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SIGNIFICANT CHANGES IN TAX LAWS 2024

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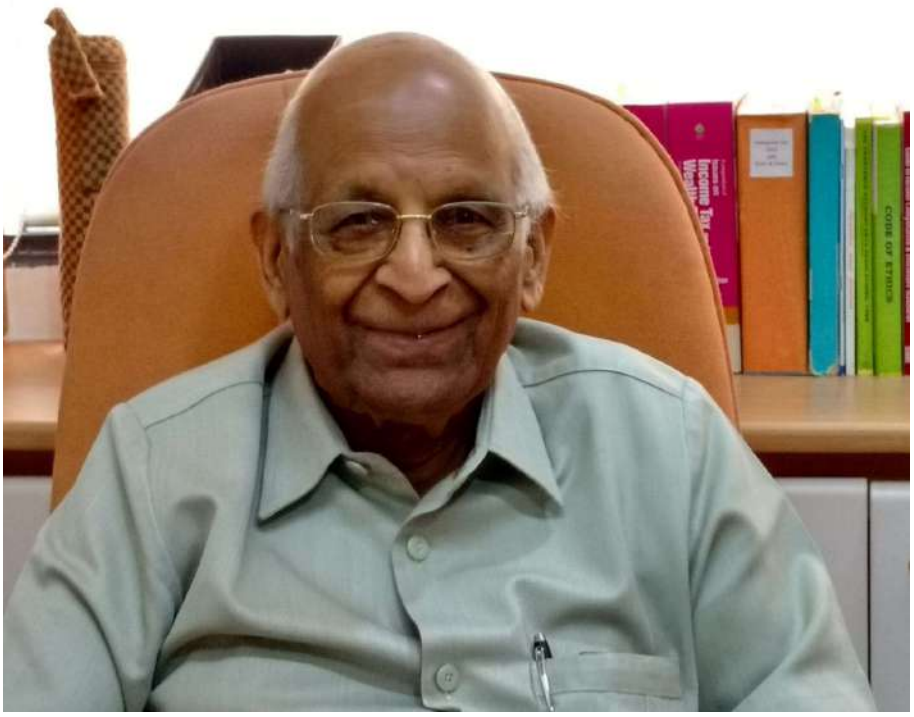

LATE SHRI P.N. SHAH (PRADYUMNABHAI)

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PART – I

THE FINANCE (NO.2) ACT 2024
[CA (MRS.) ARTI SHAH AND CA DALPAT SHAH]

1. BACKGROUND:

Smt. Nirmala Sitharaman, our Finance Minister, presented her 6th Fiscal Budget in the Parliament on 23rd July, 2024. In her Budget speech, she has set up Budget Theme and Budget Priorities. In the Budget Theme, she has put focus on employment, skilling, MSMEs, and the middle class whereas; in the Budget Priorities, she has envisaged sustained efforts on the following 9 priorities for generating ample opportunities for all.

1) Productivity and resilience in Agriculture
2) Employment & Skilling
3) Inclusive Human Resource Development and Social Justice
4) Manufacturing & Services
5) Urban Development
6) Energy Security
7) Infrastructure
8) Innovation, Research & Development and
9) Next Generation Reforms

The Finance Minister also introduced the Finance Bill, 2024, containing 99 sections amending various sections of the Income Tax Act, 1961 (Act). The Finance Minister has also given an indication of comprehensive review of the Income tax Act,1961 in order to make the Act concise, lucid, easy to read and understand which shall reduce disputes and litigation. The Finance Act, 2024 has received the assent of the President on 16th August,2024. In this Article, some of the important amendments in the Act are discussed.

2. RATES OF TAXES:

2.1 There is no change in tax slab rates for Assessment Year 2025-26 (FY 2024-25) in cases of Individual, HUF, AOP, BOI, Co-Operative Society, Firms, etc. as per Old Regime. Similarly, there is no change in tax slab rates in cases of Company and Local Authority for Assessment Year 2025-26.

2.2 Rates for Companies

There is no change in the rates of tax (including surcharge and cess) in the case of domestic companies for Assessment Year 2025-26. However, the tax rates for foreign companies have been reduced. The rates of taxes are as under:

Types of Companies	**Income not exceeding Rs.1 Crore**		**Income exceeding Rs.1 Crore and upto Rs.10 Crore**		**Income above Rs.10 Crore**	
	Tax rate (normal)	Tax rate (MAT)	Tax rate (normal)	Tax rate (MAT)	Tax rate (normal)	Tax rate (MAT)
Domestic Company with turnover up to Rs.400 crore in Assessment Year 2022-23 and **under Old Regime**	25%	15%	25%*	15%*	25%*	15%
Other domestic company	30%	15%	30%*	15%*	30%*	15%
Demestic Company opting for **New Regime** of tax as per section 115BAA	22%**	Nil	22%**	Nil	22%**	Nil
New domestic manufacturing companies **opting for New Regime** of tax as per section 115BAB	15%**	Nil	15%**	Nil	15%**	Nil
Foreign Company	35%	15%	35%***	15%***	35%***	15%***

Applicable Surcharge

* surcharge at the rate of 7% in case of income from Rs.1 crore upto Rs.10 crore and 12% in case of income above Rs.10 crore

** surcharge at the rate of 10%.

*** surcharge at the rate of 2% in case of income from Rs.1 crore upto Rs.10 crore and 5% in case of income above Rs.10 crore

3. INCOME FROM SALARY:

3.1. Increase in the limit of Standard Deduction under New Regime Tax.

Section 16(ia) provides standard deductions of Rs.50,000/- or the amount of the salary, whichever is less under both the Regime of Tax. The same has now been increased from Rs. 50,000/- to Rs. 75,000 for individuals filing income tax returns under the New Regime of Tax u/s. 115BAC(1A).

This amendment is applicable w.e.f. Assessment Year 2025-26.

3.2 Presently, individuals are eligible to claim deduction for contributions made by them towards the pension scheme notified by Central Government under section 80CCD. The employees of Central/State Government are allowed deduction of an amount contributed by their employers subject to the limit of 14% of salary under both the Tax Regimes. In case of other employees, the limit for deduction is restricted to 10% of salary for the amount contributed by their employers.

The deduction limit in case of other employees is now enhanced to 14% of salary if such individual files the return of income under the New Regime of Tax u/s. 115BAC(1A).

This amendment is applicable w.e.f. Assessment Year 2025-26.

4. INCOME FROM HOUSE PROPERTY:

At present, any rental income from let out of a residential house is taxed under the head 'Income from House Property' u/s. 22 of the Act. However, instances have been observed by the Government that the rental income from residential property is offered to tax under the head 'Profits and Gains from Business or Profession'. Now, a new Explanation 3 has been inserted in section 28 clarifying that rental income from any residential property or part of such property earned by the owner of the property shall be chargeable under the head 'Income from House Property' and not 'Profits and Gains from Business or Profession'.

The Finance Minister has amended section 28 for the reason that :

"It has been observed that some taxpayers are reporting their rental income generated by letting out of the house property, under the head 'Profits and gains of business or profession' in place of the head 'Income from house property'. Accordingly, they are reducing their tax liability substantially by showing house property income under the wrong head of income."

This amendment has clarified that an assessee who is holding a residential house as stock-in- trade or using it in its business but has let out during the year, the rental income shall be assessed under the head ''Income from House Property' U/sec. 22. Consequently, as per section 24 of the Act, property/ municipal taxes paid for the said property can be claimed as a deduction against the rent income. Hence, no other expenditure (except 30% standard deduction and interest on borrowed loan) in relation to the let-out residential property can be claimed as business expenditure.

This amendment is with effect from Assessment Year 2025-26.

5. INCOME FROM BUSINESS:

5.1. Section 36(1)(iva)- Contribution to Pension Scheme

Section 36(1)(iva) provides that any contribution by an employer towards Pension scheme referred to U/sec 80CCD shall be allowed as business expenses to the extent of 10% of the salary of the employee. The limit of 10% is now increased to 14% w.e.f. 01.04.2025 (Assessment Year 2025–26).

5.2. Section 37(1)

Explanation 1 to Section 37 does not allow any expenditure incurred which is an offence under or prohibited by any law in India or outside India including expenditure to compound such offence.

Further, Explanation 3 clarifies that the expenditure incurred by an assessee for any purpose which is can offence or which is prohibited by law for the purposes of Explanation 1.

A new clause (iv) has been inserted to Explanation 3 to Section 37(1) whereby any expenditure to settle proceedings initiated in relation to the contravention under any law as may be notified by the Central Government in this regard will not be allowed as a deduction. Therefore, in addition to the expenditure for any purpose which is an offence, even expenditure to settle the proceedings initiated in relation to contravention of laws (to be notified) will be disallowed.

This amendment is applicable w.e.f. Assessment Year 2025-26.

5.3. Remuneration to Partners u/s. 40(b)

A Partnership firm can claim remuneration paid or payable to its partners subject to the limit as provided u/s. 40(b). This limit has been increased with effect from Assessment year 2025- 26 which is as under:

	Till Assessment Year 2024-25	Remuneration Payable	w.e.f. Aessment Year 2025-26	Remuneration Payable
(a)	On the first Rs. 3 lakh of the book profit or in case of a loss.	Rs.1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more	On the first Rs. 6 lakh of the book profit or in case of a loss.	**Rs.3,00,000** or at the rate of 90 per cent of the book-profit, whichever is more
(b)	on the balance of the book-profit	at the rate of 60 per cent	on the balance of the book-profit	at the rate of 60 per cent

A Partnership Firm/LLP may have to modify clause on Remuneration payable to its partners in their Deed of Partnership to give effect of this amendment.

5.4. Deductions U/sec 43D in case of public financial institutions, public company

Section 43D of the Act provides any income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed by RBI shall be chargeable to tax in the hands of various public financial institutions and public companies when the interest income is credited to profit & loss account or received, whichever is earlier.

This section is now amended w.e.f. 01.04.2025 (Assessment Year 2025-26) whereby public companies will not be allowed to take benefit of this special provision. Thus, the interest income in relation to specified categories of bad or doubtful debt will now be chargeable to tax in case of public companies on accrual basis.

This amendment is applicable w.e.f. effect from Assessment Year 2025-26.

6. CAPITAL GAIN:

6.1. Reduction in Period of Holding in case of Short term capital asset

Section 2(42A) defines a capital asset as "Short Term Capital Asset' under section 2(42A). Now, with effect from 23rd July 2024, the period of holding of a capital asset (other than a listed security and unit or unit of UTI) has been reduced to 24 months from 36 months. Accordingly, if such capital asset is sold on or after 24th July 2024 and not held by the assessee for more than 24 months immediately before the date of transfer shall be treated as short term capital asset.

There has been no change in the period of holding for capital assets being the listed securities and units or units of UTI which are treated as short term capital assets if held for not more than 12 months.

6.2. Transaction not regarded as transfer

At present, clause (iii) of section 47 of the Act provides that any transfer of a capital asset by any assessee under gift or will or irrevocable trust is not regarded as a taxable transfer. This clause is now substituted by a new clause whereby, w.e.f. 1st April 2025 (Assessment Year 2025-26), this benefit of tax exemption is restricted in cases where the transfer of capital assets is made by an individual or HUF only.

6.3. No benefit of indexation of cost

Section 48 has been amended withdrawing the benefit of indexation of cost of acquisition or improvement on transfer of a long term capital asset on or after 23.07.2024.

It is to be noted that in the Finance Bill (No. 2) 2024, which was presented before the Lok Sabha on 07th August 2024, section 112 of the Act was further amended whereby an option if provided to a resident individual or HUF to claim benefit of indexation on transfer of land, building or both which was acquired before 23rd July 2024. Accordingly, it is provided that to compute long term capital gain under section 112 of the Act on transfer of land, building or both which was acquired before 23rd July,2024, a

resident individual or H.U.F. shall be able to choose one option from the following:

(a) shall be eligible to deduct indexed cost of acquisition/improvement as provided U/sec 48 of the Act to derive long term capital gain on transfer of a land, building or both which was acquired before 23rd July,2024 and pay tax @20% on the same as provided under section 112 of the Act.

OR

(b) shall continue to pay tax at 12.5% on long term capital gain on transfer of land, building or both which was acquired after 23rd July 2024 without claiming the benefit of indexation.

It may be noted that the amendment is under section 112 which provides tax computation on long term capital gain. Therefore, the assessee shall not be eligible to set-off any long term capital loss after claim of indexed cost against long term capital gain of another capital asset. Similarly, such loss can also not be carried forward to next assessment year.

However, a clarification from C.B.D.T. is required on this aspect.

It may be noted that the benefit of indexation is available to resident individual and H.U.F. only. Thus, the other assesses such as firms, LLPs, domestic companies, non-residents, etc. shall have to pay tax at 12.5% on the long term capital gain (where transfer takes place on or after 23rd July 2024) without an option to claim the benefit of indexation on cost.

It may be noted that other provisions of substitution of FMV as on 01.04.2001 in case of a capital asset acquired before that date and deductions U/sec 54/54F/54EC shall continue on transfer of a long term capital asset on or after 23.07.2024.

6.4. A new section 50AA was inserted by the Finance Act, 2023 for computation of capital gains on transfer of unit of a Specified Mutual Fund acquired on or after 01.04.2023 or Market Linked Debenture shall be treated as short term capital gain irrespective of its period of holding.

Now, this section has been amended to include that the transfer/redemption/ maturity of an unlisted bond or an unlisted

debenture on or after 23rd July 2024 shall be treated as short term capital gain irrespective of period of holding.

For the purpose of this section, the term 'specified mutual fund' is defined as investment of such fund in the equity shares of domestic companies does not exceed 35% of its total proceeds. Now this condition of investment has been amended w.e.f. 01.04.2026 (Assessment Year 2026-27). Accordingly, the revised meaning of 'specified mutual fund' is:

(i) a Mutual Fund whose investment in the debt and money market instrument should be minimum 65% of its total proceeds ;or
(ii) a fund which invests minimum 65% of its total proceed in units of other fund referred to in (i) above ,i.e. Fund of Fund (units of a Debt or Liquid Fund).

Impact of this amendment shall be that transfer of a fund whose investments in debt or money market instruments is less than 65% of its total proceeds then same will be out of application of section 50AA. Accordingly, assessee shall be liable to pay long term capital gain tax in case the same is a long term capital asset.

6.5. Cost of Acquisition of unlisted shares transfer under IPO

Section 55(2)(ac) provides benefit of grand fathering cost being FMV as on 31.01.2018 on transfer of a share listed on a recognized stock exchange being a long term capital asset which was acquired before 01.02.2018. However, clause (iii) of the Explanation (a) defines FMV for the purpose of this section.

Now a new clause (AA) is inserted to clause (a)(iii) to the Explanation with retrospective effective from 1st April 2018 which includes transfer of an unlisted shares held as on 31.01.2018 under the offer for sale under an initial public offer (IPO). Accordingly, in a case where the capital asset is an equity share in a company which is not listed on a recognised stock exchange as on the 31st day of January, 2018, or which became the property of the assessee in consideration of share which is not listed on such exchange as on the 31st day of January, 2018 by way of transaction not regarded as transfer under section 47, but listed on such exchange subsequent to the date of transfer, where such transfer is in respect of

sale of unlisted equity shares under an offer for sale to the public included in an initial public offer, "fair market value" would mean an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the financial year 2017-18 bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the first day of April, 2001, whichever is later.

6.6. Increase in the limit of deduction from Long term Capital Gain U/sec 112A

Section 112A(2) provides an exemption of maximum Rs. 1 Lakh against LTCG on transfer of equity share in a company or a unit of an equity-oriented fund or a unit of a business trust on which securities transaction tax is paid. This limit of exemption has now been increased to Rs. 1.25 Lakhs from Assessment Year 2025-26.

6.7. Taxation on buy-back of shares

At present a company is liable to pay tax at the rate of 20% plus applicable surcharge and education cess on amount distributed to its shareholders on buy-back of its own shares U/sec 115QA and the shareholder is exempted from tax U/sec 10(34A) on any income arising on buy-back of shares by a company of the Act although section 46A of the Act provides that the difference between the consideration received and the cost of acquisition shall be treated as capital gain.

Now these provisions are amended effective from 1st day of October 2024 which is as under:

i) The exemption granted U/sec 10(34A) of the Act has been withdrawn on Buy-Back of Shares by a company on or after 1st October 2024. Accordingly, any income arising to the shareholder on buy-back shall be taxable under the Act.

ii) New clause (f) to section 2(22) has been inserted providing that any payment by a company to its shareholder on buy-back of shares in accordance with provisions of section 668 of the Companies Act 2013 shall be taxed as dividend income (deemed dividend).

iii) To avoid double taxation of consideration, a proviso to section 46A has been inserted which is effective from 1st day of October 2024, which provides that for the purpose of computation of capital gain under section 46A , the consideration shall be deemed to be 'Nil' as

the same shall be taxed U/sec 2(22)(f) of the Act as dividend income. Consequently, there will be a capital loss U/sec 46A which can be set-off against other capital gain as provided U/sec 70 or U/sec 71 and any unabsorbed capital losses can be carry forward to next eight years.

So, a company shall be liable to pay tax @20% on the buy-back of shares on or before 30th September, 2024 and a shareholder shall be exempted from tax under section 10(34A) on the consideration received or receivable of such buy-back.

The amended provisions shall be beneficial to those shareholders who are in the tax bracket of less than 20%.

6.8. Tax Rate on Capital Gain w.e.f. 23.07.2024:

	Nature of Income	Section	Tax Rate Upto 23.07.2024	Tax Rate w.e.f. 23.07.2024
1	STCG on transfer of listed securities on which STT paid	111A	15%	20%
2	<u>LTCG</u> - on transfer of listed securities on which STT paid - on transfer of other assets - on transfer of unlisted securities by an NRI	112A 112(1)(c)(i)/(ii) 112(1)(c)(iii)	 10% 20% 10%	 12.5% 12.5% 12.5%
3	LTCG arising to Offshore Fund on transfer of units purchased in foreign currency	115AB	10%	12.5%
4	LTCG arising to NRI on transfer of bonds or GDRs purchased in foreign currency	115AC	10%	12.5%

5	LTCG arising to Resident on transfer of **bonds or GDRs**	115ACA	10%	12.5%
6	STCG under section 111A arising to Specified Funds/FIIs on transfer of securities	115AD	15%	20%
7	LTCG under section 112A arising to Specified Funds/FIIs on transfer of securities	115AD	10%	12.5%
8	LTCG arising to NRI on transfer of foreign exchange asset	115E	10%	12.5%

7. INCOME FROM OTHER SOURCES:

7.1 At present, the clause (viib) of section 56(2) provides that in case of company in which public are not substantially interested, i.e. other than a Government company or a company registered under section 25 of the Companies Act 1956, receives consideration from any person for issue of shares in excess of its fair market value shall be chargeable to income tax under head 'income from other source'. This clause is now omitted with effect from 01.04.2025 (Assessment Year 2025 – 26).

It may be noted that no such amendment has been made in section 56(2)(x) and therefore, any excess amount might get added U/sec 56(2)(x) in the hands of such issuer company.

7.2 Deduction under Section 57.

Section 57(i) has been amended to provide that no deduction of commission or remuneration shall be allowed in connection to such dividend income as referred u/s. 2(22)(f) i.e. deemed dividend on buyback of shares. This amendment shall be effective from 01.10.2024.

7.3 Increase in limit of Deduction against Family Pension

Section 57(iia) provides deduction of 33.33% or Rs. 15,000/-, whichever is less, from family pension received by a person. This clause is now amended, w.e.f. 1st April 2025 (Assessment Year 2025-26), whereby it is

provided that in case of a person whose tax is computed u/s. 115BAC(1A)(ii), i.e. under the new regime of tax, the deduction shall increase to maximum amount of Rs. 25,000/-.

8. CHARITABLE TRUSTS:

8.1. Rationalisation of exemption provisions for Charitable Trusts/Institutions:

Amendments under Finance (No.2) Act, 2024, clarifies intention to for gradual merger of exemption provisions for charitable trusts/institutions, presently available under the First Regime, with the exemption available under the Second Regime. The two main regimes providing exemption for trusts/institutions/funds are as under:

(i) The First Regime relates to exemption under the provisions of sub-clause(s) (iv), (v), (vi) or (via) of clause (23C) of section 10 of the I.T. Act, 1961.

(ii) The Second Regime relates to exemption under the provisions of sections 11 to 13 of the I.T. Act, 1961.

The provisions relating to respective regimes lay down the procedure for getting approval/registration, the conditions subject to which approval/ registration shall be granted or withdrawn etc.

Amendments made under Finance (No.2) Act, 2024 is step forward in direction of simplification of administrative procedures and compliances, and with that view it is proposed that the trusts/ institutions/funds coming under the First Regime be gradually transferred and included in the Second Regime.

The amendments to simplify the procedure are as under :

i) Applications, pertaining to First Regime, seeking approval or provisional approval under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and the **applications which have been filed on or after 1st October,2024, shall not be considered**.

ii) However, applications under first regime filed before 1st October,2024, and which are pending would be processed and considered under the existing provisions of the first regime itself.

iii) Approved trusts/institutions/funds would continue to get the benefit of exemption, as per the provisions of sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 upto the end of the period for which approval granted is valid.

iv) Trusts/institutions/funds would be eligible to apply for registration, subsequently, under the Second Regime and necessary amendments in section 12A have been made accordingly.

8.2. Section 11(7)- Option to Claim Exemption

Section 11(7) provides that where a trust or an institution has been granted registration under section 12AA or section 12AB or has obtained registration under section 12A then exemption under section 10 shall not be available to such Trust or institution except that under section 10(1),10(23C) and 10(46) and such registration shall become inoperative from the date on which the trust or institution is approved under section 10(23C) or section 10(46).

Now this section is amended by inserting approval under section 10(23EC) and section 10(46A) also. Corresponding amendment has been made in the second Proviso to section 11(7) to make registration operative under section 12AA/12AB.

This amendment is applicable w.e.f. Assessment Year 2025-26.

8.3. Condonation of delay in filing application for registration by Trusts/Institutions/Funds under section 12A

Section 12A(1)(ac) provides for time limit to apply for registration of a trust or institution under section 12A. In case a trust/institution/fund is unable to apply within time specified, it may become liable to tax on accreted income as per provisions of Chapter XII-EB of the Act. A situation of permanent exit of trust/institution/fund from the exemption regime may also arise. A Proviso has been inserted providing that any delay in filing an application for such registration may be condoned by the Pr.C.I.T./C.I.T. on the ground of a reasonable cause for such delay and such application shall be deemed to have been filed within due time.

This amendment is applicable w.e.f. 1st October ,2024.

8.4. Section 12AB Timelines for Approval of Registration under section 12AB/80G

Section 12AB(3) provides time limit to pass an order of approval or rejection of an application for registration of a Trist or institution by Pr.CIT/CIT within the time limit of 6 months from the end of month of such application made.

Now, this section 12AB(3) is amended providing time limit to pass such an order as under:

(*i*) within 3months from the end of the month in which the application was received for registration for a period of 5 years ;

(*ii*) within 6 months from the end of the quarter in which the application for registration was received under section 12A(1)(ac)(ii)/(iii)(iv)/(v) or (vi)(B)

This amendment is applicable w.e.f. 1st October, 2024.

8.5. Section 12AC Merger of charitable trusts or institutions

A new section 12AC has been inserted providing merger of Charitable Trusts/Institution . It provides that any trust or institution registered under section 12AB or approved under section 10(23C)(iv)/(v)/(vi)(via) can merge with another trust or institution. It is provided that on such merger, provisions of section 115TD, shall not be applicable subject to fulfilment of following conditions:–

(*a*) the other trust or institution has same or similar objects;

(*b*) the other trust or institution is registered under section 12AA or 12AB or approved under section 10(23C)(iv)/(v)/(vi)(via); and

(*c*) the said merger fulfils such conditions as may be prescribed.

This new section will facilitate other small Trusts who has to comply with statutory requirements of audit, tax return filing, charity commissioner compliances, etc. although are non-operative due to paucity of funds or lack of administration.

This amendment is applicable w.e.f. Assessment Year 2025-26.

8.6. Section 13(1)(d) - Exception to Mode of Investments U/sec 11(5)

Clause (d) of sub-section (1) of section 13 provides that a Charitable Trust/Institution shall not be eligible to claim exemption under section 11 or section 12 if for any period during the previous year, any funds of the trust or institution are, inter alia, invested or deposited otherwise than in any one or more of the forms or modes specified in section 11(5).However, certain exceptions to the same are provided in the First Proviso to said clause. A new clause (iv) in the first proviso to section 13(1)(d) has been inserted which allows exemption under section 11 or section 12 even though the investments are in below mentioned modes:

i. any assets form part of the corpus as on the 1st day of June, 1973;
ii. equity shares of a public company held as part of the corpus as on the 1st day of June, 1998 with any accretion to such shares by issue of bonus shares;
iii. any debentures held before the 1st day of March, 1983; or
iv. any voluntary contributions received and maintained in the form of jewellery, furniture or any other article as notified by the CBDT.

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

Section 92CA(2A) provides that, if during the course of assessment proceedings, the Transfer Pricing Officer ('TPO') notices any international transaction which has not been referred to him by the Assessing Officer, he can determine the Arm's Length Pricing ('ALP') of such transaction.

Now, this provision is amended to include 'Specified Domestic Transactions' ('SDT') within its scope. Accordingly, the TPO can determine ALP of a SDT which has not been referred to him by the AO but is noticed by him during the TP assessment proceedings.

This amendment is applicable w.e.f. Assessment Year 2025-26.

9.1. Non Applicability of Section 94B to Finance Companies at IFSC

Section 94B provides limitation of interest deduction in certain cases with exception to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance or such class of NBFC as may be notified by the Central Government. Now this section is amended to also include a finance Company located in any IFSC

which satisfies such conditions and carries on activities as may be prescribed to whom the limitation of interest deduction under section 94B shall not be applicable.

This amendment is applicable w.e.f. Assessment Year 2025-26.

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

10.1 Section 192(2B): Section 192(2B) provides that an employer shall consider details provided by his employee in regard to income chargeable under other heads of income and TDS deducted thereon and loss under the head 'Income from House Property' while deducting TDS on payment of salary to such employee.

This sub-section (2B) has been amended providing that an employer shall also consider details of TCS collected from employee while deducting TDS on salary. So, this amendment shall reduce the TDS deductible from salary in the case of an employee from whom TCS is collected by bank, etc. while making foreign remittance under LRS such as for foreign tour, education fees, etc., which otherwise could have been claimed while filing his income tax return only.

This amendment is w.e.f. 1st October, 2024.

10.2. Section 193: Clause (iv) to the Proviso to Section 193 provides that TDS shall be deducted @10% on interest payable exceeding Rs.10,000 on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018 during the financial year . This clause (iv) has been amended to include that tax shall be deducted on interest payable in excess of Rs.10,000 on Floating Rate Savings Bonds, 2020 (Taxable) or any other notified security of the Central or State Government.

This amendment is applicable w.e.f. 1st October, 2024.

10.3. Section 194C : Section 194C provides to deduct TDS on payment to a Contractor for carrying out any work. The term 'work' is defined under Clause (iv) in the Explanation to Section 194C but excludes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate,

being a person placed similarly in relation to such customer. Now, this exclusion has been amended to include any payments referred to in section 194J(1) i.e. for professional services, technical services, commission to directors not covered u/s. 192, etc.

This amendment is applicable w.e.f. 1st October,2024.

10.4. Section 194-IA: A buyer on transfer of an immovable property other than an agricultural land, if the consideration for the transaction is Rs. 50 Lakhs or more, shall deduct TDS @1% of the higher of stamp duty value or consideration payable. Now, a Proviso to sub-section (2) is added to clarify that where there is more than one transferor or transferee in respect of an immovable property, then such consideration shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the tranferors for transfer of such immovable property.

This amendment is applicable w.e.f. 1st October,2024.

10.5. Section 194T: TDS on payment of Remuneration by Firm/LLP to Partners
A new section 194T has been inserted to provide that a Firm/LLP shall deduct TDS @10% on payment of salary, remuneration, commission, bonus or interest in aggregate exceeding Rs. 20,000 during the financial year, to a partner of the firm/LLP at the time of credit or payment which ever is earlier.

It may be noted that any non-deduction or non-deposit of such TDS may result into disallowance of such salary, remuneration, etc. under section 40(a)(ia). This amendment shall have practical difficulty in deduction of TDS as Firm/LLP provides remuneration to its partners as computed under section 40(b) on finalization of its accounts/audit which usually happens after 31st March of the financial year and therefore, may result into interest/penalty on delayed payment of TDS under this new section.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.6. Section 194Q: Section 197 is amended providing that a seller of goods who is a deductee of tax at source under section 194Q can also apply for lower deduction of tax at source**.**

10.7 Section 196B: Section 196B provides to deduct TDS @ 10% on long-term capital gains arising on transfer of units referred to in section 115AB, payable to an Offshore Fund. The rate of TDS has been increased to 12.5% on transfer of such units on or after 23rd July,2024.

10.8. Section 196C: Similar amendment is made increasing the rate of TDS @ 12.5% from 10% on long-term capital gains arising on transfer of bond or Global Depository Receipts (GDR) referred to in section 115AC which takes place on or after 23rd July,2024.

10.9. Section 198: Section 198 provides that TDS deducted under the provisions of Chapter XVII-B shall be deemed to be income received by an assessee. Now this section is amended by inclusion of income tax paid outside India, by way of deduction, in respect of which an assessee is allowed a credit against the tax payable shall be also be deemed to be an income received.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.10. Section 206C(1F): Currently, a seller of a motor vehicle is required to collect TCS @ 1% on sale consideration in excess of Rs. 10 Lakhs. Now, a seller of any other goods as notified by the CBDT shall also collect TCS @ 1% on sale consideration in excess of Rs. 10 Lakhs.

This amendment is applicable w.e.f. 1st January ,2025.

10.11 Time Limit to Rectify TDS/TCS Statement

Presently, there is no time limit provided under section 200 or under section 206C to file correction statement of TDS or TCS respectively . Now a time limit has been provided to file a correction or rectification statement of TDS or TCS within 6 years from the end of the financial year u/s. 200(3) and 206C(3) respectively.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.12 Credit for TCS of Any Other Person

Section 206C(4) provides that credit of TCS collected from a person shall be given to such person only. Now this sub-section has been amended to also include 'any other person eligible for credit '. So, in case of TCS

collected under the PAN of a minor can be claimed by the parent. However, a clarification from the CBDT is required in regard to who shall be considered 'any other person' for the purpose of this section.

This amendment is applicable w.e.f. 1st January, 2025.

10.13. Interest for delayed payment of TCS

Section 206C(7) provides that a person responsible to collect TCS fails to collect the same or fails to deposit the same after collection, shall be liable to pay simple interest at the rate of 1% per month. Now the rate of interest is increased to 1.5% for failure to deposit the collected TCS.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.14 Time Limit to pass Order under section 201(1)

Section 201(3) provides a time limit to pass an order under section 201(1) for default in deduction or payment of TDS .The time limit to pass such order has been reduced to 6 years from 7 years from the end of financial year of such default.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.15 Time Limit to pass Order under section 206C(6A)

A new sub-section (7A) has been inserted to section 206C providing that an order under section 206C(6A) in regard to default in collection of TCS shall be passed within 6 years from the end of financial year of such default or 2 years from the end of financial year in which a correction statement is filed, whichever is earlier.

This amendment is applicable w.e.f. Assessment Year 2025-26.

10.16 TCS at Nil or Lower Rate on Specified Transaction

A new sub-section (12) in section 206C is inserted, which provides that on specified transactions to be notified by the CBDT, TCS shall be collected at Nil or lower rate.

This amendment is applicable w.e.f. 1st October, 2024.

10.17 On the under mentioned nature of payment, the rate of TDS has been reduced w.e.f. **1st October, 2024**

Section	Nature of Payment	Old Rate of TDS till 30.09.2024	**Revised rate of TDS w.e.f. 01.10.2024**
194DA	Payment in respect Life Insurance Policy	5%	2%
194F	Payment on repurchase of units under Equity Linked Savings Scheme by Mutual Fund or UTI	20%	Section omitted
194G	Commission on sale of lottery tickets	5%	2%
194H	Commission or brokerage	5%	2%
194IB	Payment of Rent by certain individuals/ HUF	5%	2%
194M	Payment of certain sums by certain individuals or HUF	5%	2%
194O	Payment of certain sums by e-commerce operator to e-commerce participant	1%	0.1%

11. PENALTIES & PROSECUTION:

11.1. Section 271FAA and Section 273B: Penalty for furnishing inaccurate statement under section 285BA

Section 271FAA is a penalty provision for furnishment of inaccurate particulars of financial transactions or reportable account as provided under section 285BA. Sub-section(1) is now substituted providing that Penalty shall be leviable of Rs. 50,000 for:

(a) Providing inaccurate information in the statement or fails to furnish correct information within the specified time under section 285BA(*6*);

(b) Failure to comply with the due diligence requirement prescribed under section 285BA(*7)*

Section 273B provides exemption from levy of penalty under various sections. Now, penalty under section 271FAA is also inserted under these sections of exemption. Accordingly, by virtue of section 273B, no penalty can be leviable under section 271FAA if the person proves that there was a reasonable cause of failure in furnishment of inaccurate particulars of financial transactions or reportable account.

This amendment is applicable w.e.f. 1st October, 2024.

11.2. Sec 271GC A new section 271GC is inserted providing to levy penalty on failure to furnish statement as prescribed under section 285 by a non-resident having liaison office in India, within 60 days from end of financial year. The penalty shall be –

i. Rs.1,000 per day if the period of failure does not exceed 3 months; or
ii. Rs.1 lakh if failure is beyond 3 months.

This amendment is applicable w.e.f. Assessment Year 2025-26.

11.3. Section 271H: This section provides exemption from penalty in case the statement of TDS/TCS is furnished before expiry of 1 year from the prescribed time. Now this time limit is reduced to 1 month only.
This amendment is applicable w.e.f. Assessment Year 2025-26.

11.4. **Section 276B:** This section provides that in case of a failure to pay the amount of TDS under Chapter XVII-B by a person, then he shall be punishable with imprisonment of for a period of minimum 3 months to maximum 7 seven years and with fine.

Now a Proviso is inserted providing that no such imprisonment or fine shall be levied if the person has deposited the due amount of TDS within the prescribed time for filing of respective statement under section 200(3).

It may be noted that such relief has not been given in respect of failure to deposit TCS under section 276BB.

This amendment is applicable w.e.f. 1st October, 2024.

12. ASSESSMENTS AND APPEALS:

12.1. Reassessment

Provisions of section 148 and 148A relating to reassessment proceedings are amended with effect from 01.09.2024. It may be noted that any notices issued on or before 31.08.2024 u/s. 148 or 148A shall continue to

be governed by the provisions of section 148/148A before the amendment. The amended provisions are discussed here under:

- **Issuance of notice under section 148:**
  It is now provided that notice under section 148(1) shall be issued to the assessee along with a copy of order passed under section 148A(3) requiring him to furnish the return of income within a specified period, not exceeding three months from the end of the month in which notice is issued.

  (i) The return filed within the specified period shall be considered as return filed u/s 139(1) and the return filed after the specified period shall not be considered a as a return filed u/s 139(1).

  (ii) No such notice shall be issued unless the Assessing Officer has information in regard to escapement of income for therelevant assessment year.

  (iii) No such notice shall be issued without prior approval of the specified authority u/s 151 in the case the Assessing Officer has information under the scheme notified u/s 135A.

  (iv) For the purpose of section 148 and 148A, under following cases, income can be considered as has escaped assessment :

  a. Any information in accordance with risk management strategies formulated by CBDT; or
  b. Any Audit Objection in regard to assessment has not been made in accordance with the provisions of Act; or
  c. Any information received under the Agreement (DTAA/DTR) as provided under section 90 or 90A; or
  d. Any information available to assessing officer under the notified scheme under section 135A; or
  e. Any information which requires assessment in consequence of the order of a Tribunal or a Court; or
  f. Any information emanating from survey conducted by u/s 133A other than survey for verification of TDS/TCS compliances u/s 133A(2A) on or after 1st day September 2024.

- **Procedure before issuance of notice under section 148A**.
  (i) The Assessing Officer having information of escapement of income shall before issuing notice under section 148 provide an opportunity of hearing to such assessee by serving show cause notice accompanied by the information of escapement of income for relevant assessment order.
  (ii) On receipt of such notice assessee may furnish his reply within the such period, as may be specified in the notice.
  (iii) With this amendment, the minimum period of 7 days and maximum period of 30 days to reply has been substituted by 'specified time' in the notice.
  (iv) The Assessing Officer shall pass an order u/s 148A with prior approval of specified authority based on material available on record and reply furnished by the assessee determining whether or not it is a fit case of issuance of notice under section 148.
  (v) The assessing officer shall not follow the procedure under section 148A in the case where he has received information under the scheme notified u/s 135A.
  (vi) Specified Authority is defined u/s 151 shall be Additional Commissioner/ Director or Joint Commissioner/Director.

- **Time Limit for Issuance of Notice - Section 149**
  Section 149 provides time limit for issuance of notice . The said section has been substituted w.e.f. 01.09.2024 which provides that :

  (i) No notice u/s 148 shall be issued from end of relevant assessment year:
    (a) If 3 years and 3 months from the end of the relevant assessment year, have elapsed unless the case fall under clause (b);
    (b) if 3 years and 3 months but not more than 5 years and 3 months have elapsed from the end of the relevant assessment year, unless the Assessing Officer is in possession of books of accounts or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income

chargeable to tax has escaped assessment is or is likely to amount to Rs. 50 Lakhs or more.

(ii) No notice U/sec 148A shall be issued from end of relevant assessment year–

(a) if 3 years have elapsed from end of relevant assessment year unless the case fall under clause (b);

(b) if 3 years or more but not more than 5 years have elapsed from end of relevant assessment year unless the income chargeable to tax which has escaped assessment, as per the information with the Assessing Officer, amounts to or is likely to amount to Rs. 50 Lakhs or more.

So, time limit for issue of notice u/s 148/148A has been reduced from 10 years to 5 years. **This amendment is effective from Assessment Year 2025-26.**

- **Amendment in Section 152:**

(i) Sub-section (3) has been inserted so as to provide that where a search/requisition or survey is conducted on or after 1st April 2021 but before 1st September 2024, the provisions of section 147 to 151 shall apply as they stood immedicately before the commencement of the Finance Act (No. 2) 2024.

(ii) Sub-section (4) has been inserted so as to provide that in any other cases where a notice u/s 148 or order u/s 148A(d) has been passed prior to 1st September 2024, the assessment, reassessment or recomputaiton shall be governed as per the provisions of section 147 to 151 as they stood immedicately before the commencement of the Finance Act (No. 2) 2024.

- **Section 153: Time Limit for completion of Assessment/Reassessment/ Recomputation**

Section 153 of the Act provides for time limit to complete Assessment, Reassessment or Recomputation by the Assessing Officer.

(i) A new sub-section (1B) has been inserted providing that an order under section 143 or section 144 may be made at any time

before the expiry of 12 months from the end of financial year in which a return is furnished in consequence to an order passed u/s 119(2)(b).

(ii) In sub-section (3), a reference has been inserted to section 250 in order to provide time limit for disposal of cases which are separately proposed to be set-aside by the Commissioner (Appeals).

(iii) Sub-section (8) has been amended so as to provide the timeline for passing of order in case of revived assessment or re-assessment proceedings as a consequence of annualment of block assessments.

(iv) A new proviso has been inserted in Explanation 1 to provide that where after exclusion of the period referred to in clause (xii), the period of limitation for making an order of assessment, reassessment or recomputation, as the case may be, ends before the end of the month, such period shall be extended to the end of such month.

This amendment is applicable w.e.f. 1st October, 2024.

12.2. Assessment of search cases

Chapter XIV-B provides for a Special procedure for Assessment of Search cases. In order to make the procedure of assessment of serach cases efficient, cost-effective and meaningful, thus, the scheme of block assessment has been initiated for search u/s 132 or requisition u/s 132A has been made on or after 1st September 2024. For this purpose, Chapter XIV-B containing sections 158B to 158BI has been introduced w.e.f. 1st day of September,2024. Few major amendments are as under:

- **Block Period** - means the period comprising previous years relevant to 6 assessment years preceding the previous year in which the search was initiated under section 132 or any requisition made under section 132A and also includes the period starting from the 1st day of April of the previous year in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition.

Last of the authorisations shall be deemed to have been executed:

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

- **Undisclosed Income-** means any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, or property which has not been or would not have been disclosed or any expense, exemption, deduction or allowance claimed under this Act which is found to be incorrect, in respect of the block period.

- **Procedure of Assessment where search initiated on or after 1st September 2024:**

(i) Section 158BA: Abated Assessment-

a) It is provided that any assessment or reassessment or recomputation, pertaining to any assessment year falling in the block period is pending on the date of initiation of the search under section 132, or making of requisition under section 132A then same shall be abated on the date of initiation of search or making of requisition. Similarly, any reference to TPO under section 92CA(1) has been made, or an order under section 92CA(3) has been passed, such assessment or shall also be abated on the date of initiation of search or making of requisition.

b) However, any assessment under the provisions of this Chapter is pending in the case of an assessee in consequence of earlier search initiated or a requisition is made then such pending assessment shall not be abated but the same shall first be completed and thereafter the assessment in respect of subsequent search or requisition shall be made and time to complete such subsequent assessment shall be extended to 3 months from the end of the month in which the earlier pending assessment is completed.

c) If any proceeding initiated under this Chapter or any order of assessment or reassessment under section 158BC(1)(c) has been

annulled in an appeal then notwithstanding anything in this Chapter or section 153, such abated assessment or reassessment shall revive with effect from the date of receipt of the order of such annulment by the Pr. Commissioner or Commissioner of Income tax.

d) It is provided that the total income other than undisclosed income of the assessment year relevant to the previous year in which the last of the authorisations for a search is executed or a requisition is made, shall be assessed separately in accordance with the other provisions of this Act.

e) The total income relating to the block period shall be charged to tax at the rate specified in section 113, i.e. 60% .

(ii) **Section 158BB** - The total income of the block period shall be aggregate of :

a. total income disclosed in the return furnished under section 158BC;
b. total income assessed under section 143(3) /144/147/153A/153C prior to the date of initiation of the search or the date of requisition,;
c. total income declared in the return of income filed under section 139 or in response to a notice under section 142(*1*) or section 148 ;
d. total income determined before the date of last of the authorisations for the search or requisition relating to such previous year;
e. undisclosed income determined by the Assessing Officer under section 158BB(2)

It is provided that for determination of undisclosed income, —

(a) of a firm, such income for each year falling within the block period shall be determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called to any working partner ;

(b) the provisions of sections 68, 69, 69A, 69B and 69C shall, if applicable then shall apply to the relevant previous year falling in the block period;

(c) the provisions of section 92CA shall, if applicable then shall apply to the relevant previous year falling in the block period;

Treatment of set-off of losses and of unabsorbed depreciation:

Sub-section (7) provides for lossess brought forward from the previous year. It is provided that any brought forward losses or unabsorbed depreciation under section 32(2) shall not be set off against the undisclosed income determined in the block assessment under this Chapter . However, same may be carried forward to asessment year subsequent to end of the block period.

(iii) Section 158BC: **Procedure for block assessment**

(*a*) The Assessing Officer shall, in respect of search initiated on or after the 1st day of September, 2024, issue a notice to such person, requiring him to furnish within such period, not exceeding a period of 60 days, a return of income for the block period and such return shall be considered as furnished under section 139 and thereafter a notice under section 143(2) shall be issued. Return furnished beyond the allowed period shall not be deemed to be a return under section 139. It is provided that no revised return can be furnished under section 158BC.

(*b*) The Assessing Officer shall based on the return filed for the block period shall determine the total income including the undisclosed income of the block period and shall pass an order of assessment or reassessment.

(c) The provisions of section 143(1) shall not apply to the return furnished under this section.

(d) The Assessing Officer, before issuance of notice shall take prior approval of the Additional Commissioner/ Director or the Joint Commissioner/ Director, as the case may be.

(iv) Section 158BD: Extension of Search Proceedings to Other Person

It is provided that during the search proceedings of a person, the Assessing Officer finds and is satisfied that any undisclosed income belongs to or pertains to or relates to any other person, other than the person with respect to whom search was made under section 132 or section 132A, then, any money, bullion, jewellery or other valuable article or thing, or assets, or expenditure, or books of account, other documents, or any information contained therein, seized or requisitioned shall be handed over to the Assessing Officer having

jurisdiction over such other person and that other Assessing Officer shall proceed under the provisions of this Chapter against such other person .

(v) Section 158BE: Time Limit to Complete Search Assessment Proceedings

It is provided that time limit provided under section 153 to pass an assessment order shall not be applicable to block assessment. The assessing Officer shall pass the assessment order under section 158BC within 12 months from the end of the month in which the authorisations for search under section 132 or requisition under section 132A, was made, except in case any reference is made to TPO under section 92CA(1), the said period shall be extended by another 12 months in respect of the block period.

However, in computing the time limit to complete the block period assessment proceedings, the period not exceeding 182 days commencing from the date of initiation of search till the date of handing over of the seized assets and documents, etc. to the jurisdictional Assessing Officer shall be excluded.

In case of other person on whom search proceedings were initiated under section 158BD, the time limit of 12 months to pass block assessment order shall be from the end of the month in which the notice under section 158BC in pursuance of section 158BD, was issued to such other person.

It is also provided that in computing the period of limitation under this section, the following period shall be excluded,—

(*i*) the period of stay granted by any court; or

(*ii*) the period commencing from the date on which a reference for exchange of information is made by a competent authority competent under an agreement referred to in section 90 or section 90A till the period of receipt of information by the Pr. Commissioner or Commissioner or a period of 1 year, whichever is less; or

(*iii*) the time taken in reopening the whole or any part of the proceeding or giving an opportunity of re-hearing under section 129; or

(*iv*) the period of commencement of audit and last date of furnishing the audit report as directed by the Assessing Officer under section 142(2A); or

(*v*) the period of reference to the Valuation Officer under section 142A(1) till the date of receipt of report of the Valuation Officer ; or

(*vi*) the period of intimation by the Assessing Officer to the Central Government or the prescribed authority about the contravention of the provisions of section 10 till the date of receipt of copy of the order withdrawing the approval or rescinding the notification; or

(*vii*) the period of reference to the Pr. Commissioner or Commissioner under the second proviso to section 143(3) till the date of receipt of the order; or

(*viii*) the period of a reference made of an impermissible avoidance arrangement to the Principal Commissioner or Commissioner under section 144BA(1) till the date of receipt of a direction ; or

(*ix*) the period of an application to AAR under section 245Q(1) till the date of receipt of order rejecting the application or order of Advance Ruling under section245 R.

However, it is provided that in case where after exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order is less than sixty days than such remaining period shall be extended to sixty days. It is further provided that if the period of limitation expires before the end of a month then such period shall be extended to the end of such month.

(vi) Section 132B: Adjustment of Tax Liability under Black Money Act

An amendment has also been made in section 132B stating that the liability under the Black Money Act, 2015, can be adjusted against assets seized under section 132 or 132A.

This amendment is applicable w.e.f. 1st October, 2024.

(vii) Reference to DRP u/s 144C

Section 144C (15) has been amended providing that an assesse in whose case block assessment proceedings are initiated is not eligible to refer the matter to DRP u/s 144C.

(viii) Section 158BF: Interest under section 234A/234B/234C & Penalty under section 270A

It is provided that no interest under section 234A, 234B or 234C or penalty under section 270A shall be levied or imposed upon the assessee in respect of the undisclosed income assessed or reassessed for the block period.

- **Section 158BFA: Interest & Penalty**

In the case of the return of income including undisclosed income for the block period under section 158BC is not furnished within the specified time, interest shall be levied at the rate of 1.5% of the tax on undisclosed income determined per month or part of a month for the period commencing from the end of such specified time till the date of completion of assessment under section 158BC.

The Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under this Chapter, may direct that the person shall pay by way of penalty equal to 50% of tax leviable on the excess of amount disclosed in the return of income and income assessed under section 158BC(1)(c).

However, no order imposing penalty under this section 271AAD , 271D, 271DA or 271E shall be made for the block period in respect of a person if—

(i) such person has furnished a return under section 158BC;
(*ii*) the tax payable on the basis of such return has been paid or seized money is adjusted against the tax payable;
(*iii*) Evidence of tax paid is furnished along with the return; and
(iv) an appeal is not filed against the assessment of that part of income which is shown in the return:

It is provided under sub-section (3) that no order imposing a penalty under section 158BFA(*2*) shall be made,—

(*a*) unless an assessee has been given a reasonable opportunity of being heard;

(*b*) with the previous approval of the Additional Commissioner/Director or the Joint Commissioner/Director where the penalty exceeds Rs. 2 lakh ;

(*c*) in a case where the assessment is the subject-matter of an appeal, not beyond 6 months from the end of the financial year in which such appellate order is received;

(*d*) in a case where the assessment is the subject-matter of revision under section 263, after the expiry of six months from the end of the financial year in which such order of revision is passed;

(*e*) in any other case not beyond 6 months from the end of the financial year in which notice for imposition of penalty is issued,

It is also provided under sub-section (4) that in computing the period of limitation for imposing penalty period shall be excluded under specified circumstances.

- **Section 158BG: Authority to pass Order**

  It is provided that the order of block assessment shall be passed by an Assessing Officer not below the rank of a Deputy Commissioner or an Assistant Commissioner or a Deputy Director or an Assistant Director with the previous approval of the Additional Commissioner/Director or the Joint Commissioner/Director.

13. OTHER AMENDMENTS:

13.1. Special Provisions for Computing Profit Of Cruise Shiping Business of Non-Resident Under Section 44BBC

A new section 44BBC has been inserted providing that in the case a non-resident operator of cruise ship, profits and gain from such business shall be deemed to be at @20% of the aggregated amount received or receivable or deemed to be received on account of carriage of passenger. However, certain prescribed conditions for such cruise operator is to be notified by CBDT.

It may be noted that corresponding amendment has been made under the special provisions of section 44B for computation of profit of non-resident shipping operator by excluding the non-resident cruise operator .

This amendment is applicable w.e.f. Assessment Year 2025-26.

13.2. Section 139AA: Quoting of Aadhaar Enrolment Number

Proviso to section 139AA(1) allows to merely mention Aadhaar Enrolment ID where the person does not possess the Aadhaar Number in the application for PAN or in the return of income furnished. Now, this proviso is amended w.e.f. 1st day of October, 2024 providing Aadhaar Number to mention in PAN Application form and income tax return.

13.3. Section 230: **Tax Clearance Certificate**

It provides that a domicile of India while leaving India may be required to obtain a tax clearance certificate from Income Tax Department stating that he has no liabilities under Income tax Act, 1961 or Wealth tax Act, 1957 or the Gift tax Act, 1958 or the Expenditure Act, 1987. This certificate is required in the case of such person:

i. who is involved in in serious financial irregularities and his presence is necessary in investigation of cases; or

ii. whose outstanding tax demand exceeds Rs. 10 lakh and which have not been stayed by any authority

Now, liability under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 (Black Money Act) has also been added w.e.f. 1st October, 2024.

CBDT has issued a Press Release dated 20.08.2024 clarifying that only above referred persons while leaving the country are required to obtain tax clearance certificate under section 230.

13.4. Section 245(2) - This section provides that Assessing Officer can withhold any tax refund due to a person during pendency of any assessment or reassessment proceedings and he is of the opinion that granting of refund may adversely affect the revenue department. Now, it is provided that the

refund can be withheld upto 60 days from the date on which such assessment or reassessment is made.

This amendment is applicable w.e.f. 1st October, 2024.

13.5. Sec 244A- Proviso to section 244A(1A) provides to exclude the period of withholding of tax refund till the date of completion of an assessment or reassessment while granting additional interest on delay in issue of refund. Now, as per the provisions of amended section 245(2), the period beginning from the date and ending with the date upto on which such refund is withheld shall be excluded.

This amendment is applicable w.e.f. 1st October, 2024.

13.6. Sec 245Q & 245R- Application for Advance Ruling

In section 245Q(4), a new proviso has been inserted to provide that an applicant may make a request on or before 31st October, 2024 to keep the pending application in abeyance if upto the date of such request the Board has not passed an order under section 245R(2).

Consequential amendment is made in section 245R(2) so as to provide that on receipt of an application under 245Q(4), the Board may by an order, reject the application as withdrawn on or before 31st December 2024.

This amendment is applicable w.e.f. 1st October, 2024.

13.7. Section 251- Power of Commissioner/Joint Commissioner (Appeals)

Section 251 provides various powers given to Commissioner/Joint Commissioner of Income tax (Appeals). Now, a proviso to Section 251(1)(a) has been inserted giving power to set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in the case of an appeal against best assessment order u/s 144.

13.8. Section 153(3) – Section 153(3) has also been amended whereby a reference has been inserted to section 250 in order to provide the timelimit of 12 months to the Assessing Officer for disposal of cases which are separately proposed to be set-aside by Commissioner (Appeals) u/s 251.

13.9. Sec 253(3)-Time Limit to file Appeal before ITAT

Section 253(3) provides that an Appeal before ITAT shall be filed within 60 days from the date of communication of such order of a lower authorities. However, under Faclesess Appellate proceedings, appellate orders are communicated by uploading the same by the appellate authorities which the revenue authorities find difficult to track on daily basis. Therefore, section 253(3) has been amended providing that the said time limit of 60 days shall now be two months from the end of month in which such order is communicated.

This amendment is applicable w.e.f. 1st October, 2024.

13.10. Section 44 / Rule 2 of the First Schedule: Computation of profits of Life Insurance business

Section 44 of the Act provides for computing of profits and gains of any business of insurance to be in accordance with First Schedule of the Act. Rule 2 of the First Schedule of the Act provides how to compute profit of Life Insurance Business of an Insurance Company. Now, with an intention to curb claim of non-business expenses, a proviso to said Rule 2 has been inserted providing that any expenditure which is not allowable under section 37 shall also not be allowed as business expenditure.

This amendement is w.e.f. Assessment Year 2025-26.

13.11. Abolition of Equalisation Levy

The Finance Act, 2016 introduced Equalisation Levy (EL) on e-commerce transactions which was amended by the Finance Act, 2020 to provide for imposition of EL of 2% on the amount of consideration received/ receivable by an e-commerce operator from e-commerce supply or services. Now, the EL of 2% shall not be applicable to any consideration received or receivable for e-commerce supply or services, on or after the 1st day of August, 2024.

13.12. Amendments in section 42 and 43 of the Black Money Act, 2015

Section 42 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the Black Money Act) provides for penalty on a resident assessee other than not ordinarily resident for failure to furnish details of foreign income and assets in the return of income.

Similarly, section 43 of the Black Money Act provides for penalty for failure to furnish information of any foreign assets or any foreign income in the return of income or furnishing inaccurate particulars about the same by a resident assessee other than not ordinarily resident.

The amount of such penalty under section 42 or 43 of the Black Money Act, is Rs. 10 Lakhs regardless of the value of asset located outside India.

However, it is provided under the provisos to the aforementioned sections of the Black Money Act that the provisions of these sections shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to Rs. 5,00,000 at any time during the previous year.

The said proviso is now amended to provide that the provisions of the said sections shall not apply in respect of a foreign asset other than immovable property having the aggregate value not exceeding Rs. 20 Lakhs.
This amendment is applicable w.e.f. 1st October, 2024.

13.14 Amendments to the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act)

Amendment of Section 24 which is applicable w.e.f. 1st October, 2024

Provisions	Time Limit upto 30th September, 2024	Time Limit w.e.f. 1st October, 2024
<u>Section 24(1)/(2)</u> To furnish a reply to the notice issued under section 24(1) section 24(2)	No Time Limit	<u>Newly inserted section 24(2A)</u> 3 months from the end of the month in which notice issued
<u>Section 24(3)/(4)</u> To pass an order of attachment of the property, for continuing the provisional attachment, revoking the	90 days from the last day of the month in which notice under sub-section (1) is issued	within 4 months from the end of the month in which notice under sub-section (1) is issued

provisional attachment or deciding not to attach the property		
Section 24(4) To refer a statement of attachment to the Adjudicating Authority by Initiating Officer	15 days from the date of attachment order	1 month from the end of the month in which the order of attachment issued

Insertion of Section 55A in PBPT Act: Immunity from Penalty

As per the PBPT Act, 1988 the offence of benami transaction is punishable with a penalty. This is penalty is the same for a benamidar or a beneficial owner or any person who abets or induces any person to enter into a benami transaction. Due to some quantum of penalty and prosecution as is imposable in the case of beneficial owner and abettor, benamidars do not come forward to give evidence against the beneficial owner. Further, many benamidars being of poor means and illiterate, imposing on them the same penalty as the beneficial owner could be disproportionate in nature. Alternatively, if such benamidars were to become approvars, it would help in gathering clinching evidence and details about benami properties and result in convictions of the benefial owners.

In view of this a new section 55A in the PBPT Act is inserted to provide that the Initiating Officer may, immune the benamidar or any other person as referred to in section 53, other than the beneficial owner from penalty for any offence under section 53, with the previous sanction of the competent authority, on condition of his making a full and true disclosure of the whole circumstances relating to the benami transaction. As a consequence of this, he shall also get immunity from prosecution under section 53 of the Act.

However, if the Initiating Officer records a finding that such person has not complied with the condition on which the tender was made or is wilfully concealing the details or is giving false evidence and with the previous sanction of the competent authority, the immunity shall be deemed to have been withdrawn.

Also such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the said matter and shall also become liable to the imposition of any penalty under this Act to which he would have otherwise been liable.

This amendment **is applicable w.e.f. 1st October, 2024**

PART – II

'VIVAD SE VISHWAS' SCHEME, 2024
[CA (MRS.) ARTI SHAH AND CA DALPAT SHAH]

BACKGROUND

The Finance Minister, in her Budget Speech reiterated the intention of the Government to reduce tax litigations. On the success of the Vivad se Vishwas Scheme, 2020, which resolved approximately 1.46 lakh cases before various appellate authorities and collected tax revenues amounting to Rs. 53,684 crores (Source: Ministry of Finance Press Release dated 09.08.2021), in her Budget, 2024, the Finance Minister has introduced a Scheme "The Direct Tax Vivad se Vishwas Scheme,2024" (Vivad Scheme, 2024) intending to further reduce litigations in the direct taxes. The Vivad Scheme,2024 is effective from 1st October,2024 as notified by the CBDT vide notification dated 19th September, 2024. CBDT has also issued Rules notifying the Forms to be filed by the assessee through notification dated 20th September, 2024. Important provisions and features of the Vivad Scheme,2024 is discussed here under:

1. WHO CAN TAKE THE BENEFIT OF THE SCHEME:

Any appellant ,i.e., an assessee or income-tax authority, can take benefit of this scheme in regard to following disputed matters, as on the **specified date i.e. 22nd July,2024**. The pending appeal shall be towards income, penalty, interest and fees.

The following persons can take benefit of this Scheme:

i. any pending appeal before the Supreme Court, High Court, Income tax Appellate Tribunal or Commissioner (Appeals) or Joint Commissioner (Appeals).

ii. a Writ Petition or Special Leave Petition (SLP) has been filed and which is pending as on 22.07.2024.

iii. Any direction of the Dispute Resolution Panel (DRP) is pending as on 22.07.2024 against an Objection filed before u/s 144C of the Act.

iv. Any direction of the Dispute Resolution Panel (DRP) is issued but the Assessment under section 144C(13) is pending as on 22.07.2024.

v. Any pending application for Revision u/s 264 as on 22.07.2024.

However, an order has been issued but the time to file a further appeal against the same is not over on the specified date then such cases shall not be covered under the Scheme. So, a clarification in this regard is required from the C.B.D.T.

2. <u>WHO IS NOT ELIGIBLE TO TAKE BENEFIT OF THE SCHEME:</u>

2.1. In respect of the following cases of tax arrears an assessee cannot take the benefit of the Scheme:

(i) In respect of the assessment year for which an assessment has been made under section 143(3) or 144 or 147 or 153A or 153C of the Income Tax Act on the basis of **search** initiated under section 132 or 132A of the Income Tax Act, if it relates to any tax arrears.

(ii) In respect of the assessment year in respect of which **prosecution** has been initiated on or before the date of filing the declaration under the Vivad Scheme, 2024, if it relates to any tax arrears.

(iii) If the tax arrear relates to an undisclosed income from a source located outside India or undisclosed asset located outside India.

(iv) In a case where an assessment or reassessment is made on the basis of information received under DTA agreement made by the Government under section 90 or 90A of the Income Tax Act, if it relates to any arrears of tax.

2.2. A person on whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) on or before the date of filing of declaration under the Vivad Scheme, 2024.

However, if such detention order has been revoked by the Advisory Board or set aside by a court of competent jurisdiction then such a person can file a declaration under the scheme;

2.3. A person in respect of whom prosecution for any offence punishable under the provisions of the following Acts:

a) Unlawful Activities (Prevention) Act, 1967,
b) Narcotic Drugs and Psychotropic Substances Act, 1985,
c) Prohibition of Benami Property Transactions Act, 1988,
d) Prevention of Corruption Act, 1988, or
e) Prevention of Money Laundering Act, 2002.

has been instituted on or before the filing of the declaration under the VSV Scheme or such person has been convicted of any offence punishable under the above Acts.

2.4. A person against whom prosecution has been initiated by the Income tax Authority for any offence punishable under the provisions of the Bharatiya Nyaya Sanhita, 2023 (erstwhile The Indian Penal Code), or for the purpose of enforcement of any civil liability under any law on or before the filing of the declaration under the Vivad Scheme, 2024. This will include a person who has been convicted of any such offence consequent to the prosecution initiated by the income tax authority.

2.5. A person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, on or before filing of declaration under the Vivad Scheme, 2024.

3. <u>DISPUTED TAXES, PENALTY, INTEREST OR FEE:</u>

(i) **<u>Disputed Tax:</u>**

Disputed tax means income tax including surcharge and cess, which shall be as under in different situations:

	Situation	**Disputed Tax**
i	Pending Appeal/Writ/SLP	income tax including surcharge and cess
ii	The direction of Dispute Resolution Panel (DRP) is pending as on 22.07.2024 against an Objection filed before U/Sec 144C	income tax including surcharge and cess payable as per the draft order of the A.O.
iii	A.O. has not passed order u/s 144C(13) as per the direction of DRP as on 22.07.2024	income tax including surcharge and cess payable as per the direction of the DRP

	Situation	Disputed Tax
iv	Any pending application for Revision u/s 264 as on 22.07.2024	income tax including surcharge and cess payable as per the assessment order or intimation
v	In the case of notice of enhancement issued by the C.I.T.(Appeal) on or before 22.07.2024	income tax including surcharge and cess shall be increased by the amount pertaining to such notice of enhancement
vi	Dispute in relation to reduction of tax credit U/sec 115JAA or Sec 115D of the Act or loss or depreciation	Two Options provided : i. Disputed tax shall include the tax related to such tax credit or loss or depreciation; OR ii. The amount to carry forward the reduced tax credit or loss or depreciation in the **prescribed manner**

(ii) **Disputed Penalty**

'Disputed penalty' means any penalty determined under the provisions of the Act against which appeal has been filed and pending before the appellate forum.

(iii) **Disputed Interest**

'Disputed interest' means any interest determined under the provisions of the Act against which appeal has been filed and pending before the appellate forum.

(iv) **Disputed Fee**

Disputed Fee means a fee determined under the provisions of the Income tax Act in respect of which appeal has been filed.

4. AMOUNT PAYABLE TO SETTLE DISPUTED TAX LIABILITY UNDER THE SCHEME:

The Vivad Scheme, 2024 provides that an assessee who wishes to settle his tax arrears under the Income Tax Act for any assessment year under this scheme will have to file a declaration to the designated authority on or before the last date as may be notified by the Central Government. The

assessee will have to make a payment under Vivad Scheme, 2024 as per the table below:

Sr. No.	Nature of tax arrears	Amount payable under the Vivad Scheme, 2024	
		On or before 31.12.2024	**On or after 01.01.2025 but before the last date**
1.	Tax Arrears relating to disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, where the appeal has been filed after 31.01.2020 but on or before 22.07.2024.	Amount of disputed tax	Amount of disputed tax plus 10% of disputed tax which should not exceed total of interest and penalty
2.	Tax Arrears relating to disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, where the appeal has been filed on or before 31.01.2020 at the Appellate forum in respect of such tax arrears.	Aggregate of amount of disputed tax plus 10% of disputed tax which should not exceed total of interest and penalty	Aggregate of amount of disputed tax plus 20% of disputed tax which should not exceed total of interest and penalty
3.	Tax arrears relating to disputed interest or disputed penalty or disputed fee, where the appeal has been filed after 31.01.2020 but on or before 22.07.2024.	25% of such disputed interest or penalty or fee.	30% of such disputed interest or penalty or fee
4.	Tax arrears relating to disputed interest or disputed penalty or disputed fee, where the appeal has been filed on or before 31.01.2020 at the Appellate forum in respect of such tax arrears.	30% of such disputed interest or penalty or fee	35% of such disputed interest or penalty or fee

Sr. No.	Nature of tax arrears	Amount payable under the Vivad Scheme, 2024	
		On or before 31.12.2024	On or after 01.01.2025 but before the last date
5.	An appeal, writ or SLP is filed by the Income tax Authority (by Department)	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner
6.	On pending appeal before C.I.T.(Appeals) or objections before DRP on any issue which was already decided by the ITAT in his favour and was not reversed by the High Court or Supreme court	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner
7.	On pending appeal before C.I.T.(Appeals) or objections before DRP on any issue which was already decided by the High Court in his favour and was not reversed by the Supreme court	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner	50% of the amount as calculated in Sr. No. 1 to 4 above, in prescribed manner

5. <u>PROCEDURE TO BE FOLLOWED UNDER THE SCHEME:</u>

The Vivad Scheme, 2024 lays down the procedure to be followed for settlement of the disputed tax under the Income Tax Act. The procedure is as under:

(i) The assessee shall file the declaration for any dispute to the designated authority (i.e., Commissioner of the Income tax designated for this purpose by the Principal Chief Commissioner) in Form 1 as per Rule 4 of the Vivad se Vishwas Rules. He also has to furnish an undertaking waiving his right, whether direct or indirect, to seek or pursue any remedy or any claim in relation to the tax

arrears which may otherwise be available to him under any law for the time being in force in Form 1 along with the declaration.

(ii) The above declaration shall be considered as defective and shall be presumed never to have been made if:

a) Any material particulars in the declarations are found to be false; or
b) The declarant violates any of the conditions of the Scheme; or
c) The declarant acts contrary to the undertaking given by him as stated in Form 1.

In such a case all the benefits taken under the scheme shall be withdrawn and all the demands waived under the scheme shall be revived.

(iii) The designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of the Scheme within 15 days of the receipt of the declaration and grant a certificate to the declarant in prescribed Form No. 2 giving details of the amount of tax arrears payable by the declarant.

(iv) The declarant has to pay the amount determined within a period of fifteen days of the date of receipt of the certificate in Form No. 2 and intimate the details of such payment made pursuant to the certificate issued by the designated authority shall be furnished along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim filed by the declarant to the designated authority in Form No. 3.

(v) Upon filing of Form No. 3, an order shall be passed in Form No.4 by the designated authority in respect of payment of amount payable by the declarant.

6. CONSEQUENCES OF OPTING FOR VIVAD SCHEME, 2024:

(i) The order passed by the designated authority, as stated above, shall be conclusive and final and cannot be reopened or challenged in any other proceedings before any Authority in India or outside India.

(ii) The designated authority shall not instate any proceedings in respect of any offence or impose or levy any penalty or charge any interest under the Income tax Act in respect of the tax arrears.

(iii) If the declarant pays the amount as determined by the designated authority, as stated above, the assessee will not be required to pay any further amount of tax, penalty, interest or fee for the assessment covered by the order of the designated authority.

(iv) Any amount paid in pursuance of the declaration, as stated above, shall not be refundable under any circumstances. However, if the assessee has paid any amount against Tax Arrears, pending decision of appeal, he will be entitled to get refund if the tax payable as determined by the Designated Authority as stated in (iii) of Para 6 above is less than the amount already paid. No interest under Section 244A will be paid by the Government on this refund.

(v) Upon filing the above declaration any pending appeal before the CIT(A) or ITA Tribunal in respect of the Disputed Tax, Interest, Penalty or Fee shall be deemed to have been withdrawn from the date on which certificate is issued by the designated authority as stated in (iii) of Para 6 above.

(vi) The declaration made by the assessee, as stated above, shall not amount to conceding the tax position and it shall not be lawful for the assessee or the Income tax Authority, who is a party to the Appeal before the Appellate Authority, to contend that the assessee or the Income tax Authority has acquiesced in the decision on the disputed issue by settling the dispute. In other words, it will be open for the assessee or the Income tax Authority to contest the same issue, which is settled under this Scheme, in any earlier or later assessment year.

(vii) It is also clarified that no Appellate Authority shall proceed or decide any issue for which the declaration has been made by the assessee and order, as stated in (iii) above, has been passed by the designated authority.

(viii) Where the assessee has paid the Disputed Tax, Penalty, Interest or Fee according to the order passed by the Designated Authority, as stated above, the same shall not be construed as conferring any benefit, concession or immunity to the assessee in any proceedings other than those relating the matter for which declaration has been made. From this, it appears that if a particular issues in a particular assessment year has been settled under this Scheme, the assessing officer can reopen that assessment in subsequent year if some fresh information comes to his notice on some other issue not connected with the issue already settled under the Scheme for that assessment year.

7. <u>TO SUM UP:</u>

The Vivad Se Vishwas Scheme,2024, is certainly a step towards the object of Finance Ministry to reduce pending litigations and enhance the Revenues of the Government. However, a clarification is required in the case of an order is received but the time limit to file an appeal has not expired on the specified date, is eligible for the Scheme? Further, the scheme does not provide any mechanism to resolve differences in the quantum of disputed tax, interest, penalty or fees as determined by the Designated Authority and as per the Declarant. An assessee shall take the benefit of The Scheme if he finds his appeal on a weak ground as it will save his interest and penalty liability.

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PART – III

GOODS AND SERVICES TAX (GST)
[CA (MRS.) ARTI SHAH]

BACKGROUND

The Honourable Union Minister of Finance and Corporate Affairs Smt. Nirmala Sitharaman for the 7th consecutive time on 23rd July, 2024 presented the Union Budget for FY 2024-25 with a vision of 'Viksit Bharat' by 2047. The vision for 'Viksit Bharat' is that of 'Prosperous Bharat in harmony with nature, with modern infrastructure, and providing opportunities for all the citizens and all regions to reach their potentials.'

The relevant extracts from the speech of the Honourable Union Minister of Finance and Corporate Affairs is re-produced as under:

> *"115. I start with GST. It has decreased tax incidence on the common man; reduced compliance burden and logistics cost for trade and industry; and enhanced revenues of the central and state governments. It is a success of vast proportions. To multiply the benefits of GST, we will strive to further simplify and rationalise the tax structure and endeavour to expand it to the remaining sectors."*

All the changes in connection to GST as proposed in the Union Budget 2024-25 vide Finance Act 2024 shall come into effect from a date to be notified and various proposals shall become effective from a retrospective date once the said proposals are notified some of the important proposals are as under:

1. Relaxing the time limit to avail Input Tax Credit ultimately resulting into reduction of the ongoing litigations:

New Sub-Sections (5) and (6) are being inserted in Section 16 of the CGST Act, 2017 to relax the time limit to avail Input Tax Credit as per section 16(4) of the CGST Act with retrospective effect from 01st July, 2017, as follows:

a) In respect of FY 2017-18, 2018-19, 2019-20 and 2020-21:

Sub-Section (5) shall be inserted in Section 16 of the CGST Act, 2017 providing for non-obstante clause over Sub-Section (4) to provide that in respect of an Invoice or Debit Note for the FY 2017-18 to FY 2020-21, the Registered Person shall be entitled to take Input Tax Credit in any Return under section 39 i.e. GSTR-3B which is filed up to 30th November, 2021.

Thus, the maximum time limit to avail Input Tax Credit for FY 2017-18 to FY 2020-21 shall be considered as 30th November, 2021 and the Registered Person who have belatedly taken Input Tax Credit by 30th November, 2021 or have filed belated GSTR-3B for the period proposed to be covered but by 30th November, 2021 shall be considered as Input Tax Credit availed within the maximum permissible time limit. This shall drastically reduce the ongoing litigations in connection with the issue of violation of maximum time limit to avail Input Tax Credit.

b) In cases where Returns have been filed after revocation of cancellation of Registration:

Sub-Section (6) shall be inserted in Section 16 of the CGST Act, 2017 to provide for a maximum time limit for availment of Input Tax Credit in case of cancellation of GST Registration and subsequent revocation thereof.

If the Registration of a Registered Person was cancelled and the said cancellation of Registration is revoked thereafter on an application made by the Registered Person for such revocation or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court, the Input Tax Credit in respect of an Invoice or Debit Note would be available in a Return (i.e. GSTR-3B) which is

- filed up to 30th November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

- filed for the period from the date of cancellation of registration or the effective date of cancellation of

registration, as the case may be, till the date of order of revocation of cancellation of registration, within thirty days of the date of order of revocation of cancellation of registration, whichever is later subject to the condition that the time-limit for availment of credit in respect of the said invoice or debit note should not have already expired under sub-section (4) of the said section on the date of order of cancellation of registration.

2. <u>Waiver of Interest or Penalty or both:</u>

A total waiver from interest and penalty for the period involving July, 2017 to March, 2020 or part thereof shall be available in the following cases if the Tax Payer pays the full amount of tax payable as per the Notice / Order before the date to be notified by the Government (as per 53rd GST Council meeting, the same has been proposed to be 31st March, 2025 but need to wait for the same):

a) A Show Cause Notice issued under sub-section (1) of section 73 (In cases other than involving fraud or any wilful-misstatement or suppression of facts to evade tax) or a Statement issued under sub-section (3) of section 73 (subsequent period's notice post issuance of the Show Cause Notice issued earlier under Section 73(1)), and where Order has not been issued (i.e. Show Cause Notice issued but Adjudication yet pending),

b) Adjudication is completed and an Order has been passed in respect of the Show Cause Notice issued under Section 73, and where no order has been passed by the Appellate Authority under sub-section (11) of section 107 or no order has been passed by the Revisional Authority under sub-section (1) of section 108; (i.e. Show Cause Notice issued and Order has been passed by the Adjudicating Authority),

c) An Order has been passed by the Appellate Authority under sub-section (11) of section 107 or an Order has been passed by the Revisional Authority under sub-section (1) of section 108; (i.e. Order of Appeal has been passed or an Order has been passed by the Revisional Authority),

d) Where a notice has been issued under subsection (1) of section 74 (with an allegation as to involvement of fraud, willful mis-statement, suppression of facts with an intent to evade tax payment) and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75 i.e. confirming the demand under Section 73 as compared to earlier invoked Section 74, the said notice or order shall be included for amnesty from interest and penalty. (i.e. The charges under Section 74 has been set aside and re-determination of demand has been done in accordance with the provisions of Section 73),

e) If the Department has filed appeals, or carried out revisional proceedings or other proceedings and the amount of tax payable is increased, the conclusion of the proceeding under this Section will be subject to payment of the additional amount within three months from the date of the said Order. (i.e. Additional Amount being paid within 3 months)

However, the said benefit will not be available in the following cases:

a) Any amount payable on account of erroneous refund, and

b) Cases where Show Cause Notice issued but Adjudication yet pending before the Appellate Authority or Appellate Tribunal or Court and the same has not been withdrawn before the date to be notified under this section (as per 53rd GST Council meeting, the same has been proposed to be 31st March, 2025 but need to wait for the same),

- Once the amount of tax has been paid and the proceedings are deemed to be concluded, no appeal shall lie before the First Appellate Authority or Appellate Tribunal as all the proceedings shall be deemed to be concluded.

- Where interest and penalty has already been paid, the Refund thereof shall not be granted to the tax payer.

The proposed amendment is a positive and a welcome step towards addressing the teething issues experienced during the initial years of GST implementation and is in line with promoting ease of doing business and reducing Tax litigations.

One need to wait for various clarifications. For example, in a case where the taxpayer is in receipt of a notice/order involving multiple issues, whether partial relief under this proposed Section can be granted and the taxpayer can opt for litigation route for the remaining issues. where a taxpayer is in receipt of a notice/order involving multiple years, whether the demand raised against one particular year can be litigated and waiver can be claimed for the remaining years.

3. <u>Insertion of a new Section to provide a common time limit for issuance of Demand Notices and Orders:</u>

Section 74A is being inserted in the CGST Act, so as to provide for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to the Financial Year 2024-25 onwards. It also provides for the same limitation period for issuing demand notices and orders in respect of demands from the Financial Year 2024-25 onwards, irrespective of whether the charges of fraud, wilful misstatement, or suppression of facts are invoked or not, while keeping a higher penalty, for cases involving fraud, wilful misstatement, or suppression of facts. Thus, this will put an end to the litigations where extended period is challenged and Appellate Authorities or Courts take a view that extended period is not invokable and remands the matter back for confirmation of demand for the normal period.

The below table compares the present and the proposed changes in connection to the Demand Notices and Orders:

Table showing amendment of section 73 vis a vis 74A

Particulars	**Upto FY 2023-24 (Section 73)**	**From FY 2024-25 (Section 74A)**
Due date for issuance of Show Cause Notice	36 months from due date of annual return	42 months from due date of annual return
Penalty	10% of tax or 10,000/- whichever is higher	10% of tax or 10,000/- whichever is higher

Particulars	Upto FY 2023-24 (Section 73)	From FY 2024-25 (Section 74A)
No penalty, if	Tax + applicable interest is paid within 30 days of SCN	Tax + applicable interest is paid within 60 days of SCN
Order	Within 36 months from due date of annual return	Within twelve months from the date of issuance of notice Commissioner or officer authorised by Commissioner may extent said period by maximum of six months

Table showing amendment of section 74 vis a vis 74A

Particulars	Upto FY 2023-24 (Section 74)	From FY 2024-25 (Section 74A)
Due date for issuance of Show Cause Notice	60 months from due date of annual return	42 months from due date of annual return
Penalty – phase 1	15% is paid before issuance of SCN	15% is paid before issuance of SCN
Penalty – phase 2	25% if paid within 30 days of issuance of SCN	25% if paid within 60 days of issuance of SCN
Penalty – phase 3	50% if paid within 30 days of issuance of order	50% if paid within 60 days of issuance of order
Penalty - Phase 4	100% after phase 3	100% after phase 3
Order	Within 60 months from due date of annual return	Within twelve months from the date of issuance of notice Commissioner or officer authorised by Commissioner may extent said period by

		maximum of six months

The provisions of Section 73 and 74 shall apply for determination of tax pertaining to the period up to FY 2023-24 and the provisions of Section 74A shall be applicable with effect from FY 2024-25onwards.

4. <u>Changes in General Provisions relating to Tax Determination:</u>

Sub-Section 2A is to be inserted in Section 75 of the CGST Act, 2017 to provide that where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable (which is a penalty equivalent to 100% of the Tax Amount leviable in the case of fraud, wilful-misstatement or suppression of facts to evade tax) for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A (i.e. 10% of Tax Amount or Rs. 10,000/- each towards CGST and SGST whichever is higher).

5. <u>Modification in the provisions dealing with Time of Supply in connection to Reverse Charge Liability for the procurements from Registered and Unregistered Persons and the provisions dealing with Tax Invoice in the case of Reverse Charge:</u>

The GST Council in its 53rd GST Council Meeting recommended to clarify and resultantly clarified vide Circular No. 211/5/2024-GST dated 26th June, 2024 that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and invoice is to be issued by the recipient only, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act is the financial year in which the invoice has been issued by the Recipient as Invoice is the Document as issued by the Recipient which is considered as a document based on which ITC can be availed.

Thus, even if the Reverse Charge on the procurements from the unregistered supplier (e.g Import of Services, unregistered GTA etc.) pertains to FY 2017-18 is discharged in FY 2024-25 and a self - invoice being

issued by the Recipient as a document to avail Input Tax Credit, the Input Tax Credit shall be available as the maximum time limit to avail the said Input Tax Credit shall be disclosure in the Return i.e. GSTR-3B furnished on or before 30th November, 2025 as the document for availing ITC been issued in FY 2024-25 on realization of non-payment. The said provision shall not apply to ITC to be taken under Reverse Charge after paying the same on the Invoices or Documents issued by the Registered Suppliers.

Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person inter alia on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per Section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM. Section 31(3)(f) has been proposed to be amended in line with the above clarification.

Explanation in sub-section (3) of the said section is also inserted so as to specify that a supplier registered solely for the purposes of tax deduction at source under section 51 of the said Act shall not be considered as a registered person for the purpose of clause (f) of sub-section (3) of section 31 of the said Act.

Section 13 (3)(b) of the CGST Act, 2017 is also proposed to be amended to provide for time of supply of services where the invoice is required to be issued by the recipient of services in cases of reverse charge supplies to align with the above objective of the 53rd GST Council Meeting to provide that the time of supply in case of Reverse Charge to be discharged on the supplies received from the Registered Suppliers shall be the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier

or the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier, in cases where invoice is required to be issued by the supplier.

6. <u>Granting Powers to Government for non-recovery of GST not levied or short-levied as a result of general practice:</u>

Section 11A in the CGST Act, 2017 is proposed to be inserted to empower the government to regularize non-levy or short levy of central tax due to any general practice prevalent in trade. Similar power is being proposed in IGST Act, UTGST Act and GST (Compensation to States) Act. This amendment is in line with the recommendation made in the 53rd GST Council meeting. In case of payment already been made there is no provision for refunding the said amount in the proposed amendment. The courts in the past have previously examined and upheld the constitutional validity of these provisions in Excise and Customs laws, stating that the Government possesses such discretionary powers. The same has been done even by the GST Council on account of genuine interpretational issues, which are implemented through circulars.

Even in the 53rd GST Council Meeting, the Council have regularized the kind of said past practices on 'as is where is' basis which generally implies that the taxpayers who did not pay or underpaid applicable tax would not owe any further payment to the treasury of the Government.

However, those who already paid conservatively would not receive refunds. The approach aligns to non-existence of refund proposition even in the latest proposals which may test the new era of litigation particularly where the amount been paid under protest to safeguard the amount of interest during the course of investigation or inquiry or Adjudication / Assessment proceedings.

7. <u>Amendment in Blocked Credit related provisions when payment is made by the supplier by reasons of fraud, or any wilful- misstatement or suppression of facts to evade tax:</u>

When tax is paid by reasons of fraud, or any wilful- misstatement or suppression of facts to evade tax under Section 74 of the CGST Act, 2017, the said Input Tax Credit is not available to the Recipient. Presently Section

17(5)(i) of the CGST Act, 2017 restricts the Recipient to avail Input Tax Credit when the tax is paid in accordance with the provisions of Section 74, 129 and 130.

It is proposed that such limitation will be limited up to financial year 2023-24 only and there is no proposal for disallowing such ITC for financial year 2024-25 onwards even for the cases involving suppression. Section 74 is proposed to be replaced by a new Section 74A for the FY 2024-25 onwards. In absence of any mention of Section 74A under the amended Section 17(5)(i), it appears that ITC restriction will not be applicable in respect of tax paid in accordance with Section 74A even in the cases involving suppression, wilful mis-statement, fraud etc. However, this would continue to be subject to the time limit for ITC availment under Section 16(4).

Further, with the amendment previously in Section 129 and 130 dealing with Detention, Seizure and Confiscation of Goods or Conveyances, only Penalty is required to be paid (generally in E-Way Bill related matters along with other contraventions as mentioned in the said provisions) and hence, the said reference to Section 129 and 130 were redundant and proposed to be omitted.

8. <u>Revocation of Cancellation of Registration:</u>

A new proviso in sub-section (2) of section 30 of the CGST Act is being inserted, so as to provide for an enabling clause to prescribe conditions and restrictions for revocation of cancellation of registration.

9. <u>GST Appellate Tribunal related changes:</u>

Section 109(5) of the CGST Act currently states that the Principal Bench and the State Bench of the Appellate Tribunal shall hear the appeals against the Orders passed by the Appellate Authority or the Revisional Authority. However, cases where any one of the issue relates to the place of supply shall be heard only by the Principal Bench. It has been proposed that the matters related to Anti-Profiteering shall be heard only by the Principal Bench.

Further, Section 109(6) allows the President by way of a General or Special Order to distribute the business of the Appellate Tribunal among the

Benches and transfer the cases from one Bench to another Bench. It is proposed to amend Section 109(5) to allow the Government, based on the recommendations of the Council, to specify cases or classes of cases that will be heard exclusively by the Principal Bench and accordingly the issues involving far reaching and industry wide ramifications is likely to be heard by the Principal Bench. Also, Section 109(6) is proposed to be amended to ensure that the President's distribution of cases among the Benches is subject to the provisions of Section 109(5), i.e., cases where any of the issue relates to the place of supply, the matter shall be heard only by the Principal Bench.

Further, Section 112 of the CGST Act, 2017 is proposed to be amended to allow the three-month period for filing appeals before the Appellate Tribunal to start from a date to be notified by the Government which was much needed as the Removal of Difficulty Order No. 09/2019-Central Tax dated 03rd December, 2019 clarified that the said three-months period would be the later of the date of communication of the order or the date on which the President or the State President of the Appellate Tribunal assumes office. With the appointment of Justice (Retired) Sanjaya Kumar Mishra as the first President of the GST Appellate Tribunal on 6th May, 2024, there was a need to address the issue of time limit of filing appeals. Hence, Section 112 is proposed to be amended to allow the three-month period for filing appeals to commence from a date to be notified by the Government.

Currently, for preferring an appeal before the Appellate Tribunal, Section 112(8)(b) provides for deposition of 20% of the disputed amount each towards CGST and SGST in addition to 10% of CGST and SGST each under the dispute paid at the time of preferring first appeal. The said amount of pre-deposit has been reduced to 10% each towards CGST and SGST of the disputed amount from 20% and effectively for filing an appeal before the GST Appellate Tribunal, a total of 20% each towards CGST and SGST and / or IGST of the disputed tax amount or 40% of the IGST disputed amount shall be required to be paid inclusive of pre-deposit made for preferring the first appeal and the maximum pre-deposit which presently is Rs. 50 Crores each towards CGST and SGST for preferring an Appeal before the Appellate Tribunal has been proposed to be reduced to Rs. 20 Crores each towards CGST and SGST and / or Rs.40 Crores towards IGST.

Thus, the above will ensure that the liquidity of the taxpayer is not impacted more.

Sub-section (6) of the said section is also being amended so as to enable the Appellate Tribunal to admit appeals filed by the department within three months after the expiry of the specified time limit of six months.

10. <u>Other Miscellaneous Changes:</u>

a) Sub-section (3) of section 39 of the CGST Act is proposed to be substituted, so as to mandate the electronic furnishing of return for each month by the registered person required to deduct tax at source (TDS), irrespective of whether any deduction has been made in the said month or not. It also empowers the Government to prescribe by rules, the form, manner and the time within which such return shall be filed.

b) The maximum pre-deposit which presently is Rs. 25 Crores each towards CGST and SGST for preferring an Appeal before the Appellate Authority (First Appeals) under Section 107(6)(b) has been proposed to be reduced to Rs. 20 Crores each towards CGST and SGST.

c) Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured shall be considered as 'no supply.'

d) Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission shall be considered as 'no supply.'

e) An amendment is proposed in Section 9 of the CGST Act, 2017 whereby un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption shall be outside the purview of GST in line with the current proposition of keeping the alcoholic beverages intended for human consumption outside the purview of GST.

f) Sub-section (3) is being amended and a new subsection (15) is being inserted in section 54 of the CGST Act, so as to provide that no refund of unutilized Input Tax Credit or Integrated Tax paid on exports shall be allowed in cases of zero - rated supply of goods where such goods are subjected to export duty. Earlier the restriction was applicable only with respect to refund of Unutilized Input Tax Credit which has now been extended to IGST paid exports as well. where the goods are actually leviable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.

g) Section 70 of the CGST Act specifies the power of the proper officer to summon any person to give evidence or to produce documents or anything during the course of any inquiry. It is proposed to amend Section 70 of the CGST Act by inserting sub-section (1A) to state that the person summoned may appear either in person or through an authorized representative, as the proper officer may direct, in compliance with the summons. It appears that the appearance through authorized representative will be at the discretion of the proper officer.

h) Sub-section (1B) of section 122 of the CGST Act providing for penal provisions is being amended, so as to restrict the applicability of the said sub-section to electronic commerce operators, who are required to collect tax at source under section 52 of the said Act. The said amendment is made effective from the 1st day of October, 2023 when the said sub- section had come into force.

i) Section 140(1) of the CGST Act provides for the transitional provisions to carry forward closing balance of CENVAT credit to the GST regime. Further, sub-section (7) provides that ITC on account of services received prior to 01st July,2017 by an ISD shall be eligible for distribution as credit under GST even if the invoices are received on or after 01st July, 2017. It is now proposed to amend Section 140(7) of the CGST Act to specify that ITC on account of services received prior to 01st July, 2017 by an ISD shall be eligible for distribution as credit under GST whether the invoices relating to such services are received prior to, on or after, 01st July, 2017 and the amendment shall come into effect from 01st July, 2017 itself.

j) Section 171 and 109 of the CGST Act are proposed to be amended to provide a sunset clause for anti-profiteering under GST and to assign the handling of pending anti-profiteering cases to the Principal Bench of the Appellate Tribunal. No new application to be entertained with effect from 01st April, 2025.

k) Sub-Section (4) in Section 16 in the IGST Act is being amended, so as to provide for notification of class of persons who may make Zero Rated Supplies of goods or services or both or class of goods or services which may be supplied on zero rated basis, and refund of integrated tax in respect of which can be claimed, in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act, subject to such conditions, safeguards and procedures as may be prescribed.

l) Sub-section (5) is being inserted in the said Section 16 of the IGST Act, 2017 to provide that no refund of unutilized input tax credit or of integrated tax paid on account of Zero-Rated supply of goods shall be allowed in cases where the zero-rated supply of goods is subjected to export duty in line with the amendment proposed in Section 54 of the CGST Act, 2017.

m) The Finance Act proposes the retrospective application of Notification No. 27/2024-Customs dated 12th July, 2024, which exempts all goods imported by a unit or developer in an SEZ for authorized operations from the GST Compensation Cess under

Section 3(9) of the CTA. This exemption is proposed to be effective from 01st July, 2017.

n) The reference to Section 74A is given in Section 10, 21, 35, 49, 50, 51, 61, 62, 63, 64, 65, 66, 75, 104, 107, 127 of the CGST Act, 2017 as the same has been proposed to replace Section 73 and 74 of the CGST Act, 2017.

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