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SIGNIFICANT PROPOSED CHANGES IN TAX LAWS 2023

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INDEX

PART – I

THE FINANCE ACT, 2023

PART – II

GOODS & SERVICES TAX (GST)

PART – I

THE FINANCE ACT, 2023
(CA (MRS.) ARTI SHAH AND CA DALPAT SHAH)

1. BACKGROUND:

Smt. Nirmala Sitharaman, our FinanceMinister, presented her 5th Fiscal Budget in the Parliament on 1st February, 2023. In her Budget speech, she emphasized that Indian economy is on the right track, and despite time of challenges, heading towards a bright future. The Finance Minister gavedetailed explanation about the measures that the Government proposes to take in the coming years.

The FinanceMinister also introduced the Finance Bill, 2023, containing 122 sections amending various sections of the Income Tax Act, 1962 (Act). Before the passages of the Bill, 39 amendments to the Bill were introduced in the Parliament. The Finance Act, 2023, has received the assent of the President on 31st March, 2023.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 Act are discussed.

2. RATES OF TAXES:

2.1 The slab rates of taxes for AY 2024-25 (FY 2023-24) for an Individual, HUF, AOP, BOI etc., as per old regime, are the same as in AY 2023-24. Similarly, the tax rates for Firm (including LLP), Company, Co-operative Societies and Local Authority for AY 2024-25 are the same as in AY 2023-24. The rate of 4% of the tax for Health and Education Cess will continue in AY 2024-25 as in earlier years for all assessees. Apart from what is stated in Para 2.2, the rates of surcharge are the same as in earlier years.

2.2 It may be noted that the rates of taxes for individuals and HUF as provided in Section 115BAC (new regime) as introduced in AY 2021-

22 have been amended by insertion of new sub-section (1A)w.e.f. AY 2024-25as under:

Sr. No.	Total taxable Income	Rate of tax
1	Up to ₹ 3,00,000	Nil
2	From ₹ 3,00,001 to ₹ 6,00,000	5%
3	From ₹ 6,00,001 to ₹ 9,00,000	10%
4	From ₹ 9,00,001 to ₹ 12,00,000	15%
5	From ₹ 12,00,001 to ₹ 15,00,000	20%
6	Above ₹ 15,00,000	30%

- The said section is also amended to provide that the rates specified above are the default rates and the taxpayer who wishes to opt for old regime of tax shall select the option on or before the due date of filing return of income.

- Further, the following additional benefits are extended to assessees covered by the New Regime.

  a. Standard deduction of ₹ 50,000 under section 16(ia) from salary income,
  b. Deduction of 33.33% or ₹ 15,000, whichever is less, from family pension income under section 57(iia), and
  c. Deduction for amount deposited in Agniveer Corpus Fund by the assessee as per newly introduced section 80CCH,
  d. Dedution in respect of contribution under section 80CCD(2) by employer to pension scheme of the Central Government on behalf of the employee upto whole of the amount contributed by the employer not exceeding 10% of employees' total salary and
  e. Deduction in respect of employment of new employees under section 80JJAA for 30% of additional employees cost.

- Other consequential provisions are inserted in section 115BAC relating to exercise and opting out, as applicable, to option exercised under sub-section (1A). Accordingly, the provisions of sub-section (1) are proposed to be effective till AY 2023-24.

- In addition to above, the assessee shall be eligible for tax rebate upto ₹ 25,000 under section 87A, if total income of such assessee does not exceed ₹ 7 lakh. Accordingly, in case of total income upto ₹ 7 lakh, no tax shall be payable by such assessee. The benefit of marginal relief shall be provided if the amount of tax payable exceeds the total income earned in excess of ₹ 7 lakh. This benefit shall be applicable only to those assessees who opt for new regime of tax under section 115BAC(1A).

- The rate of surcharge is capped at 25% for AY 2024-25, in case of assessees opting for new tax regime under section 115BAC(1A) and where the income (excluding the income by way of dividend or income from short term capital gain, long term capital gain) exceeds ₹ 2 crores.

2.3 A new section 115BAE is inserted to provide benefit of concessional tax rate of 15% to newly incorporated **(on or after 1st April 2023)** manufacturing co-operative societies subject to various specified conditions. This section is effective from AY 2024-25. This benefit is available at the option of the Co-operative society which has started production on or before 31.03.2024. The conditions for availing the benefit under this section are the same as contained in Section 115BAB applicable to limited companies.

3. <u>SALARY:</u>

At present, section 17(2) defines 'perquisite' to include (1) value of rent free accommodation provided to the assessee by his employer and (2) value of any concession in matter of rent in respect of any accommodation provided to the assessee by his employer. Rule 3 of the Income Tax Rules ,1962 contains the methodology to determine the value of rent free accommodation whereas the Explanations to 17(2)(ii) lay down the situations in which concession in thematter of rent is deemed to have been provided.

Clause (i) of section 17(2) has been amended providing that value of rent free accommodation is to be computed in a prescribed manner. The method of such valuation is yet to be notified by CBDT.

Explanation to newly substituted clause (ii) to section 17(2) is inserted so as to provide that accommodation to employees shall be deemed to have been provided at a concessional rate if the value of accommodation computed in the prescribed manner exceeds the rent recoverable from or payable by the employee.

These amendments areeffective from 1st April, 2024 and shall be applicable from AY 2024-25.

4. LEAVE ENCASHMENT:

The Hon'ble Finance Minister in her budget speech mentioned that the limit for allowing exemption for leave encashment under section 10(10AA) shall be increased from existing limit of ₹ 3 lakh to ₹ 25 lakh. However, it is to be noted that the earlier limit of ₹ 3 lakh was specified vide notification no. 123 dated 31st May 2002. Accordingly, notification no. 31/2023 dated 24th May 2023 has been issued and the limit has been enhanced to ₹ 25 lakh.

This amendment is effective from 1stApril, 2024 and shall be applicable from AY 2024-25.

5. PROFITS & GAINS FROM BUSINESS AND PROFESSION:

5.1 Section 28(iv):

At present, clause (iv) of section 28 provides that the value of benefit or perquisite, whether convertible into money or not arising from business or excerise of the profession, shall be chargeable to tax under the head 'Profits and Gains from Business or Profession'.

The said clause (iv) is now substituted to also include the value of any benefit or perquisite receivable in cash or in kind or partly in cash and partly in kind from business or excerise of the profession and the same shall be chargeable to tax under the said head. Consequential amendment is made in section 194R for TDS from such perquisite amount.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25

5.2 Section 35D:

At present, preliminary expenses incurred in connection with preparation of feasilbility report, project report, conducting market survey or any other survey or engineering services relating to the buinsess is allowable under section 35D.

The existing proviso to clause (a) of sub-section (2) of section 35D is now substituted to provide that in order to claim deduction under this section, the assesee shall have to furnish a statement containing the particulars of expenditure specified in this clause within such period, to such income-tax authority, in such form and manner, as may be prescribed.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25

5.3 Section 43B:

At present, section 43B(da) is applicable to interest on any loan or borrowing from specified non-banking financial companies. The said provision is now amended and made applicable to notified class of NBFCs i.e. a deposit taking NBFCs or systematically important non-deposit taking NBFCs.

Section 43B is amended by inserting clause (h) whereby, any sum payable to a Micro or Small Enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 shall be allowed as deduction only on actual payment made within the time limit provided under section 15 of above Act. According to MSME Act, if the supplier /service provider has an agreement with the assessee, the time limit is up to 45 days. In absence of agreement, the time limit is 15 days. It is, therefore, to be noted that the relaxation of payment being made upto due date of filing of return u/s 139(1) is not available to sums paid to

micro and small enterprises. However, the said delayed payments shall be allowable as deduction on actual payment basis.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

5.4 Section 44AD & 44ADA:

The existing provisions of presumptive taxation for eligible business and specified profession state that an assessee being an individual, HUF or Firm (other than LLP) having turnover or gross receipts below the threshold limits as specified and offers profits at the rate of 6%/8% in case of business and 50% in case of specified profession or any higher rate so earned, is not required to maintain books u/s.44AA and also not required to get its books audited u/s 44AB.

These sections are now amended and the threshold limit has now been enhanced as under:

Applicability	Existing Threshold Limit (₹)	New Threshold Limit (₹)
Eligible business u/s 44AD	2 Crore	3 Crore
Specified profession u/s 44ADA	50 lakh	75 lakh

These above enhanced limits shall be applicable only if the amount received in cash does not exceed 5% of total turnover/gross receipts.

The proviso to section 44AB is substituted to provide that the tax audit shall not apply to persons who declare profits & gains in accordance with the provisions of sections 44AD(1) and 44ADA(1).

These amendments are effective from 1st April, 2024 and shall be applicable from AY 2024-25

5.5 Section 44BB & 44BBB:

The existing provisions of presumptive taxation for non residents engaged in the business in connection with or supplying plant & machinery on hire used or to be used in the prospecting for or extraction or production of mineral oil and foreign companies engaged in business of civil construction or business of erecting plant & machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government were that the eligible assessee could claim actual loss in a year when they have incurred a loss and carried it forward, while in a year when they have higher profits, use the presumptive schemes to restrict the profit to 10% and set off the brought forward losses from earlier years.

A new sub section is inserted in 44ABB and also 44BBB to deny the set off of unabsorbed depreciation and brought forward losses where the assessee has declared profits and gains of business for any previous year in accordance with theses presumptive taxation provisions but has opted out of these provisions and offered for tax under the provisions of the Act.

These amendmentsare effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6. <u>CAPITAL GAINS</u>:

6.1 Section 45(5A):

The existing provisions of sub-section (5A) of section 45 provide that the full value of consideration received under the specified agreement (e.g. Redevelopment agreement) is to be considered with reference to the year in which certificate of completion for new project has been received from competent authority. For this purpose, the stamp duty value on the date of issue of said completion certificate, including amount, if any, received in cash, shall be considered as value of consideration.

The said section is now amended to provide that the amount, if any, received by means other than cash (e.g. Cheque or other means)

shall also form part of the consideration and capital gain shall be charged to tax accordingly.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6.2 Sections 47 & 49:

The following sections are amended pursuant to announcement made in Union Budget 2021-22 about Gold Exchange in order to promote the concept of Electronic Gold:

i. Clause (viid) is inserted in section 47
ii. Sub-section (10) in section 49
iii. Sub-clause (hi) is inserted in clause (i) of Explanation 1 of section 2 (42A)

The above amendments in above sections are incorporated/inserted in order to incorporate transactions relating to conversion of physical gold into Electronic Gold Receipts (EGR) :

i. The conversion of physical gold into EGR (and visa-versa) shall not be regarded as transfer. Accordingly, no capital gain shall be charged on such conversion.

ii. The period of holding of such gold shall include the period for which it was held in physical form as well as held in nature of EGR.

iii. The cost of acquisition of EGR shall be deemed to be the cost of gold in hands of the person in whose name the EGR is issued.

These amendmentsare effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6.3 Section 48:

The existing provisions state that while determining the capital gain on sale of immovable property, the same shall be computed after deduction of cost of acquisition and cost of improvement.

Section 48 is now amended to provide that cost of acquisition and cost of improvement shall not include any interest expenditure if the same is availed as deduction u/s 24(b) or under Chapter VI-A, while determining capital gain to the extent already claimed. Accordingly, any interest expenditure claimed in excess of already claimed u/s 24(b) or Chapter VI-A shall be allowable as cost of acquisition and cost of improvement while computing capital gain on sale of immovable property.

The said section is now amended that the interest expenditure if availed as deduction u/s 24(b) or Chapter VI-A, then the same will not be allowed as deduction while determining capital gain to the extent already claimed.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6.4 Section 50AA:

The existing provisions relating to long-term capital gains on transfer of market linked debentures, which are listed securities, are taxed at 10% without indexation. Market linked debentures are the securities which have underlying principal component in the form of a debt security but provides return which is linked to market return on underlying indices or other securities.

Section 50AA is now inserted to deem that the capital gains arising on the transfer of Market linked debentures will be presumed to be Short term Capital gain irrespective of their period of holding. Further, no deduction as part of the cost for amount paid as Securities transaction tax will be allowed.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6.5 Sections 54 & 54F:

The existing provisions of section 54 provide that capital gain arising on transfer of long term asset being a residential house is exempted to the extent such gain is re-invested in acquisition of another residential house within a period of one year before or two years after the date on which the transfer took place. Similarly, under

section 54F, exemption is available where asset other than residential house is sold and the net consideration on such sale is invested in acquisition of a residential house subject to specified conditions.

Sections 54 and 54F are now amended to the effect that the sum invested in the residential house for the purpose of exemption under these sections will be limited to ₹ 10 crores. Thus, amount invested in excess of ₹ 10 crore will not qualify for exemption. By insertion of a proviso to sections 54 and 54F it is now provided that for the purpose of deposit in the Capital Gains Account Scheme, capital gains or net consideration, as the case may be, in excess of Rs 10 crore shall not be taken into account.

These amendments are effective from 1st April, 2024 and shall be applicable from AY 2024-25.

6.6 Section 55:

The existing provision of Section 55 defines the 'cost of improvement' and 'cost of acquisition' for calculation of capital gains. However, there are certain assets like intangible assets or any sort of rights for which no consideration is paid for acquisition. This has led to legal disputes and in the absence of any specific provisions which states that the cost of such assets is nil, the chargeability of capital gains from transfer of such assets has not found favour in courts.

The terms 'cost of improvement' and 'cost of acquisition' have now been defined by amendment to sub-clause (1) of clause (b) of sub-section (1) and clause (a) of sub-section (2) of section 55 so as to provide that 'cost of improvement' and 'cost of acquisition' of a capital asset being an intangible asset or any other right (other than those mentioned in the said sub-clause or clause as the case may be) shall be 'NIL'.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

7. INCOME FROM OTHER SOURCES:

7.1 Income from life insurance policy:

Sections 2(24), 10(10D), 56(2)(xiii) have been amended / inserted to provide as under:-

i. The exemption for proceeds from life insurance policies (other than ULIPs) issued on or after 1st April, 2023 having premium above ₹ 5,00,000/- in any previous years during the term of the policy has been removed,

ii. In case where the assessee has more than one life insurance policy (other than ULIPs) issued on or after 1st April, 2023, then the exemption for the proceeds from such policy will be available only to those policies where the aggregate amount of premium does not exceed ₹ 5,00,000/- in any of the previous years during the term of any of those policies.

iii. The proceeds from such policies net of premiums paid (which have not been claimed as deduction under chapter VI-A earlier) which do not qualify for exemption have been included in the definition of income in section 2(24)(xviid).

iv. The income that is not exempt consequent to these provisions will be chargeable under the head 'income from other sources'.

v. The proceeds from these policies received on the death of the insured person will continue to be exempt.

vi. The proceeds from life insurance policies (other than ULIPs) issued before 1st April 2023 continue to be exempt subject to the specified conditions.

These amendmentsare effective from 1st April, 2024 and shall be applicable from AY 2024-25.

7.2 Section 56(2)(viib):

The existing provision of section 56(2)(viib) provides for the chargebility in case of a closely company (in which public are substantially interested) which receives consideration from residents for issue of shares in excess of the fair market value.

The said section is now amended to delete the word 'resident' and thereby the consideration received from residents as well as non-

residents in excess of fair market value of shares shall be chargeable to tax in the hands of the issuing company under the head 'Income from Other Sources'.

This amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

7.3 Sections 9(1)(viii) and 56(2)(x):

As per the existing provisions of section 9(1)(viii), any sum of money exceeding ₹ 50,000/- received by a non-resident without consideration from a person resident in India is taxable as income of the non-resident under section 56(2)(x). Due to this, certain persons being not ordinarily residents were receiving gifts from persons resident in India and not paying tax on it.

The said clause (viii) is now substituted as an anti-abuse provision so as to extend this deeming provision to sum of money exceeding ₹ 50,000/- received by a not ordinarily resident, without consideration, from a person resident in India. Such sum will be taxable under section 56(2)(x).

These amendments are effective from 1st April, 2024 and shall be applicable from AY 2024-25.

8. SET-OFF AND CARRY FORWARD OF LOSSES:

8.1 Section 79:

The existing provision with respect to carry forward and set-off of loss under section 79 in relation to an eligible start-up as referred to in section 80IAC was that irrespective of change in shareholding of such start-up by more than 49%, it was entitled to carry forward and set-off of loss under section 79in the first seven years of its incorporation. This was subject to the condition that all the shareholders of such eligible start-up in the year in which loss was incurred continued to be sahreholders in the previous year in which such loss was to be set-off.

The said provision has now been amended to allow such carry forward of losses incurred in the first 10 years of incorporation.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

8.2 Sections 72A and 72AA: Carry forward/set-off of accumulated loss & unabsorbed depreciation on Amalgamation or Demerge:

Section 72A relates to provisions for carry forward and set-off of accumulated loss and unabsorbed depreciation in case of amalgamation or demerger. Section 72AA relates to carry forward and set-off of accumulated loss and unabsorbed depreciation in case of amalgamation in certain cases which, interlia, includes amalgamation of one or more banking companies with any other banking institution. In order to facilitate strategic disinvestments, the said sections are amended to extend the benefit of carry forward and set-off of accumulated loss and unabsorbed depreciation, by widening the definition of 'strategic disinvestment' to include disinvestments which result in reduction of shareholding of Central or any State Government in any PSU falls below 51%.

These amendments are effective from 1st April, 2023 and shall be applicable from AY 2023-24.

9. <u>CHARITABLE TRUSTS:</u>

9.1 Due Date of furnishing Form 9A and Form 10 for accumulation:

At present, if any charitable or religious trust referred to sub clause (iv), (v), (vi), (via) of clause (23C) of Section 10 or trust / institution registered u/s. 12AA / 12AB of the Income Tax Act fails to apply minimum 85% of its income for charitable or religious purpose, then it has two options as below:

a. To apply the same in the next financial year (PY) (if income is received during the current year) or
b. To apply in the financial year in which the income is actually received or the next financial year in which it is received.

In order to exercise such option the Charitable or Religious Trust has to file Form 9A with the department. Earlier, the last date to file this form was the due date mentioned in Section 139(1) for filing the return of income i.e. 31st October of the assessment year. The said section is now amended so that the due date for exercising the option by filing Form 9A will be at least 2 months prior to the due date of filing the return of income, i.e. 31st August after the end of the relevant financial year.

Similarly, Form 10 is required to be filed for informing the Assessing Officer that the income has been accumulated or set apart for application within a period of 5 years. The last date for submission of this Form 10 is now at least 2 months prior to the due date for furnishing the return of income u/s. 139(1).

These amendments shall be effective from 1st April 2023 and will accordingly apply for AY 2023-24.

Further, vide Circular No. 6 of 2023 dated 24th May 2023, the CBDT has clarified that the filing of Form 9A and Form 10 can be done till the date of filing of return u/s. 139(1) of the Act. This clarification shall apply from AY 2023-24.

9.2 Rule 17AA: Maintenance of Books of Accounts & Documents:

CBDT has vide Notification No. 94/2022 in GSR 622(E) dated 10.08.2022 inserted new Rule 17AA specifying the books of accounts and other documents to be kept and maintained by a trust. The condition to maintain books of accounts is in addition to the condition requiring the trust or institution to get registration, audit of the books of account and filing of Return of Income. Thus, if the Trust fails to comply with any of these conditions, the benefit of exemption under section 10(23C) or section 11 and 12 shall not be available.

This rule shall be effective from 1st April 2023 and will accordingly apply for AY 2023-24.

9.3 Audit Report in Form 10B/10BB:

CBDT vide Notification No. 7/2023 in GSR 118(E) dated 21.02.2023 and through Income-tax (3rd Amendment) Rules, 2023 amended Rule 16CC and Rule 17B of the Income-tax Rules, 1962 and also amended the tax audit report required to be furnished by Charitable Trusts or Institutions including NGOs registered under section 12AA/12AB or approved under section 10(23C) of theAct in Form No. 10B and Form No. 10BB.

This amendment shall be applicable from 01.04.2023 i.e. applicable for AY 2023-24.

New forms of Audit Report shall be selected on the basis of amended provisions as specified below :

Applicable to Form 10B		**Applicable to Form 10BB**	
1.	In any Trust or Institution registered u/s. 12AA/12AB, without giving effect to the provisions of sections 11 and 12 total receipts exceeds Rs.5 crores during the previous year, or	1.	In any Trust or Institution registered u/s. 12AA/12AB, or approved 10(23C) does not exceed total receipt of Rs. 5 crores during the previous year, or
2.	In any Trust or Institution approved u/s. 10(23C), without giving effect to the provisions of sub clauses (iv), (v), (vi) and (via) of the said clause total receipts exceeds Rs.5 crores during the previous year, or	2.	In any Trust or Institution registered u/s. 12AA/12AB, or approved 10(23C) does not receive any amount of foreign contribution during the previous year, or
3.	In any Trust or Institution registered u/s. 12AA/12AB, has received any foreign contribution during the previous year, or	3.	In any Trust or Institution registered u/s. 12AA/12AB, or approved 10(23C) does not apply any part of its income outside India during the previous year.

4.	In any Trust or Institution approved u/s. 10(23C), has received any foreign contribution during the previous year, or		
5.	In any Trust or Institution registered u/s. 12AA/12AB, has applied any part of its income outside India during the previous year, or		
6.	In any Trust or Institution approved u/s. 10(23C), has applied any part of its income outside India during the previous year.		

9.4(i) Denial of Exemption under Section 11 to Updated Return of Income

A Charitable Organisation can claim exemption under section 11 unless it has filed its return of income under section 139 ,i.e. on or before due date under section 139(1) or belated under section 139(4) or updated return under section 139(8A).

It is now provided that with effect from AY 2023-24, exemption u/s. 11 shall be available to charitable trusts / institutions who are required to file return u/s. 139(4A) even if the return is filed belatedly u/s. 139(4) of the Act (i.e.before 31st December).

However, an amendment is made to the twentieth proviso to section 10(23C) and section 12A(1)(ba) which provides that the return of income of the trusts / institutions shall be filed within the time allowed under section 139(1) / 139(4). This means that the trusts or institutions cannot claim the benefit of exemption and other benefits by filing an updated return of income under section 139(8A) after 31st December.

(ii) Section 11(1): Donation to Other Charitable Organisation

A new clause (iii) has been inserted in Explaination 4 to section 11(1) of the Act wherein now the donations / contributions (except corpus donations) made to other trusts covered u/s. 10(23C) or 12AB, **only 85% of such donation will be treated as application for calculation of amount applied**. It means that if Rs. 100 is donated by Trust A to Trust B then only Rs.85 will be considered as application in the hands of Trust A.

This amendment will be effective from from 1st April 2024 and shall be applicable from AY 2024-25.

(iii) Section 11(5): Application of Income out of Corpus/Loan Fund

At present, the amount spent for charitable purposes out of the corpus fund or loan is not eligible for deduction as "Application of Income". However, when the amount will be deposited / invested back in the corpus as per the modes specified u/s. 11(5) or loan has been repaid, it will be treated as application of funds in the year in which the amount is so deposited/invested back or loan is repaid. So no time limit was provided to redeposit/invest back to the Corpus or repay the loan.

The said section is now amended and a few conditions which need to be complied have been inserted for treating deposit back or repayment of loan borrowing as application of funds. The said conditions are as under:

(i) To get the benefit of application in subsequent years the investment with respect to corpus funds is required to be made or borrowings are required to be repaid within 5 years from the end of the year in which the said corpus or borrowing was utilized towards objects of the trust.

(ii) Such re-investment related to any corpus or repayment of loan pertaining to period prior to 01.04.2021, will not be considered as application of income.

(iii) The application should not be a corpus donation to another trust;

(iv) The amount drawn can be treated as application of income only if no violations are made under section 40(a)(ia) or 40A(3) or 40A(3A) etc.;

(v) Application of Income is considered only in the year in which actual payments are made;

(vi) The application of income is not determined considering the carry forward or set off of excess application of any preceding previous year;

(vii) The Income or the Application of Income should not directly or indirectly benefit the related parties i.e Persons mentioned in section 13(1)(c);

(viii) Application of Income is within India except with the prior approval of CBDT.

This amendment will be effective from from 1st April 2024 and shall be applicable from AY 2024-25.

9.5 Sections 10(23C), 12A, 12AB and 80G: New Scheme of Registration:

Charitable or religious trusts who were earlier gratned registration u/s. 10(23C), 12AA, 80G are required to take re-regitration. A new scheme of registration or approval were introduced w.e.f. 01.04.2021. This scheme provides that the first time registration or approval u/s. 10(23C), 12AB and 80G has to be made in two stages:

Category	***Time limit to file the application***	***Time limit to pass an order***	***Period (or which registration/ approval is granted)***
Provisional Registration/	At least 1 month before the	Within 1 month from	3 years

Approval	commencement of the previous year relevant to the assessment year from which the registration or approval is sought.	the end of the month in which the application is received.	
Conversion of Provisional Registration/ Approval	At least 6 months before the expiry of 3 years provisional registration/ approval period or within 6 months of the commencement of its activities, whichever is earlier.	Within 6 months from the end of the month in which the application is received	5 years

Where a trust or institution has already commensed the activities, it was still required to file an application in two stages, first, for provisional registration and second, this provisional registration was required to be converted to regular registration if the activities has already been commenced.

The two stage requirements posed a challenge to the trusts where activities has already commensed. Hence, sections 10(23C), 12A and 80G are now amended to allow for direct final registration / approval in such cases without applying provisional registration / approval.

It is now provided that only those trusts and institutions shall file an application for provisional registration / approval who has not commenced its activities. The provisional registration / approval shall be gratned for a period of three years from the assessment year from which the registration / approval is sought for. Such provisional regsitation / approval shall be required to be converted

into regular registration / approval atleast six months before the expiry of three years or within six months of the commencement of its activities whichever is earlier.

CBDT has vide Circular No. 6 of 2023 dated 25.05.2023 has extended the time limit for filing such application to 30.09.2023.

9.6 Section 115TD: Accreted (Exit) Tax on failure to Register/Re-register Trust:

A new scheme of registration effective from 01.04.2021 required the trusts / institutions to make an application for re-registration or re-approval. There is a possibility that some trusts / institutions failed to apply for regular registration after obtaining provisional registration. There are also trusts / institutions registered before 01.04.2021 who have not applied for re-registration / re-approval.

Chapter XII-EB consisting of sections 115TD, 115TE and 115TF imposes accreted tax (exit tax) on conversion of a charitable trust or organisation into a non-charitable organisation, or merger with a non-charitable organisation or a charitable organisation with dissimilar objects or does not transfer the assets to another charitable organisation. The accreted income of such trust / institution is taxable at the maximum marginal rate.

The said section is now amended from A.Y.2023-24 to provide that trust or institution shall be deemed to have been converted into any form not eligible for registration or approval in the previous year in which period for re-registration / re-approval expires and if:

a. It fails to make an application for re-registration;
b. It fails to convert provisional registration to regular registration; or
c. It fails to get the renewal of registration within the specified period.

In all such cases tax at the maximum marginal rate will be chargeable on the fair market value of the net assets of the Trust/Institution.

10. PENALTY AND PROSECUTION:

10.1 Sections 271C and 276B:

The provisions of of section 271C provide for levy of penalty and the provisions of section 276B provide for prosecution in cases where a person fails to pay the whole or any part of tax required under the provisons of Chapter XVII-B as well as other sections.

The said provisions have now been widened to include any failure by a person who does not pay or fails to ensure that the tax has been paid as is referred to in the provisions of section 194R / 194BA and 194S where the income, benefit or perquisite is paid in cash or in kind.

This amendment is effective fromfrom 1st April 2023 and shall be applicable from AY 2023-24 except for amendment for section 194BA which is applicable w.e.f. 1st July 2023.

10.2 Section 271FAA:

Section 285BA of the Act obligates certain specified assesses to furnish statement of specified financial transactions or reportable account in a prescribed form which is known as 'specified financial transaction' (SFT). In case of furnishing any inaccurate particulars in the prescribed form of SFT, theasessee is penalized under section 271FAA of the Act. At present, section 271FAA provides for a penalty of Rs. 50,000 for default made by the person furnishing the SFTs. However, no penal provisions existed for account holders for furnishing falsified certificates / information.

It has now been provided in section 271FAA that a penalty of Rs. 5,000 shall be levied on the financial institution specified under clause (k) of section 285BA(1) for every inaccurate reportable account. This penalty shall be paid by the financial institutions which in turn can recover the same from the account holder or debit the same to the account holder.

This amendment is effective fromfrom 1st April 2023 and shall be applicable from AY 2023-24.

10.3 Section 276A:

Section 276A contains provisions for prosecution of a person being a liquidator of a company where he has contravened the provisions of section 178.

The said section is now amended by providing a sunset clause. No fresh prosecution proceedings shall be initiated under this provision on or after 1st April, 2023.

These amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

10.4 Section 270AA:

Section 270AA(6) provides that the order passed by the assessing officer, accepting or rejecting the application for immunity, shall be final and when an order granting immunity is passed by the assessing officer, no appeal before the Commission (Appeals) shall be filed u/s. 246A.

The similar restriction of filing an appeal has now been extended for appeals to be filed before Joint Commissioner (Appeals) under section 246.

This amendment is effective fromfrom 1st April 2023 and shall be applicable from AY 2023-24.

11. <u>TRANSFER PRICING:</u>

11.1. Section 92BA:

Section 92BA contains transfer pricing provisions with respect to specified domestic transactions.

A new sub-clause (vb) is inserted in section 92BA, which deals with any business transacted between the co-operative society and the other person as referred to in section 115BAE(4). Accordingly, the transaction between the co-operative society and the other person having close connection shall now come within the purview of 'Specified Domestic Transactions'. In such a case, the amount of profits shall be determined having regards to arms' length price.

This amendment is effective fromfrom 1st April 2024 and shall be applicable from AY 2024-25.

11.2 Section 92D:

Section 92D(3) provides that a person who enters into an international transaction or specified domestic transaction shall furnish specified information or documents to the Assessing Officer or the Commissioner (Appeals) within 30 days from the receipt of notice during the course of any proceedings and can be extended for a further period of 30 days on application made.

It is now provided that the time period for submission fo any information or document asked by the AO / CIT(A) be reduced from 30 days to 10 days. However, the reduced 10 days may be extended by further period not exceeding 30 days if the assessee requests for such an extention.

This amendment is effective from 1st April 2023 and shall be applicable to all transfer pricing assessment pending as on 1st April 2023.

11.3 Section 94B:

This section provides that the deduction of interest expenses paid by an entity to its associated enterprise in excess of one crore rupees shall be restricted to 30% of EBITDA or interest paid or payable to the associated enterprise whichever is less. The disallowance of excess will be made even if the borrowing is for the purpose of business and the rate of interest is at arms' length. The interest expense so disallowed shall be allowed to be carried forward for a maximum period of eight subsequent assessment years. This section does not apply to banking and insurance companies.

This section is now amended to exclude NBFCs which are notified by the Central Government from the purview of thin capitalisation rule.

These amendment is effective from 1st April, 2024 and shall be applicable from AY 2024-25.

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

12.1 Section 192A - TDS on accumulated balance of EPF:

This section provides for TDS on payment of accumulated balance due to an employee under the employees' provident fund scheme, 1952 at the rate of 10% of lump sum payment to an employee. However, no tax is to be deducted if the agreegate amount is less than Rs. 50,000. If the PAN of the receipient is not available, then tax to be deductible shall be at Maximum Marignal Rate.

The said section is now amended to omit the second proviso so that in cases where PAN is not furnished, TDS shall be deducted at 20% as per section 206AA and not at the maximum marginal rate.

This amendment is effective from 1stApril, 2023 and shall be applicable from AY 2023-24.

12.3 Section 193 - TDS on Listed Debentures:

This section provides for TDS on payment of any income to a resident by way of interest on securities at the rate of 10%. Further, clause (ix) of the proviso to section 193 grants an exempton from deduction of TDS on interest payable on specified securities. Clause (ix) of the proviso provides that no tax shall be deducted from any interest payable on any security issued by a company, if such security is in dematerialised form and is listed on a recognised stock exchange in India.

The Finance Minister stated that there is under reporting of such interest income by the recipient due to exemption from TDS deduction. Therefore the said clause (ix) of the proviso to Section 193 is now omitted and therefore tax will be dedutible on interest on such security.

This amendment is effective from 1stApril, 2023 and shall be applicable from AY 2023-24.

12.4 Section 194B - TDS on Winnings from Lottery or Crossword Puzzle:

Section 194B provides for deduction of tax at source by any person responsible for paying to any person any income by way of winnings from any lottery or cross-word puzzle and other game if the amount of income is Rs. 10,000/- or more.

Scope of this section has been changed by inclusion of income from gambling or betting of any form or nature and exclusion of income from any online game .

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.5 Section 194BA - TDS on Winnings from Online Games:

Section 194BA is now inserted so as to provide that any person responsible for paying any income by way of winning from online game during a financial year shall deduct income tax on the net winning in the respective user account comuputed in the prescribed manner, at the end of the financial year or at the time of such withdrawal on the net winnings at the rates in force. It is also provided that, where the net winnings are wholly in kind or partly in cash and partly in kind but the cash element is not sufficient to meet liablity of tax deduction in respect of whole of net winnings, the responsible person shall before releasing winnings ensure that tax has been paid in respect of new winnings .

This amendment will be effective fromfrom 1st July 2023.

12.6 Section 194BB - TDS on Winnings from Horse Race:

Section 194BB provides for the deduction of tax at source for Horse racing in any race course or for arranging for wagering or betting in any race course.

It is now amended to provide that tax deductions under these provisions shall be made if the amount or aggereggate of amount paid or payable exceeds Rs. 10,000/- during the financial year. Thus

post amendment TDS shall be applicable to amount exceeding Rs. 10,000/- in aggregate in a financial year as against per transaction.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.7 Section 194N: TDS on cash payment:

Section 194N mandates every Banking company (including any Bank or Banking institution), co-operative bank or post-office, which is responsible for payment of cash to a person from one or more accounts maintained by him, to deduct tax at source. This provision provides that the person responsible for payng any sum or aggregate of sums, in cash exceeding Rs. 1 crore during the previous year, to any person shall, at the time of payment of such sum, deduct :

i. an amount equal to 2 % of such sum if the aggregate of amount withdrawn exceeds Rs. 20 lacs during the previous year but does not exceed Rs. 1 crore;
ii. an amount equal to 5 % of such sum if the aggregate of amount withdrawn exceeds Rs. 1 crore during the previous year.

A proviso is now added to provide that the threshold limit of Rs. 1 core is now increased to Rs. 3 crores.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.8 Section 194R- TDS on Business/Profession benefit or perquite:

Section 194R provides that any person responsible for providing to a resident, any benefit or perquisite, arising from business or exercise of a profession by such resident, shall ensure that, before providing such benefit or perquisite, tax is deducted at the rate of 10 % of the value of such benefit or perquisite.

First proviso to Secrion 194R(1) states that if the benefit or perquisite is entirely in kind or partly in kind and partly in cash, but the cash portion is not enough to cover the tax deductions, the person responsible for granting the benefit or perquisite must ensure that the tax required to be deducted has been paid before releasing the benefit or perquisite.

CBDT vide circular no.12 dated 16.06.2022 clarified that tax under Section 194R must be deducted regardless of whether the benefit or perquisite is in cash or in kind.

Explanation 2 has been inserted in Section 194R which provides that this section shall apply to benefit or perquite whether in cash or in kind or partly in cash and partly in kind.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.9 Section 196A- TDS on income in respect of units on non-resident:

At present, any person responsible for paying any income in respect of units of mutual fund specified under Section 10(23D), or specified company referred to in Explanation to Section 10(35) is required to deduct tax at source at the rate of 20% if the recipient of income is a non-resident, not being a company or a foreign company.

A proviso to Section 196A has been inserted to provide that the TDS rate in such case shall be lower of the two rates:

i. 20 %; or
ii. The rate specified in the agreement in Section 90(1) or Section 90A(1).

It is provided that where India has Double Tax Avoidance Agreements (DTAA) with the foreign country and where such agreement provides a benefit in form of lower tax rates, non residents shall be subject to TDS at the lower rates provided in the said DATAA or 20% and have provided the Tax Residency Certificate.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.10 Section 197- Lower or Nil TDS:

At present, Section 197 provides that the Assessing Officer can issue a certificate for lower/ NIL TDS certificate which did not include Section 194LBA. Section 194LBA provides that a business trust paying business income to a non-resident unit holders is required to deduct tax at 5 %.

Section 197 is now amended to include Section 194LBA so that a lower/NIL TDS Certificate can now be obtained by the deductee (i.e. unit holders) whose income is subject to tax under Section 194LBA.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

12.11 Section 206AB and 206CCA- Higher rate of TDS/TCS for non-filer of income tax returns:

Sections 206AB and 206CCA deal with special provisions for TDS / TCS in cases of non-filers of income tax return and for deduction / collection of tax at source at a higher rate where payment is made to or from a specified person. The said provisions do not apply to a non-resident who does not have permanent establishment in India.

The said provisions are now amended effective from 1-4-2023 so as to expand the scope of above exclusion. It is now provided that the specified person shall not include a person who is not required to furnish the return of income for the relevant assessment year and is notified by the Central Government in the official gazette in this behalf.

12.12 Section 206C(1G)- TCS on Foreign Remittance:

Section 206C deals with TCS on various transactions and subsection (1G) includes foreign remittance through the Liberalised Remittance Scheme (LRS) and the sale of overseas tour package.

The said section is amended to raise the rate of TCS on foreign remittance through the Liberalised Remittance Scheme (LRS) and the sale of overseas tour packagefrom 5% to 20 % w.e.f. 01.07.2023. However, C.B.D.T. vide Circular No. 10/2023 dated 30.06.2023 has provided that no TCS shall be applicable on remittance other than on foreign tour packages upto Rs. 7 Lakhs and also issued a Guidelines in this regard. The CBDT has made the said amendment effective from 01.10.2023. The current and new TCS rates are tabulated as under:

Sr. No.	**Type of Remmitance**	**Present scenario** upto 30.09.2023	**Amended scenario** w.e.f.01.10.2023
1	For education purposes, out of education loan obtained from any financial institution as defined in Section 80E.	Up to Rs.7 Lakhs - Nil Above Rs.7 Lakhs- 0.5%	No change
2	For education purposes (other than 1, above) or for medical treatment.	Up to Rs. 7 Lakhs - Nil Above Rs. 7 Lakhs- 5%	No change
3	Overseas tour package	5% without any threshold limit	Up to Rs.7 Lakhs -5% Above Rs.7 Lakhs- 20%
4	Any other case	5% of amount or the aggregate of the amounts in excess of Rs.7,00,000	Up to Rs. 7 Lakhs -5% Above Rs.7 Lakhs- 20%

The CBDT has clarified in this Guidelines that any transactions through International Credit Card while being out of India would

not be counted as payment under LRS and hence no TCS shall be applicable under section 206C(1G) on the same.

13. ASSESSMENTS AND APPEALS:

13.1 Section 153: Time Limit for completion of Assessment/ Reassessment:

Under the existing provisions , the time limit for completion of assessments under section 143 or section 144 is 9 months from the end of the assessment year in which the income is first assessable. Similarly, in case of assessments of updated returns, the time limit to pass assessment order is 9 months from the end of the financial year in which the return is furnished.

It is now provided that this time limit be extended to 12 months to provide more time to the assessing officers for completion of assessment for AY 2022-23 and onwards. Similarly, time limit in cases of updated returns filed under section 139(8A) is also extended to 12 months from the end of the financial year in which such return is filed.

The time limit to complete assessments, reassessments and order passed under section 92CA by the transfer Pricing Officer is amended to to give reference to orders passed by PCCIT or CCIT or PCIT under sections 263 or 264.

The existing provisions of section 147 do not provide for abatement or revival of pending assessment or reassessment proceedings as on date of search or requisition proceedings. Due to absence of these provisions, the information available in a search having bearing on the pending scrutiny proceedings was not effectively used due to limitation of such proceedings.

To provide for such cases a new subsection (3A) is inserted in section 153 to provide that when any assessment or reassessment proceedings are pending as on date of search under section 132 or requisition under section 132A, the period available for completion

of such assessments or reassessments shall be extended by 12 months.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

13.2 Section 142(2A): Valuation of Inventory:

At present, the Assesseing Officer is empowered to direct special audit of the accounts of the assessee under special circumstances with the prior approval of the PCIT or CCIT and obtain a report from a chartered accountant.

Section 142(2A) is now amended to empower the assessing officer to obtain a separate report from a practicing cost accountant, nominated by PCCIT, CCIT, etc., for the valuation of inventory.

This amendment shall be applicable from 01.04.2023 i.e. applicable for AY 2023-24.

13.3 Section 245: Set-off of Refund against Outstanding Tax Demand:

Section 245 empowers the assessing officer to with hold the refunds of the assessee if he thinks that granting such refunds would negatively impact the revenue. It also empowers the authorities to set off the refunds payable against and remaining amount due by the assessee after giving written intimation.

The provisions of section 241A and section 245 are now integrated in section 245 and the new provisions will now allow the authorities to set off the refunds due to the assessee against any sum owed by him instead of paying the refunds directly.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

Further, no additional interest on refund under section 244A shall be payable to the assessee for the period beginning from the date

on which the refund is withheld and ending with the date on which the assessment or reassement is made.

This amendment shall be applicable from 01.10.2023.

13.4 Section 140B:

The existing provision of section 140B implies that interest is payable on the difference between the assessed tax and advance tax.

It is now clarified that the interest payable under section 234B is with respect to the assessed tax which is the tax on the total income as declared in the updated return less any relief or tax referred to in section 140A(1) (which includes advance tax) claimed in any earlier return.

This amendment shall be applicable retrospectively from 01.04.2022.

13.5 Section 246: New Appellate Authority- Joint Commissioner (Appeals):

At present Commissioner(Appeals) is the first Appellate authority under the Income Tax Act. The taxpayer aggrieved by an assessment order, an order imposing penalty, or any other order, can file an appeal before the Commissioner (Appeals) having jurisdiction over him.

The Commissioners(Appeals) are currently overburdened due to huge number of appeals pending. In order to release this burden and clear the pendency, a new authority is being proposed to be created at Joint Commissioner/Additional Commissioner level.These authorities shall handle certain class of cases involving small amount of disputed demand.

Joint Commissioner (Appeals) is defined in new section 2(28CA) to mean a person appointed as Joint Commissioner of Income Tax

(Appeals) or as an Additional Commissioner of Income Tax (Appeals) as per section 117(1).

Section 246 is revived and substituted so that the appeals can be filed before Joint Commissioner (Appeals) against the intimations / orders u/s. 143(1), 143(3), 144, 200A(1), 201, 206C(6A), 206CB, various penalty orders, rectification orders u/s. 154 & 155. No appeal can be filed before the Joint Commissioner (Appeals) if such orders referred are passed by or with the prior approval of an income tax authority above the rank of Deputy Commissioner.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

13.6 Section 253: Appeals to the Appellate Tribunal:

At present, an assessee can prefer an appeal with the ITAT against the Orders passed by the CIT(A) u/s. 154, 250, 270A, 271, 271A, 271J or 272A.

The Finance Act, 2022 has amended sections 271AAB, 271AAC and 271AAD to empower CIT(A) to levy penalty along with the Assessing Officer. These Orders were not appealable to ITAT.

Section 253 is now amended to provide that appeal against the penalty order passed by the CIT(A) under sections 271AAB, 271AAC and 271AAD shall be appealable before ITAT.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

13.7 Section 132: Amendments relating to Search cases:

The existing provisions of section 132(2) relating to search and seizure provides that authorised search officers may requisition services of police officer or any officer of Central Government to assist him during the search.

The said section is now amended and the authorised person can requisition the services of any person or entity from different walks and strata with the condition that the said person is approved by PCCIT/CCIT/PCIT/CIT,Principal Director General,or the Director General as per the procedure prescribed.

Further, under the existing provisions of section 132(9D), the authorised officer can make a reference to valuation officer u/s 142A.

This secton 132(9D) is now substituted to provide that a reference can also be made to any other person or entity or valuer registered under any law in force as may be approved by PCCIT/CCIT/PDGIT/DGIT for estimating the fair market value of the property in the prescribed manner and submit a report of such reference within 60 days.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

Under section 132 a reference is made to the phrase 'execution of an authorisation for search'. The same was explained by referring to section 153B(2). Due to the amendment by Finance Act,2021, the assessment for search cases are now covered in new section 147, and sections 153A and 153B are no more applicable.

In order to bring the provisions of last authorisation in its ambit as it was provided in section 153B,an explanation is added to section 132.

This amendment is effective from 01.04.2022.

13.8 Section148: Time Limit to file Return U/s.148:

At present, in order to make an assessment or re-assessment or re-computation in section 147, a notice is required to be issued to the assessee u/s. 148 requiring him to furnish within such period, as may be specified in such notice, a return of income under this Act. At present, there is no prescribed time limit under the Act by which

the income tax return shall be filed. Thus, the return of income in response to the notice u/s .148 is required to be filed within the time specified in the notice.

The said section is now amended so that a return in response a notice u/s. 148 shall be furnished within three months from the end of the month in which such notice is isuued, or within such further time as may be allowed by the Assessing Officer on a request made in this behalf by the assessee.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

13.9 Section 149: Time Limit for issuance of Notice U/s.148:

At present, section 149 provides the period of limitation for issuance of notice u/s. 148 for the commensment of proceedgins u/s. 147 of the Act.

A proviso is inserted in section 149 to provide that in cases where a search u/s.132 is initiated, or a search for which the last of the authorisation is executed or requisition is made u/s. 132A, after the 15th March of any financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice u/s. 148 and the notice so issued shall be deemed to have been issued on 31st March of such financial year.

A similar proviso is inserted to provide that in cases where the information deemed to be with the Assessing Officer emanates from a statement recorded or documents impounded under summons or survey, on or before 31st March of a financial year inconsequence of, a search u/s .132 is initiated, or a search for which the last of the authorisation is executed or requisition in made u/s. 132A, after the 15th March of any financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation for issuance of notice u/s. 148 and u/s. 148A(b) and the notice so issued shall be deemed to have been issued on 31st March of such financial year.

This amendment is effective from 1st April, 2023 and shall be applicable from AY 2023-24.

13.10 Sections 135A, 245M, 245R, 250 and 275: Amendments relatingto Faceless Scheme:

The Central Government has undertaken several measures to make various processes faceless by eliminating the person-to-person interface between the tax payer and the department to the extent technologically feasible. Various schemes have been notified and directios have been issued for implementing such schemes. The various notified schemes with their timelimits are given below:

Section	Name of notified scheme	Time limit
135A	e-Verification Scheme, 2021	31.03.2022
245MA	e-Dispute Resolution Scheme, 2022	31.03.2023
245R	e-Advance Ruling Scheme, 2022	31.03.2023
250	Faceless Appeals Scheme, 2021	31.03.2022
274	Faceless Penalty Scheme, 2022	31.03.2022

At present, any amendment or adjustment which may be required in the schemes announced as above cannot be made due to the limitation period specified in the section.

A new proviso is added in all the above sections to enable the Central Government to amend any directions issued under these sections, if it was issued before the limitation period.

These amendments are applicable retrospectively w.e.f. 01.04.2022 for sections 135A, 250 and 274 and from 01.04.2023 for sections 245MA and 245R.

14 OTHER AMENDMENTS:

14.1 Section 155(19): Recomputation of Total Income of Sugar Co-operative Society:

In order to resolve the issue of the sugar co-operatives, a new sub-section (19) is inserted in section 155 to allow the Assessing Officer to re-compute the total income of a sugar mill co-operative and

allow the deduction for sugarcane purchase expenditure that was equal to or less than the Government fixed price. The Assessee needs to apply for re-computation of total income in order to avail deduction. As in the current scenario, the Assessment Order shall pertain to assessment years before 2016-17, the limitation period for four years shall be reckoned from 01.04.2023.

14.2 Section 155(20):

A new sub-section (20) is inserted in section 155 which shall apply when income has been reported in an income tax return u/s. 139 for a specific assessment year and tax was withheld and paid in a later financial year. In such a case, the tax payer can apply in the prescribed Form to the Assessing Officer within two years of the end of the financial year in which the tax was withheld and the Assessing Officer will amend the assessment or the intimation and allow credit for the tax. The provisions of section 154 of the Act will also apply, and the four year limit will be counted from the end of the financial year in which the tax was withheld. The credit for the tax will not be allowed in any other assessment year.

Accordingly, section 244A has also been amended to provide that the interest on refund arising out of the above rectification shall be for the period from the date of the application to the date on which the refund is granted.

14.3 Section 245D: Settlement Commission:

There are various applications pending before the settlement commission regarding the rectification or amendment of mistake apparent from the record. In order to dispose off the pendency and to avoid further litigation, the time limit for amending any order or filing of rectification application which expires on or after 01.02.2021 but before 01.02.2022 has been extended to 30.09.2023.

14.4 Sections 269SS and 269T: Relief to PACS & PCARD:

The Primary Agricualtural Credit Society (PACS) and Primary Co-operative Agricualtural and Rural Development Bank (PCARD) are involved in granting loans and accepting deposits from rural

segments. Sections 269SS and 269T are amended to provide that no penalty under Section 271D shall levid for a deposit accepted under section 269SS by a PCAS or a PCARD from its member or for loan taken from a PCAS or PCARD by its member upto 2 lakh.

Penalty u/s. 271E is amended so that now it shall not be applicable for a loan repaid under section 269T by a PCAS or a PCARD from its member or for loan taken from a PCAS or PCARD by its member upto 2 lakh.

These amendments are effective from 1st April, 2023 and shall be applicable from AY 2023-24.

14.5 Sections 10AA and 155(11A): Amendments related to SEZ units:

SEZ units are allowed deduction of specified percentage of profit from their total income u/s. 10AA. It is now provided that the said deduction shall be available when:

a. Return of income has been filed on or before the due dates specified u/s. 139(1);

b. The proceeds from the sale of goods or provision of services are received in, or brought into India in convertible foreign exchange within six months from the end of the pervious year or within such period as the specified competent authority may allow.

Consequential amendment in S. 155 (11A) is also made allowing the AO to rectify the assessment order u/s. 154 even beyond four years where the export earning is ultimately realized in India by the SEZ unit after the permitted period.

These amendments are effective from 1st April, 2024 and shall be applicable from AY 2024-25.

14.6 Section 80IAC: Deduction to Start-ups:

Eligible start-ups are allowed deduction u/s. 80IAC for three consecutive assessment years out of 10 years at the option of such a start-up. In order to promote the development of start-ups in India and to provide them with a competitive platform, the outer

date for incorporation of a starp-up company shall be 31.03.2024. The deduction u/s. 80IAC shall therefore continue to be available to a start-up if it is incorporated on or before 31.03.2024.

14.7 Section 80G: Removal of JNMF, IGMT & RGF from eligible Funds:

Section 80G lists several intitutions or funds donations to which are eligible for deduction in hands of Donors. The names of Jawaharlal Nehru Memorial Fund, Indira Gandhi Memorial Trust and Rajiv Gandhi Foundation have now been removed from the list of eligible funds. Hence, donations made to these funds on or after 1st April 2023 shall not be eligible for deduction u/s. 80G.

14.8 Section 10(4E): Exemption to Non-resident on income distribution from IBU:

The income of non-residents from the transfer of offshore derivative instruments (ODI) entered into with an IFSC banking unit (IBU) is currently exempt u/s. 10(4E). The IBU makes investments in permissible Indian securities on behalf of the ODI holders, and any income earned on such investments is taxed as capital gains, interest, or dividends u/s. 115AD. However, the exemption u/s 10(4E) only applies to the transfer of ODIs and not to the distribution of income to the non-resident ODI holders, resulting in double taxation. Section 10(4E) is therefore amended to provide an exemption on any income distributed on the offshore derivative instruments entered into with an IBU. This exemption shall apply subject to the condition that the income shall be charged to tax in the hands of the IBU u/s. 115AD. This shall eliminate double taxation and provide equitable tax treatment to non-resident ODI holders.

This amendment is effective fromfrom A.Y.2024-25.

14.9 Section 47(viiad): Extension of Exemption on Transfer on Rrelocation in IFSC:

In order to promote the establishment of entities in IFSC and make such relocation tax-neutral transfer, section 47(viiad) now extends the exemption to any transfer of a capital asset by the original fund to the resultant fund at the time of relocation of the entity to an

IFSC. Thus, such a transfer was not subject to tax under the head capital gains subject to the condition that such a transfer should occur on or before 31.03.2023 which has now been extended to 31.03.2025.

14.10 Sections 2(24)(xviic), 56(2)(xii) and 115UA(3)- Distribution by REIT Funds:

Section 115UA provides in respect of interest and dividend income received by a Business Trust from a special purpose vehicle in case of both REIT and InvIT and rental income in case of REIT. Such income is taxable in the hands of the unit holders and is treated as being of the same nature and proportion as received by the business trust. On the other hand any income distributed by the business trust to the unit holders is exempt from tax in the case of the unit holders and taxable at the business trust level. In order to avoid tax at both the business trust and unit hodlers level, business trust distributes income in the form of repayments of debt. At present, such income does not suffer taxation either in the hands of the business trust or in hands of the unit holder.

Section 56(2)(xii) has been inserted to provide that any amount received by a unit holder from a business trust (that is not exempt u/s. 10(23FC) or 10(23FCA) or 115UA(2)) shall be chargeable as the income of the unit holder. Any such amount received by the unit holder from a business trust towards redemption of unit(s) held by him, the sum so recived shall be reduced from the cost of acquisition of the unit or units to the extent such cost does not exceed the sum received.

Definition of 'income has also been amended by inserting sub-clause (xviic) in section 2(24) to include the sum u/s. 56(2)(xii) in the definition of income

These amendments are effective from 1st April, 2024 and shall be applicable from AY 2024-25.

PART - II

GOODS & SERVICES TAX (GST)
[CA (MS) ARTI SHAH]

1. INTRODUCTION:

Several amendments have been made in the GST Law in the Finance Act, 2023. The amendments have been made in the provisions regarding filing of GST returns, availing of input tax credit, GST refund, GST registration, decriminalization of offences, compounding of offences. Though some of the amendments are in favor of the taxpayer, however, major amendments are revenue friendly.

Effective date of amendments:

The provisions relating to GST amendments will come into effect from the date to be notified by issuance of notification after receipt of presidential assent.

2. MAJOR/IMPORTANT AMENDMENTS:

2.1 Section 10 of CGST Act, 2017: Removal of restriction

At present, the composition taxpayer engaged in making supply of goods is not eligible to supply such goods through electronic commerce operator.

Now, restrictions imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy has been removed by way of amendment in section 10 (2)(d) and section 10(2A)(c).

2.2 Explanation to section 17 (3) of CGST Act, 2017: Restriction on input tax credit

Availment of input tax credit in respect of transactions specified in para 8(a) of Schedule III i.e. 'supply of warehoused goods to any person before clearance for home consumption' is restricted by

treating such transaction as exempt supply by way of adding the same to the explanation to sub section (3) of section 17.

As the said transaction shall now be considered as exempt supply, common input tax credit in proportion to said transaction shall also required to be reversed.

2.3 Section 17(5) of CGST Act, 2017: Blocked credit

Sub section 5 of section 17 (blocked credit) has been amended so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

2.4 Section 37(5) of the CGST Act, 2017: Time limit for filing GSTR 1

A new sub-section (5) in section 37 of the CGST Act is being inserted so as to provide a time limit of three years from due date of filing the details of outward supply for the purpose of filing GSTR 1 for a particular period.

Earlier there was no such time limit for filing GSTR 1.

Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

2.5 Section 39(11) of the CGST Act, 2017: Time limit for filing GSTR 3B

A new sub-section (11) in section 39 of the CGST Act is being inserted so as to provide a time limit of three years from due date of filing the return for the purpose of filing GSTR 3B for a particular period.

Earlier there was no such time limit for filing GSTR 3B.

Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

2.6 Section 44(2) of the CGST Act, 2017: Time limit for filing annual return

A new sub-section (2) in section 44 of the CGST Act is being inserted so as to provide a time limit of three years from due date of filing the return for the purpose of filing GSTR 9 (Annual Return) for a particular period.

Earlier there was no such time limit for filing GSTR 9.

Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

2.7 Section 52(15) of the CGST Act, 2017: Time limit for filing GSTR 8 (return by E-Commerce operator)

A new sub-section (15) in section 52 of the CGST Act is being inserted so as to provide a time limit of three years from due date of filing the statement for the purpose of filing GSTR 8 (Return by Electronic Commerce Operator) for a particular period.

Earlier there was no such time limit for filing GSTR 8.

Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for an operator or a class of operators.

2.8 Section 122(1B) of CGST Act, 2017: Penal provisions for E-Commerce Operators

A new sub-section (1B) in section 122 of the CGST Act is being inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.

The new sub-section is as under:

An electronic commerce operator (ECO) shall be liable for penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved, whichever is higher in following cases:

i. If the ECO allows supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

ii. If the ECO allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply;

iii. If the ECO fails to furnish the correct details in the statement in form GSTR 8 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act.

2.9 Section 132(1) of CGST Act, 2017: Decriminalization of certain offences

Sub-section (1) of section 132 of the CGST Act is being amended so as to decriminalize offences specified in clause (g), (j) and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offences under the said Act from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.

The offences specified in clause g, j and k are as under:

Clause g : a person who obstructs or prevents any officer in the discharge of his duties under this Act;

Clause j: a person who tampers with or destroys any material evidence or documents;

Clause k: a person who fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

2.10 First proviso to sub-section (1) of section 138 of the CGST Act, 2017: No compounding of offences in case of fake invoice

First proviso to sub-section (1) of section 138 of the CGST Act is being amended so as to simplify the language of clause (a), to omit clause (b) and to substitute the clause (c) of said proviso so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act. i.e. no compounding of offences in case of fake invoice

It further seeks to amend sub-section (2) so as to rationalize the amount for compounding of various offences by reducing the minimum amount upto 25% of tax involved and maximum amount upto 100% of tax involved for compounding.

2.11 Section 158A of CGST Act, 2017: Sharing of the information furnished by the registered person

A new section 158A in the CGST Act is being inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

For the purpose of sharing details under sub-section (1), the consent, of the supplier or the recipient as the case may be, shall be obtained.

2.12 Schedule III of the CGST Act, 2017: Retrospective applicability to Para 7, 8 (a) and 8 (b)

Schedule III of the CGST Act is being amended to give retrospective applicability to Para 7, 8 (a) and 8 (b) of the said Schedule, with effect from 01st July, 2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services.

Para 7 states about supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India

Para 8a states about supply of warehoused goods to any person before clearance for home consumption.

Para 8b states about High Sea sales.

It is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019, no refund of such tax paid shall be available.

2.13 Section 2(16) of IGST Act, 2017: Amendment in definition of 'non-taxable online recipient'

The definition of 'non-taxable online recipient' has been amended by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession.

Amended definition: "non-taxable online recipient" means any government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose, located in taxable territory.

Now, the OIDAR service provider located in non-taxable territory shall be taxable for providing such service to unregistered persons located in taxable territory even though the service is availed by the

unregistered person for the purpose of commerce, industry or any other business or profession.

Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST Act i.e. who is required to deduct tax at source shall be treated as unregistered person for the purpose of the said clause.

2.14 Section 2(17) of IGST Act, 2017: Amendment in definition of online information and database access or retrieval services

Amended definition: "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as:

(*i*)	advertising on the internet;
(*ii*)	providing cloud services;
(*iii*)	provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(*iv*)	providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
(*v*)	online supplies of digital content (movies, television shows, music and the like);
(*vi*)	digital data storage; and
(*vii*)	online gaming;

The Government as part of the amendments proposed in the Union budget 2023-24 has broadened the scope of OIDAR services, by removing the term 'essentially automated and involving minimal human intervention' from the definition of OIDAR services. This would essentially mean that even if the services are not totally automated and involve human interactions through online/internet mediums for the rendition of services, the services will get qualified as OIDAR services.

2.15 Proviso to sub-section (8) of section 12 of the IGST Act, 2017:

Proviso to sub-section (8) of section 12 of the IGST Act is being omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

Now the place of supply for transactions mentioned under section 12(8) shall be as under:

The place of supply of services by way of transportation of goods, including by mail or courier to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:

2.16 Omission of sub-section (9) of section 13 of the IGST Act, 2017:

Section 13(9) of the IGST Act provided that the place of supply of services of transportation of goods, where the location of the service provider or the service recipient is outside India, is the place of destination of such goods.

Export freight charged by Indian Shipping Line to Indian exporter is taxable and the place of supply is determined as per Section 12(8) of the IGST Act 2017. But freight charged by Foreign Shipping Line was not taxable as supply by Foreign Shipping Line to Indian exporter for transport of goods to a place outside India (Section 13(9) of IGST Act 2017). Because the place of supply was out of taxable territory so it was not an import of service hence, not liable to GST.

Due to the above reason, Indian exporters were preferring Foreign Shipping Line over India Shipping Line. So there was a need to change the place of supply for such services under section 13 (9) of the IGST Act 2017 from “place of destination of goods” to the “location of the recipient of service”

So, now after the deletion of section 13(9) of the IGST Act 2017 both Indian Shipping Lines and Foreign Shipping Lines have identical liability to pay or to not pay IGST on the transportation of goods by a vessel from India to outside India and vice versa.

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