT AND REASSESSMENT OF INCOME:

In the Finance Act, 2021, new provisions were made for the procedure to be followed for assessment or reassessment of Income in the case of a Search or Requisition. Sections 147, 148 and 149 were substituted and a new Section 148A was added from 01.04.2021. The following amendments are made in these provisions from A.Y. 2022-23 (F.Y. 2021-22).

11.1 Section 132 and 132B dealing with Search and Requisition are amended to include reference to the assessment, reassessment or re-computation under Sections 14(3), 144 or 147 in addition to assessment under Section 153A.

11.2 Explanation 1 to Section 148 gives a list of items considered as Information about income escaping assessment. Following changes are made in this list.

(i) One of the items relate to final objection raised by C&AG. New the requirement is that if any "Audit Objection" states that the assessment for a particular year is not made in accordance with the provisions of the Income tax Act, it will become information. The A.O. can issue notice on the basis of such information

(ii) The scope of the "information" is now extended to the following items:

(a) Any information received under an agreement referred to in Section 90 or 90A.

(b) Any information made available to the A.O. under the Scheme notified under section 135A providing for collection of information in faceless manner.

(c) Any information which requires action in consequence of the order of a Tribunal or a Court.

11.3 Explanation 2 to Section 148 deals with Information with the A.O. about escapement of Income in cases of search, Survey etc. The following changes are made in these provisions:

(i) Information about any function, ceremony or event obtained in a Survey under Section 133A (5) can now be used for reopening an assessment under Section148. This will include any marriage or similar function.

(ii) The deeming fiction that Explanation 2 to Section 148 was applicable for 3 assessment years immediately preceding the relevant year has now been removed.

11.4 The requirement of obtaining approval of any Specified Authority by the A.O. is modified as under:

(i) If the A.O. has passed the order under Section 148A(d) to the effect that it is a fit case for issue of notice under Section 148, he is not required to take approval of the Specified Authority before issuing notice Under Section 148.

(ii) For serving a show cause notice on the assessee under Section 148A(b) no approval of the Specified Authority is required.

(iii) A new re-section 148B is inserted providing that the A.O. below the rank of Joint commissioner is required to take approval of Additional Commissioner, Additional Director, Joint Commissioner or Joint Director before passing an order of Assessment or Reassessment or Re-computation in respect of an assessment year to which Explanation 2 to Section 148 applies.

11.5 Section 149 (1) (b): This section provides for extended time limit of 10 Years for issuance of notice under Section 148. This extended time limit applies where the A.O. has in his possession Books of accounts, documents or evidence to reveal that income represented in the form of Asset which has escaped assessment is of ₹50 Lakhs or more. This provision is now amended to provide that the escaping assessment should be represented in the form of (a) An Asset, (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.

Further, the words “For that year” have been omitted. Thus, the threshold limit of ₹50 Lakhs or more need not be satisfied for each assessment year for which notice under Section 148 is to be issued.

11.6 Section 149(1A): New sub-Section (IA) is added in Section 149 to provide that in case investment in such asset or expenditure in relation to such event or occasion has been made or incurred in more than one year within the 10

years period a notice under section 148 can be issued for every such assessment year.

11.7 Section 148A: It is now provided that the procedure for issue of a notice under Section 148 will not apply where the A.O. has received any information under the Scheme notified under Section 135A.

It is now provided, effective from 1.4.2021, that restriction in section 149(1) for issuance of notice under Section 148 for A.Y. 2021-22 or any earlier year, if such notice could not have been issued at that time on account of being beyond the time limit as specified in Section 149(1)(b) as it stood before 1.4.2021, shall also apply to notice under Sections 153A or 153C.

11.8 Section 153: This Section dealing with time limit for completion of Assessment has been amended from 1/4/2021. It is now provided that the assessment for the A.Y.2020-21 (F.Y. 2019-20) should be completed within 18 months of the end of the assessment year I.e. by 30-9-2022.

11.9 Section 153A: Explanation 1 to this Section provides for excluding the period to be excluded for limitation. This section is now amended from 1.4.2021 to provide for exclusion of the period (not exceeding 180 Days) commencing from the date on which Search is imitated under Section 132 or requisition is made under Section 132A to the date on which the books of accounts, documents, money, bullion, jewellery or other valuable articles seized or requisioned are handed over to A.O. having jurisdiction over the assessee. Similar amendment is made in Section 153B also.

11.10 Section 153B: The time limit for completion of assessment under section 153A relating to search cases has now been removed from 1.4.2021. In all cases where search is made on or after 1.4.2021, the assessment will be made under Section 143, 144 or 147. Time limit provided for such assessments will apply. However, in a case where the last authorization for search or requisition under section 132/132A was executed in the F.Y:2020-21 or books/documents/assets seized were handed over to the A.O in F.Y:2020-21, the assessment in such case for the A/Y:2021-22 can be made on or before 30/09/2022.

11.11 Section 271 AAB: This section provides for levy of penalty at lower rate in Search cases if the specified conditions are complied with. One of the conditions is that the assessee should have paid tax on undisclosed income and filed the Return of Income declaring the undisclosed income before the specified date. The definition of "Specified Date" is now amended from 1.4.2021 to include the date on which the period specified in the notice under Section 148 expires.

12. FILING BELATED RETURN OF INCOME:

12.1 At present Section 139(4) and 139(5) gives only limited time for filing revised Return of Income. Now sub section (8A) is added in Section 139 from 1.4.2022 to permit filing of belated return of income. This return can be filed after the expiry of the period provided in section 139(4) or (5) whether the assessee has filed the return of income or not. However, there are several conditions attached to this facility of filing belated return of income which include payment of additional tax and interest. These conditions are discussed below:

(i) The belated return should not be a loss return

(ii) It should not have effect of reducing the tax liability as determined in the return already filed under section 139.

(iii) It results in claiming Refund of Tax or increased Refund of Tax.

(iv) If belated return is already furnished earlier for that year. In other words such belated return for any year can be furnished only once.

(v) If any assessment, reassessment, re-computation or revision of income is pending or has been completed for that assessment year. This will mean that if the case is taken up for scrutiny and notice under section 142(1) or143(2) is issued, the belated return cannot be filed.

(vi) The A.O. has information in his possession about the assessee for that year under the specified Acts and the same has been communicated to the assessee. These Acts are (a) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, (b) Prohibition of Benami Property Transactions Act, 1988, (c) Prevention of Money-

Laundering Act, 2002 and (d) Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(vii) Where information for that year has been received under the agreement referred to in section 90 or 90A (Under DTAA) in respect of the assessee and is communicated to him.

(viii) Where any prosecution proceedings under Chapter XXII have been initiated in the case of the assessee for that year.

(ix) The assessee is such a person or belongs to such a class of persons as may be notified by CBDT.

(x) Where Search or Survey proceedings initiated under sections 132, 132A or 133A (other than TDS / TCS Survey) the belated return cannot be filed for the relevant assessment year and any preceding assessment year.

(xi) However, in the following cases the belated return can be filed by the assesse.

(a) If the assesse has furnished a return showing loss, he can furnish a belated return if such return shows income.

(b) If any carried forward loss, unabsorbed depreciation, carried forward Tax Credit under Sections 115JAA/115JD is to be reduced as a result of furnishing belated return.

12.2 The above belated return can be filed within 24 months after the expiry of the time limit for filing the Return or revised Return Under Section 139(4) or 139(5). Where such belated return is filed, the A.O has to pass assessment order within 9 months of the end of the financial year in which such return is filed. Tax, Interest, additional tax and late filing Fee is payable as discussed below:

12.3 The tax, interest and fees for the belated return is payable as under where no return was filed under Section 139.

(i) Tax payable as per the belated return after deduction of Advance tax, TDS / TCS, Relief under section 89,90, 90A or 91 and Tax credit under Section 115 JAA or 115JD.

(ii) Interest for delay in filing return under sections 234A, 234B and 234C.

(iii) Fees payable for delay in filing return under section 234F.

12.4 Where the return under section 139 is already filed and belated return is furnished to correct any error in the original return, the balance tax after deducting taxes already paid shall be payable. Interest is also payable on the difference in tax under Section 234A 234B and 234C.

12.5 Apart from the above, additional tax and interest is also payable for belated filing of return as under:

(i) If the belated return is filed within 12 months from the end of assessment year for which time for filing return under section 139(4) or 139(5) has expired 25% of the aggregate tax and interest is to be paid.

(ii) If the belated return is filed after 12 months but within 24 months from the end of the assessment year as stated above, 50% of the aggregate tax and interest is to be paid.

12.6 For the above purpose section 140 B is added from 1.4.2022. Consequential amendments are made in Sections 144, 153 and 276CC.

12.7 From the above discussion it will be evident that very few persons will be able to take advantage of filing revised returns after the time limit under Section 139 (4) / 139 (5) expires. With these conditions the assessee will not be able to make a claim for deduction of any expenditure or relief which he has forgotten to claim in the return of income filed under section 139(1).

13. FACELESS ASSESSMENTS SCHEME:

13.1 Section 92CA deals with the provisions for reference to Transfer Pricing Officer. Section 144C deals with reference to Dispute Resolution Panel. Section 253 deals with procedure for filing appeals before ITA Tribunal. Under these sections power is given to notify a Scheme for Faceless procedure for assessments and appeals before 31/03/2022. Similarly, under Section 255 dealing with procedure for disposal of appeals before ITA Tribunal the notification for Faceless hearing can be issued before

31/03/2023. In all these Sections amendments are made and the above time limit for issue of notification for Faceless procedure is now extended upto 31/03/2024.

13.2 Section 144B dealing with the procedure for Faceless Assessments has been amended from 1/4/2022. The Faceless Assessment Scheme has come into force from 1/4/2021. Some amendments are made in Section 144B modifying the procedure under the Scheme. In brief, these amendments are as under:-

(i) At present the Scheme applies to assessments under Sections 143(2) and 144. Now it will apply to assessments, reassessments and recomputation under section 147 also.

(ii) At present the time limit for reply to notice under section 143(2) is 15 days from receipt of notice. This time limit is removed. Now the time limit will be stated in the notice under section 143(2).

(iii) The concept of Regional Faceless Assessment Centre is now done away with.

(iv) It is now specified that Assessment Unit can seek assistance of Technical Unit for (a) determination of Arm's Length Price, (b) Valuation of Property, (c) withdrawal of Registration and (d) Approval, Exemption or any other matter.

(v) The procedure for Assessment Unit (AU) preparing the draft assessment order and revising the same on getting comments has been done away with. Now AU has to state in writing if no variations are proposed to the returned income. If variations are proposed a show-cause notice is to be issued to the assessee. On receipt of the response from the assesse the National Assessment Centre shall direct the AU to prepare a draft order or it can assign the matter to Review Unit.

(vi) After receiving the suggestions from the Review Unit the National Assessment Centre has to assign the case to the same AU which had prepared the draft order. In the old Scheme the case had to be

assigned to another AU. To this extent the new provision that the matter goes back to the original AU which made the draft order is a welcome change.

(vii) In the old Scheme there was no provision for referring the case for Special Audit under Section 142(2A). Now it is provided that if AU is of the opinion that considering the complexity of the case it is necessary to get Special Audit done it can refer the matter to National Assessment Centre.

(viii) Under the old Scheme request for personal hearing through video conferencing could be granted only if the Chief Commissioner or Director General approved the same. This provision is now amended and it is provided that if the request for personal hearing is made by the assesse, the Income tax Authority of the concerned Unit has to allow the same through Video Conferencing. This is a welcome provision.

(ix) At present, Section 144B(9) provides that the assessment shall be considered as non-est if the same is not made in accordance with the procedure laid down under Section 144B. This provision is now deleted with retrospective effect from 1/4/2021. This is very unfair. It removes the safeguard which ensured that the department will follow the procedure under Section 144B.

(x) At present Section 144B(10) provides that the function of verification unit can assigned to another verification unit. This sub-section is now deleted from 1/4/2022.

14. APPEALS AND REVISION:

14.1 At present, Section 158 AA provides that the CIT or the Principal CIT may direct the A.O. to defer filing of appeal to ITA Tribunal if, in assessee's own case, an identical question of law is pending before the Supreme Court for another assessment year. This section will not operate on or after 01.04.2022.

14.2 A new Section 158 AB is inserted from 01.04.2022 to provide for the procedure for deferment of appeals to be filed by the Income tax

Department. This section provides that the Principal CIT or CIT will not file an appeal against the order of CIT(A) or ITA Tribunal if:-

(i) A collegium comprising of two or more Chief CIT or Principal CIT or CITs as may be specified by CBDT is of the opinion that the question of law in the case of the assessee is identical to the question of law arising in the case of the assessee's own case or in the case of any other assessee for any other assessment year.

(ii) Such identical question of law is pending before the jurisdictional High Court or the Supreme Court in an appeal or SLP filed by the Income tax Department, and

(iii) The assessee accepts that the question of law arising in the other case is identical to the question of law arising in the assessee's case.

If the above conditions are satisfied the A.O. will make an application to ITA Tribunal within 120 days from the receipt of CIT(A) order or to the High Court within 120 days of receipt of ITA Tribunal order in the prescribed form stating that the appeal in the assessee's case may be filed after the decision in the identical case becomes final.

14.3 Section 263: At present the CIT has no power to revise the order passed by Transfer Pricing Officer (TPO) under Section 92CA. Now, Section 263 is amended from 01.04.2022 to give such power to the CIT. By this amendment the CIT is now authorized to direct the TPO to modify the order passed under Section 92CA or to cancel such order and direct him to pass a fresh order under the Section. Consequently, Section 153 is also amended to provide that when TPO Passes a fresh order under the direction of CIT under Section 263, the A.O. will have to modify the order of assessment or reassessment in conformity with the fresh order of TPO within 2 months from the end of the month in which the fresh order of TPO is received.

15. PENALTIES AND PROSECUTION:

15.1 Sections 271 AAB, 271 AAC and 271 AAD authorizes the A.O. to levy penalty if undisclosed income is found during the search as well as income referred to in Sections 68,69,69A, 69B, 69C or 69D and for falsification or omission of entries in the books of account. This power to levy penalty is now given to CIT (A) also from 01.04.2022.

15.2 Section 272A: At present this section provides for levy of penalty at the rate of ₹100/- per day for failure such as (a) Non-furnishing of returns, statements or particulars mentioned in Sections 133, 206C or 285B, (b) non-furnishing or late filing of return of income as required under Section 139(4A) or 139 (4C) by Charitable Trusts etc. or (c) Non-furnishing Certificate as required under Section 203 or 206C etc. This penalty is now increased to ₹500/- per day from 01.04.2022.

15.3 Section 271 AAE: This is a new section inserted from A.Y. 2023-24 (F.Y. 2022-23). As discussed in Para 5.4 above if an Institution or a Charitable Trust claiming exemption under Section 10(23C) or 11 give an unreasonable benefit to the Author of the Trust, Trustee or related persons, the A.O. can levy Penalty of (a) 100% of the benefit given to interested persons if the violation is noticed for the first time and (b) 200% of such benefit if noticed in the subsequent year.

15.4 Section 278A: This section is amended from 01.04.2022. Under Section 276 BB punishment is provided if a person fails to deposit tax collected at source with the Central Government. By amendment of section 278A it is now provided that if the person convicted under section 276 BB is again convicted of the same offence for a second or every subsequent offence he shall be punishable with rigorous imprisonment for a term of not less than 6 months which may extend to 7 years and with fine.

15.5 Section 278 AA: This section is amended from 01.04.2022. It is now provided that no person shall be punishable for failure to comply with Section 276 BB, i.e. failure to deposit tax collected at source with the Central Government, if he proves that there was reasonable cause for such failure.

16. OTHER AMENDMENTS:

16.1 Section 94(8):- At present Section 94(8) provides that loss arising on account of purchase and sale of units of M.F. shall be ignored, if any units have been acquired within a period of 3 months prior to the record date for issue of Bonus Units and then the original units are sold within 9 months after the record date. However, the loss so ignored is considered as cost of the Bonus Units. By amendment of this section from A.Y. 2023-24 (F.Y. 2022-23) this provision is extended to “Securities” which will include “Shares”. Thus the

Bonus stripping provisions will apply to transaction of purchase and sale of shares during the stipulated period. Further, the section will now apply to Units of Business Trust and beneficial interest of an investor in an Alternate Investment Fund registered under specified regulations. The definition of "Record Date" has also be expanded to mean such date as may be fixed by (a) the company (b) the Mutual Fund, (c) Business Trust or (d) Alternate Investment Fund etc.

16.2 Section 119: This section is amended from 01.04.2022 to empower CBDT to issue an order relaxing the provisions of section 234F which provides for levy of Fees for late filing of Return of Income. Now CBDT can direct that such fees need not be imposed for a default by certain class of persons filing their Return of Income late due to circumstances beyond their control.

16.3 Section 133A: Under this section "Income tax Authority" is empowered to exercise power of Survey. The definition of this term is now modified from 01.04.2022. The amendment provides that for this purpose "Income tax Authority" will mean the persons subordinate to the Principal Director General, the Director General, the Principal Chief CIT or the Chief CIT as may be prescribed by CBDT.

16.4 Section 170: This section is amended from 01.04.2022. The amendment is made with a view to validate the proceedings made on the predecessor entity during the course of pendency of Business Reorganisation involving amalgamation, demerger or merger of business of one or more persons. It is now provided that such proceedings shall be deemed to have been on the successor and all provisions of the Act shall apply accordingly.

16.5 Section 170A: This is a new Section inserted from 01.04.2022. The section provides that in the case of business reorganization such as amalgamation, demerger etc. where Return of Income is filed by the successor prior to the order of the Tribunal or Court for any assessment year, the successor can furnish a modified Return of Income within 6 months of the end of the month in which the order is issued.

16.6 Section 239A: This is a new section which has come into force from 01.04.2022. This section provides procedure where, in respect of an agreement or an arrangement, the tax deductible in respect of sums payable

to Non-Residents under Section 195 is to be borne by the resident assessee and he has paid the TDS amount but he claims that such tax is not deductible. Under this procedure the assessee has to file an application for Refund with the A.O. within 30 days. The A.O. has to pass an order granting the Refund or rejecting the application. This order is to be passed within 6 months of the end of the month when the application for Refund is filed. If the assessee is not satisfied with order of the A.O. appeal can be filed before CIT (A). Consequential amendment is made in Section 246A. The existing provision for filing appeal before CIT (A) in such cases under Section 248 is now deleted from 1.4.2022.

16.7 Section 245 MA: This section deals with procedure before Dispute Resolution Committee (DRC). The Section is amended from 01.04.2022 to provide that the A.O. shall pass the order giving effect to DRC order within one month from the end of the month when DRC order was received.

16.8 Section 285 B: This section deals with reporting certain transactions to the Government: The section is substituted by a new section 285B from A.Y. 2022-23 (F.Y. 2021-22). It is now provided that the reporting requirement shall apply to persons engaged in specified activities, such as (a) Event Management, (b) Documentary Production (c) Production of Programs for Telecasting on Television, (d) Over the Top Platforms or any other similar platforms, (e) Sports Event Management, (f) Other Performing Arts or (g) Any other activity as the Central Government may notify. Thus, such persons will have to furnish a statement containing particulars of all payments in excess of ₹50,000/- to any person engaged in such production in the prescribed form.

17. TO SUM UP:

17.1 Contrary to the declared policy of the present Government, there are more than a dozen amendments in the Income tax Act which have retrospective effect. In particular, the amendment to disallow Surcharge and Cess while computing Business Income is retrospective and applies from A.Y.2005-06. Further, such claim made by an assessee based on the High Court decision will be subject to levy of penalty if the assessee does not recompute the total income for that year and pay the tax within the specified time. It is not clear whether interest on the tax due will be payable. The A.O. is given time upto

31.03.2026 to pass rectification order under Section 154 and levy penalty under Section 270A. Such type of retrospective amendment is very harsh and may not stand the judicial scrutiny.

17.2 It is true that there is no increase in the rates of taxes and some relief is given to specific entities in the matter of rates of surcharge. The only new tax levied is on Virtual Digital Asset (VDA). This is a new type of asset and some issues will arise while computing the Income from transactions relating to VDA. CBDT will have to clarify these issues relating to valuation and reporting of transactions.

17.3 Significant amendments were made in the Finance Act 2020 and 2021 in the provisions relating to Charitable Trusts and Institutions claiming exemption under Section 10(23C) and 11. This year some further amendments are made in these provisions. Some of these amendments are beneficial to the Charitable Trusts and Institutions. However, the manner in which the amendments are worded creates lot of confusion. It is necessary that a separate chapter is devoted in the Income tax Act and all provisions of Sections 10(23c), 11, 12, 12A, 12AA, 12AB, 13 etc., dealing with exemption to these Trusts and Institutions are put under one heading. This chapter should deal with Rate of Tax, Interest, Penalty etc., payable by such Trusts and Institutions. This will enable the person dealing with Public Trusts and Institutions to know their rights and obligations.

17.4 The scope for deduction of tax at source (TDS) has been extended to two more items. New Section 194-R has been added and TDS provisions will now apply to value of benefit or perquisite given to a person engaged in business or profession. Further, under the new Section 194-S the TDS provisions apply on transfer of VDA. These provisions will increase the compliance burden of the assessees.

17.5 Significant amendments are made in the provisions relating to computation of income from Business or Profession. Now, expenditure incurred in relation to exempt income will be disallowed even if no exempt income is received. Further, value of any benefit or perquisite provided to a person where acceptance of such benefit or perquisite is prohibited by any Law, rule or guidelines governing the conduct of such person will be disallowed. This will

affect most of the Pharmaceutical and other Companies providing such benefits or perquisites to their agents or dealers.

17.6 Another damaging provision which is introduced by new Section 79A relates to denial of adjustment of Current Years or carried forward loss or unabsorbed depreciation against specified undisclosed income. This provision comes into force from A.Y. 2022-23 (F.Y. 2021-22)

17.7 The amendment of Section 68 putting the burden of proving source of the money in the hands of the person from whom funds are borrowed is another amendment which will increase the compliance burden of the assessee. Now assessees will have to keep evidence about the source of funds in the hands of the lender. This is going to be difficult.

17.8 A new provision is made in Section 139 (8A) allowing the assesse to file belated return of income within 24 months after the end of the specified time limit for filing revised return. There are several conditions attached to this provision. Further, Interest, Fees for late filing and Additional Tax is payable. Reading these conditions it is evident that such belated return cannot be filed for claiming any relief in tax. Thus, very few persons will be able to take advantage of this provision.

17.9 Taking an Overall View of the amendments made in the Income tax Act this year, one can take a view that it is a mixed bag. There are some retrospective amendments which are very harsh. There are some amendments which are with a view to give some relief to assessees but they are attached with several conditions. In this effort the Income tax Act has become more complex and the declared objective of the Government to simplify the tax laws is not achieved.