Union Budget 2021-22

Analysis of Direct Tax Proposals

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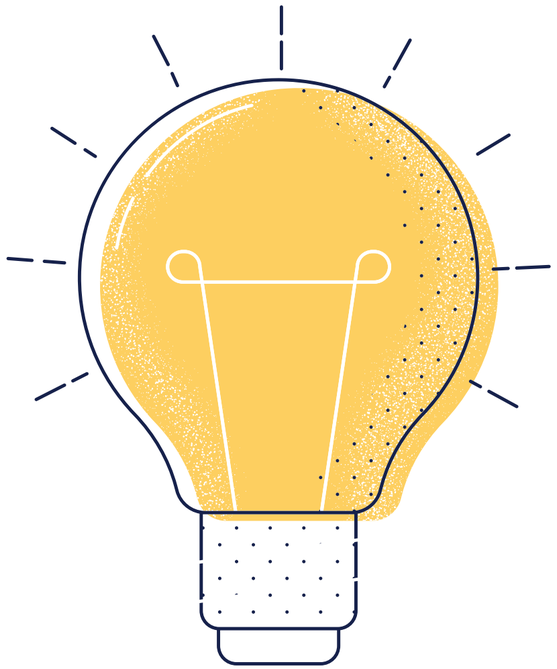
Budget Highlights

- **Expenditure:** The government proposes to spend Rs 34,83,236 crore in 2021-22. As per the revised estimates, the government spent Rs 34,50,305 crore in 2020-21, 13% higher than the budget estimate.
- **Receipts:** The receipts (other than borrowings) are expected to be Rs 19,76,424 crore in 2021-22, which is 23% higher than the revised estimates of 2020-21. In 2020-21, revised estimates for receipts were 29% lower than budget estimates. Given the impact due to COVID-19, it is useful to see the growth from 2019-20, an annual increase of 6%.
- **GDP growth:** Nominal GDP is expected to grow at 14.4% (i.e., real growth plus inflation) in 2021-22.
- **Deficits:** Revenue deficit is targeted at 5.1% of GDP in 2021-22, which is lower than the revised estimate of 7.5% in 2020-21 (3.3% in 2019-20). The fiscal deficit is targeted at 6.8% of GDP in 2021-22, down from the revised estimate of 9.5% in 2020-21 (4.6% in 2019-20). The government aims to steadily reduce the fiscal deficit to 4.5% of GDP by 2025-26.
- Ministry allocations: Among the top 13 ministries with the highest allocations, the highest annual increase over 2019-20 is observed in the Ministry of Jal Shakti (64%), followed by the Ministry of Consumer Affairs, Food and Public Distribution (48%) and the Ministry of Communications (31%).



"Taxation is the price which civilized communities pay for the opportunity of remaining civilized."

Albert Bushnell Hart

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Direct Tax Proposals

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MEANING OF THE TERM 'LIABLE TO TAX' [SECTION 2(29A)]

- The Act currently does not define the term 'liable to tax' though this term is used in section 6, in clause (23FE) of section 10 and various agreements entered into under section 90 or section 90A of the Act. Hence, it is proposed to insert clause (29A) to section 2 of the Act providing its definition.
- The term –' liable to tax' in relation to a person means that there is a liability of tax on that person under the law of any country and will include a case where subsequent to the imposition of such tax liability, an exemption has been provided.

AN EXEMPTION UNDER SECTION 10 (23FE)

- Section 10 (23FE) was introduced in last year's Budget in order to encourage **Sovereign Wealth Funds and Pension Funds** to make investments in the infrastructure sector of India.
- The Budget has provided certain relaxations in the conditions for availing 100% tax exemption (such as the prohibition on loans or borrowings, restriction on commercial activities, direct investment in the entity owning infrastructure, etc).
- These conditions shall serve as a relief to the investment funds by reducing practical issues, and thereby provide an overall push to the infrastructure sector.

Amendment proposed in Section 36(1)(va) and Section 43B

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DEDUCTIONS AND CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT [SECTION 36(1)(VA) AND SECTION 43B]

- Section 36(1)(VA) provides for deduction by way of expenditure to any sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) apply if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.
- Section 43B of the Act allowed for the deduction of expenditure incurred by the employer on account of employers' contribution to the specified funds like provident fund etc. on an actual payment basis.

DEDUCTIONS AND CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT [SECTION 36(1)(VA) AND SECTION 43B]

- In order to clarify the issue, an amendment has been proposed under Explanation 2 to Section 36(1)(va) to provide specifically that the provisions of Section 43B are not applicable and further are deemed to never have been applicable for the purpose of determining the 'due date' under the Section 36(1)(va).
- *A corresponding clarification is also proposed to be inserted under Section 43B of the Act that the provision of the Section shall not apply to a sum received by the assessee from any of his employees to which the provisions of Section 2(24)(x) applies, as the same is covered in Section 36(1)(va) of the Act.*

DEDUCTIONS AND CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT [SECTION 36(1)(VA) AND SECTION 43B]

Divergent judicial rulings on the deductibility of employees' contribution paid after the due date under respective laws but before the due date of filing RoI:

- Favorable to Assessee: Magus Customers Dialog (Kar), AIMIL Ltd (Del), Rajasthan State Beverages Corp (Raj), Sagun Foundry Ltd (All)
- Against Assessee: Gujarat State Road Corporation (Guj HC), Merchem Ltd (Ker)

NRIs won’t be taxed twice on foreign retirement account money

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RELIEF FROM TAXATION IN INCOME FROM RETIREMENT BENEFITS ACCOUNT MAINTAINED IN A NOTIFIED COUNTRY [SECTION 89A]

- The said Section is applicable in the case of a resident who was earlier a non-resident and had maintained an account in a notified country in respect of his retirement benefits.
- *There was a mismatch with respect to taxability on withdrawal from the retirement fund i.e., in some cases, the income was charged on the accrual basis in India, whereas the same was charged on a receipt basis in the foreign country.*
- The insertion of Section 89A is now proposed to alleviate the genuine hardship to these residents.

Increase in safe harbour limit of 10% to 20% for certain transfer during the period from 12th November, 2020 to 30th June, 2021

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SPECIAL PROVISION FOR THE FULL VALUE OF CONSIDERATION FOR THE TRANSFER OF ASSETS OTHER THAN A CAPITAL ASSET IN CERTAIN CASES AND INCOME FROM OTHER SOURCES [SECTION 43CA AND SECTION 56(2)(X)]

- To encourage the real estate developer, in the case of residential units, the safe harbour limit is proposed to be increased from 10% to 20% subject to fulfilling the following conditions, i.e.:
- The transfer of the residential unit takes place during the period from ***12 November 2020 to 30 June 2021.***
- The transfer is by way of first time allotment of the residential unit to any person. *The consideration received or accruing as a result of such transfer does not exceed INR 2 crore.*

SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSET IN CERTAIN CASES AND INCOME FROM OTHER SOURCES [SECTION 43CA AND SECTION 56(2)(X)]

- A consequential amendment is also proposed in Section 56(2)(x) to increase the safe harbour limit from 10% to 20% whereby, circle rate shall be deemed as sale/ purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.
- The above amendments are proposed to be effective from 1 April 2021.

Incomes not included in total Income [Section 10(23FE)]

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INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10(23FE)]

- Section 10(23FE) of the Act was introduced vide the Finance Act, 2020 and provides *an exemption in respect of any income in the nature of dividend, interest, or long-term capital gains earned by a wholly-owned subsidiary of the Abu Dhabi Investment Authority (ADIA) or sovereign wealth funds (SWFs) or pension funds (PFs) in respect of their investment made in India in infrastructure*, subject to fulfilling certain conditions.
- In order to further encourage more investments from SWFs and PFs, amendments relaxing some of the earlier conditions of exemption of income have been proposed.

INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10(23FE)]

- Previously, Category-I or Category-II Alternative Investment Fund to invest 100% of its investments in one or more entities covered under Section 80-IA(4) of the Act which provides 100% deduction to an enterprise engaged in an infrastructure facility. Now same has been relaxed to 'not less than 50%' of the investments.
- Further, the investment may also be made in an Infrastructure Investment Trust defined in Section 2(13A)(i).
- Further, it has also been proposed to allow investment into a newly incorporated domestic company, which then invests a minimum of 75% in one or more entities covered under Section 80-IA(4). The Domestic Company should be set up and registered on or after 01, April 2021.

INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10(23FE)]

- Further, allow investment into a *Non-Banking Finance Company (NBFC) registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund (IDF)*, provided that the NBFC / IDF have minimum 90% lending to one or more entities covered under Section 80-IA(4).
- It is further proposed that in case the revised minimum investment limits are satisfied but the investments are not 100% in the specified business, the exemption in income would be calculated **in proportion** to the investments in the infrastructure facility and the balance income attributable to non-infrastructure investments would be taxable as applicable.

INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10(23FE)]

- Further, it is also proposed that in case an SWF or a PF has **a loan or borrowing**, directly or indirectly, which has been utilized for the purpose of making an investment in India, **then the exemption would not be allowed.**
- The benefits of this section will continue to apply if the loan or borrowing is for any other purpose except for making the investment in India.
- It is further proposed to insert a condition that the SWF or PF would not participate in the day-to-day operations of the assessee. *However, the SWF or PF would be allowed to appoint directors or executive directors and the same would not be considered as participation in day-to-day operations.*

INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10(23FE)]

- It is also proposed to add a clarificatory amendment whereby the PF even if it is liable to tax in the foreign country, exemption from taxation for the said income is provided in the foreign country.
- The term 'liable to tax' has been proposed to be defined under Section 2(29A) and means that there is a liability of tax on such person under any law for the time being in force in any country, and shall include a case where subsequent to the imposition of tax liability, an exemption has been provided.
- The government may now prescribe the method of calculation of the said investment limits as applicable.

No depreciation on 'Goodwill' !!
[Sections 2(11), 32, 50 and 55]

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INCOME FROM BUSINESS OR PROFESSION – DEPRECIATION ON GOODWILL [SECTIONS 2(11), 32, 50 AND 55]

- The term 'block of assets' as referred to in Section 2(11) of the Act shall not include the term 'goodwill of a business or profession'.
- Section 32(1)(ii) of the Act is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said Section and therefore not eligible for depreciation.
- Also, Explanation 3 to Section 32(1) is proposed to be amended to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-Section.

INCOME FROM BUSINESS OR PROFESSION – DEPRECIATION ON GOODWILL [SECTIONS 2(11), 32, 50 AND 55]

- A proviso is proposed to be inserted in Section 50(2) and the same provides that in a case where the goodwill of a business or profession formed part of a block of an asset for the assessment year beginning on 1 April 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.
- Section 55(2)(a) is proposed to be substituted to provide that in relation to a capital asset, being goodwill of a business or profession, or a trademark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours:

INCOME FROM BUSINESS OR PROFESSION – DEPRECIATION ON GOODWILL [SECTIONS 2(11), 32, 50 AND 55]

- In the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
- In the case falling under Section 49(1) (i) to (iv) and where such asset was acquired by the previous owner by purchase, means the amount of the purchase price for such previous owner; and
- In any other case, shall be taken to be NIL.
- Further, the cost of acquisition will be the purchase price as reduced by the amount of depreciation so obtained by the assessee under Section 32 on or before 1 April 2020 in a case where: the goodwill of a business or profession is acquired by the assessee by way of purchase from a previous owner [either directly or through the modes specified under Section 49 (1) (i) to (iv)].

Definition of the term ‘Slump Sale’ mentioned u/s 50B [Section 2(42C)]

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DEFINITION OF THE TERM 'SLUMP SALE' MENTIONED U/S 50B [SECTION 2(42C)]

- **Section 50B** of the Act provides for computation of capital gains in case of 'slump sale'. However, the said term has been defined in Section 2(42C) of the Act.
- Section 2(42C) defines 'slump sale' to mean the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
- *The above definition of 'slump sale' is proposed to be amended to include all types of transfers within its scope to provide certainty.*

DEFINITION OF THE TERM 'SLUMP SALE' MENTIONED U/S 50B [SECTION 2(42C)]

- Hence, the definition of the term **'slump sale'** under Section 2(42C) is expanded so as to mean *the transfer of one or more undertakings, by any means, for lump sum consideration without value being assigned to individual assets and liabilities in such cases.*
- An Explanation is also proposed to be added to Section 2(42C) which states that the meaning of the term 'transfer'; shall have the same meaning as assigned under Section 2(47) and hence, all the types of transfer as defined in Section 2(47) are included within its scope.

DEFINITION OF THE TERM 'SLUMP SALE' MENTIONED U/S 50B [SECTION 2(42C)]

- Recently, the Madras High Court relying on an earlier decision of Bombay High Court (appeal pending before the Supreme Court of India), had held that transfer of an undertaking for non-monetary consideration is not 'slump sale' thus not chargeable to tax as per the current tax law [i.e. under section 50B of the Income-tax Act, 1961 (ITA)].
- *Primarily, the rationale for the above judgments is that if there is no monetary consideration involved in the transaction, then the transaction may be regarded as an 'exchange' and not 'sale'. Accordingly, it would be not possible for the tax department to bring such transactions under the ambit of 'slump sale'.*

DEFINITION OF THE TERM 'SLUMP SALE' MENTIONED U/S 50B [SECTION 2(42C)]

- The language in the Memorandum suggests that the proposed amendment is clarificatory in nature and that slump exchange transactions are covered under the definition of slump sale as it exists today.
- Accordingly, it will be seen in due course, how Court rulings will be going forward in relation to past slump exchange transactions, taking into consideration the above amendment.

Tax on dissolution or reconstitution of partnership

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TAXATION ON DISTRIBUTION OF ASSET/ MONEY ON DISSOLUTION OR RECONSTITUTION OF FIRM/AOP/BOI [SECTION 45 (4) AND 45(4A) AND SECTION 48]

- Section 45(4) provides for tax on the transfer of a capital asset by way of distribution to partner/ member by a firm / AOP / BOI (specified entity) on its dissolution or otherwise. For the computation of such capital gains, the fair market value of the capital asset is considered as the full value of consideration.
- It is now proposed to substitute Section 45(4) and insert new Sections 45(4) and (4A) to compute tax of the specified person on capital gains arising from dissolution or reconstitution.

TAXATION ON DISTRIBUTION OF ASSET/ MONEY ON DISSOLUTION OR RECONSTITUTION OF FIRM/AOP/BOI [SECTION 45 (4) AND 45(4A) AND SECTION 48]

- The proposed amendment provides that capital gains tax will be chargeable in hands of the firm on receipt of money or other assets by a Partner in excess of his capital account balance at the time of dissolution or reconstitution for purposes of 45(4A), the value of money or FMV will be deemed to be the full value of consideration.

Benefits to Startups Extended!

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CAPITAL GAIN ON TRANSFER OF RESIDENTIAL PROPERTY NOT TO BE CHARGED IN CERTAIN CASES [SECTION 54GB]

- Section 54GB, inter alia, provide for rollover benefit in respect of capital gains arising from the transfer of a long-term capital asset, being a residential property owned by the eligible assessee.
- The assessee is required to utilize the net consideration for subscription in equity shares of an eligible company before the due date of filing return of income. *The benefit is only available for investment in the equity shares of eligible start-ups up to 31 March 2021.*
- It is now proposed to extend the benefits to the eligible start-ups till 1 April 2022.

SPECIAL PROVISION IN RESPECT OF SPECIFIED BUSINESS. [START-UPS] [SECTION 80-IAC]

- Section 80-IAC of the Act provides for a *deduction of 100% of the profits and gains derived from an eligible business by an eligible start-up having turnover not exceeding INR 100 crores, for 3 consecutive assessment years out of 10 years, at the option of the assessee, subject to certain conditions, for an eligible start-up incorporated on or after the 1 April 2016 but before the 1 April 2021.*
- It is now proposed to extend the period of incorporation of such eligible start-ups till 1 April 2022.

DEDUCTION IN RESPECT OF PROFIT AND GAINS FROM HOUSING PROJECT [SECTION 80-IBA]

- Section 80-IBA provides a deduction of 100% of the profits in case they are earned from the business of developing and building affordable housing projects, Earlier, the time limit for the approval of the project by the competent authority was until 31 March 2021, which has now been proposed to be extended to 31 March 2022.
- Further, *sub-Section 80-IBA(1A) is proposed to be inserted*, whereby a 100 % deduction of the profits can also be availed for the profits and gains derived from the business of developing and building an affordable rental housing project.

INQUIRY BEFORE ASSESSMENT

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INQUIRY BEFORE ASSESSMENT [SECTION 142(1)(I)]

- The provisions of Section 133C give powers to the prescribed income-tax authority to ask for information and documents which may be useful or relevant to any inquiry or proceeding under the Act.
- However, the prescribed income-tax authority was not permitted to ask the assessee to file its return of income in case it had not been filed.
- *It is now proposed to amend Section 142(1)(i) so as to include within the ambit of the assessing officer, the 'prescribed income-tax authority'.*

INQUIRY BEFORE ASSESSMENT [SECTION 142(1)(I)]

- Consequently, the prescribed income-tax authority can also mandate the assessee to file his return of income, in case the same is not filed.
- This is apart from and in addition to the powers of inquiry under 'Section 133C' wherein information and documents relevant to proceedings can be asked for.

RETURN OF INCOME

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RETURN OF INCOME [SECTION 139]

- Section 139 of the Act deals with the provisions relating to the filing of return of income for various assessees.
- *The Portuguese Civil Code of 1860 and Section 5A* of the Act provides for the equal apportionment of income other than salaries between the husband and the wife governed by the said Code.

RETURN OF INCOME [SECTION 139]

- It is proposed to amend Section 139 so as to align the due dates of filing of return of income for the assessee with his / her spouse, in case the provisions of a tax audit are applicable, and they are governed by the Portuguese Civil Code of 1860 and Section 5A is applicable.
- In the erstwhile provisions, there was a mismatch whereby the spouse had to file his/her return earlier by 31 July and the assessee was required to do so by 31 October, if the provisions of Section 44AB were applicable.

RETURN OF INCOME [SECTION 139]

- Thus, the due date of 31 October would now be applicable to both the said assessee as well as his / her spouse, if either one of them is required to get his / her books audited.
- The earlier provisions for filing of return of income had a mismatch in case the provisions of Section 92E were applicable to the firm as the due date of filing return of income was 31 October for the partners but 30 November for the firm.

RETURN OF INCOME [SECTION 139]

- It is proposed to align the due date of filing return of income under Section 139 to 30 November, for the partners of the firm to whom the provisions of Section 92E are applicable.
- It is further proposed to pre-pone the due date of filing belated return of income under **Section 139(4) to 31 December** from the earlier time of **31 March** of the next year, effectively reducing the window for filing the belated return of income by **3 months.**

RETURN OF INCOME [SECTION 139]

- Pre-pone the due date of filing revised return of income under Section 139(5) to 31 December from the earlier time of 31 March of the next year, effectively reducing the window for filing the revised return of income by 3 months.
- It is further proposed to amend Section 139(9), so as to grant the Central Board of Direct Taxes (CBDT), the powers to declare such classes of assessees as excluded or excluded with modifications as the case may be, from the said conditions under which a return of income may be considered as a defective return. Since the current conditions were creating issues for the Department and therefore the government has proposed to amend the conditions.

ASSESSMENT

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ASSESSMENT [SECTION 143]

- ***Section 143(1)*** provides for the processing of the return of income and issuing the Intimation under ***Section 143(1)***.
- It is proposed to amend the time limit of processing of the said intimation under **Section 143(1)** and reduce the same to nine months instead of the current one-year time limit.
- It is also proposed to amend the language of the provision so as to enable processing of intimation under ***Section 143(1)*** as regards the mismatches with the audit report to the income side as well and not just be restricted to the expenditure side.

ASSESSMENT [SECTION 143]

- Further, it is also proposed to insert *'Chapter VI-A'* instead of the Section numbers under ***Section 143(1)(a)(v)*** which provides the conditions for the processing of the return under Section 143(1).
- The said is consequential to amendment in *Section 80AC*, which provides for non-allowance of deduction in case the return of income is not filed within the due date specified in Section 139(1).
- ***Section 143(2)*** provides the time limit for the issue of notice for scrutiny assessment, like 6 months from the end of the assessment year, which is now proposed to be reduced to 3 months from the end of the assessment year.

Income escaping assessment [Section 147]

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INCOME ESCAPING ASSESSMENT [SECTION 147]

- It is proposed that the scheme of reassessment, as well as search assessment, be substituted with a new procedure for the reassessment of income from 1 April 2021 onwards, which subsumes within its ambit both the assessment pursuant to search under Section 153A / 153C as well as reassessment under Section 147, under the erstwhile law.
- It is proposed to substitute the existing Section 147 and introduce a new Section 147, wherein the AO may assess or reassess such income and also any other income chargeable to tax that has escaped assessment, subject to the provisions of Section 148 to 153.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- It is further proposed to be clarified by way of an Explanation that *the AO has the power to assess or reassess any issue subsequently during the assessment proceedings irrespective of the fact that the provisions of Section 148A have not been complied with.*
- It is proposed to substitute the erstwhile Section 148 of the Act and introduce a new Section 148, which stipulates that the assessee is to be served a notice under *Section 148 along with the order under Section 148A, asking him to furnish his return of income.*

INCOME ESCAPING ASSESSMENT [SECTION 147]

- It has been provided that the issue of the notice would not be made unless there is information with the AO which suggests escapement of income, as also the necessary approvals have been taken from the specified authority under **Section 151.**
- The said return of income would be considered as a return of income filed under *Section 139* and the provisions, so far as applicable may apply.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- It has been clarified that information with the AO which suggests escapement of income to mean: *Any information flagged in accordance with the risk management strategy formulated by the CBDT.*
- Any final objection raised by the C & AG of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- It is proposed that **Section 148A** would require the AO to provide the assessee opportunity of being heard by serving him a show-cause notice and asking him to reply within a specified time limit not exceeding 30 days from the date of the notice.
- The AO shall consider the reply of the assessee in response to the show-cause notice under Section 148A of the Act as well as the material before him and then pass an order under Section 148A of the Act, whether or not it is a fit case to issue the notice under Section 148.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- The said order should be passed within 1 month from the end of the month in which the reply is received, and in cases where no reply is received within 1 month from the end of the month in which the time limit allowed has expired.
- It is proposed that Section 148A would require the AO to provide the assessee opportunity of being heard by serving him a show-cause notice and asking him to reply within a specified time limit not exceeding 30 days from the date of the notice.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- Section 149 of the Act has been substituted to provide that the reassessment provisions would not be applicable if 3 years have elapsed from the end of the relevant assessment year.
- However, in case the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to INR 50 lakh or more for that year, then the limitation period would get extended to 10 years from the end of the relevant assessment year.

INCOME ESCAPING ASSESSMENT [SECTION 147]

- It is further provided that the limitation period would be extended by the time limit allowed to the assessee to comply with the show cause notice under Section 148A or the period during which the proceedings under Section 148A are stayed by an order or injunction of a court.
- Corresponding amendments have also been made in Section 151 and Section 151A of the Act to reflect the said assessment procedure.

SECTION 153(1)/153A/153C

- *It is proposed to amend Section 153(1) by way of a proviso whereby the time limit of completion of assessments under Section 143 and Section 144 for AY 2021-22 onwards would be reduced to 9 months from the end of the assessment year in which the income is assessable.*
- Consequential amendments have been also proposed in Section 153A and Section 153C, whereby the Sections would cease to apply to actions initiated after 1 April 2021.

Board for Advance Rulings [Section 245-OB and from Sections 245N to Section 245W]

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BOARD FOR ADVANCE RULINGS [SECTION 245-OB AND FROM SECTIONS 245N TO SECTION 245W]

- The Government has proposed to insert section "245-OB of the Income-tax Act. As per section 245-OB, the Central Government shall constitute one or more Boards for Advance Rulings, as may be necessary, for giving advance rulings under this Chapter on or after such date as the Central Government may, by notification in the Official Gazette, appoint.
- *It further provided that the Board for Advance Rulings shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.*

BOARD FOR ADVANCE RULINGS [SECTION 245-OB AND FROM SECTIONS 245N TO SECTION 245W]

- However, industry observers point out the lack of balance because of the absence of judicial members in the proposed board and the freedom of an aggrieved applicant to go to the high court against a ruling mean more pile-up of cases at the judiciary level.
- When we have somebody from a judicial background, then there is more faith that they will be deciding judiciously. But when everything is with the income tax people who have served their whole life in revenue authorities, what can we expect from them?

PROCEDURE OF INCOME-TAX APPELLATE TRIBUNAL (ITAT) [SECTION 255]

- In order to further strengthen the Faceless Appeals Scheme, a Faceless Scheme for ITAT proceedings is proposed to be launched.
- Therefore, in order to reduce human interface between the department and the assessee, Section 255 of the Act is proposed to be amended, to provide that the Central Government may notify a scheme for disposal of appeal by ITAT and to impart greater efficiency, transparency, and accountability.
- The Central Government is empowered to give such directions that certain provisions of this Act shall not apply to this scheme or shall apply with such modifications, exceptions, and adaptations on or before 31 March 2023.

Other Amendments

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CONSTITUTION OF NEW INTERIM BOARD FOR SETTLEMENT REPLACING EXISTING INCOME-TAX SETTLEMENT COMMISSION [SECTION 245A TO SECTION 245M]

- Constitute one or more Interim Board(s) for Settlement of pending applications.
- The applications which have not been declared as invalid under Section 245D(2C) and in respect of which no order has been issued under Section 254D(4) on or before 31 January 2021 are proposed to be treated as pending cases for Interim Boards.
- An order which was required to be passed by the ITSC under Section 245(2C) on or before 31 January 2021 to declare an application invalid but such order has not been passed before the aforesaid date, such application shall be deemed to be valid and treated as pending application.

WITHHOLDING OF TAX ON PAYMENT OF DIVIDENDS [SECTION 194]

- Section 194 provides for deduction of tax at source (TDS) on payment of dividend to a resident.
- Section 194 is proposed to be amended to provide for exemption with respect to withholding tax on dividend paid by an SPV [as referred to in Explanation to Section 10(23FC) of the Act] to a business trust [as defined under Section 2(13A) of the Act] or any other person as may be notified by the Central Government in Official Gazette.
- The above amendments are proposed to be effective retrospectively from 1 April 2020.

WITHHOLDING OF TAX ON PAYMENT OF INTEREST [SECTION 194A]

- The provisions of Section 194A are not applicable on interest paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero-coupon bond issued by them.
- It is now proposed to widen the scope of the above exemption to include interest paid or payable by an infrastructure debt fund in relation to a zero-coupon bond issued by such fund.
- The above amendments are proposed to be effective from 1 April 2021.

TDS ON PAYMENT OF RENT BY CERTAIN INDIVIDUALS OR HINDU UNDIVIDED FAMILY (HUF) [SECTION 194-IB]

- According to Section 194-IB, it is mandatory for any person, i.e. individuals / HUF not liable to audit under Section 44AB, to deduct taxes for rent paid to a resident, exceeding INR 50,000 per month.
- Section 206AA of the Act provides that if Permanent Account Number (PAN) is not furnished by the payee, the withholding tax rate would be 20 percent or the rate in force, whichever is higher.
- It is now proposed to amend Section 194IB to include the newly inserted Section 206AB, providing for a higher rate for TDS for the non-filers of the income tax return, but the maximum TDS can be only up to the extent of rent. The amendment is to be effective from 1 July 2021.

TDS ON PAYMENT MADE TO FOREIGN INSTITUTIONAL INVESTORS (FIIS) [SECTION 196D]

- Section 196D prescribes a withholding of tax at the rate of 20 percent on dividend paid to FIIs from securities under Section 115AD(1)(a).
- A new proviso is inserted to Section 196D which provides that in case of a payee to whom an agreement under Section 90(1) or Section 90A(1) applies and such payee has furnished the tax residency certificate (TRC) referred to in Section 90(4) or Section 90A(4) of the Act, then the tax shall be deducted at the rate of twenty per cent or the rate or rates of income-tax provided in such agreement for such income, whichever is lower.

DEDUCTION OF TAX IN CASE OF SPECIFIED SENIOR CITIZEN [SECTION 194P]

- Section 194P of the Act is proposed to be inserted which provides for relaxation from furnishing/filing of return of income to a senior citizen in the year in which tax has been deducted by the specified bank after giving effect to the deduction allowable under Chapter VI-A of the Act and rebate under Section 87A of the Act.
- Senior citizens need to satisfy the below requirements for applicability of the said Section: Resident in India Aged 75 years or more during any time during the previous year income other than pension and interest income from the same specified bank in which he is receiving his pension income furnished a declaration to the specified bank containing particulars, in such form and verified in such manner, as may be prescribed.

TDS ON PAYMENT OF CERTAIN SUM FOR PURCHASE OF GOODS [SECTION 194Q]

- Section 194Q of the Act is proposed to be newly inserted to provide for withholding tax at the rate of 0.1 percent on payment made by a buyer to a person resident in India for purchase of goods exceeding INR 50 lakh in a previous year. The buyer is required to withhold tax at the rate of 0.1 percent on the sum exceeding INR 50 lakh.
- The Explanation to the proposed Section 194Q(1) of the Act seeks to define the term 'buyer' to mean a person whose total sales, gross receipts, or turnover from the business carried on by him exceeds INR 10 crore, during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

TDS ON PAYMENT OF CERTAIN SUM FOR PURCHASE OF GOODS [SECTION 194Q]

- The provisions of this Section shall not apply to a transaction on which: tax is deductible under any of the provisions of the Act, and tax is collectible under the provisions of Section 206C [other than a transaction covered under Section 206C(1H) of the Act]It is also proposed to consequentially amend Section 206AA(1) and insert the second proviso.
- The second proviso shall provide that where the tax is required to be deducted under Section 194Q and Permanent Account Number (PAN) is not provided, the TDS shall be at the rate of five percent.
- The above amendments are proposed to be effective from 1 July 2021

TDS /TCS FOR NON-FILERS OF INCOME-TAX RETURN [SECTION 206AB / 206CCA]

- Section 206AB and Section 206CCA are proposed to be inserted to provide for a higher rate of withholding tax/collection of tax for taxpayers not furnishing / filing return of income.
- Section 206AB is proposed to apply on any sum paid or payable or credited by a deductee to a specified person (other than any sum where tax is required to be withheld under Section 192, Section 192A, Section 194B, Section 194BB, Section 194LBC, or Section 194N of the Act).– The proposed withholding tax rate shall be higher of the below:
- at twice the rate specified in the relevant provision of the Act; or
- at twice the rate or rates in force; or
- at the rate of five percent

TDS /TCS FOR NON-FILERS OF INCOME-TAX RETURN [SECTION 206AB / 206CCA]

Section 206CCA is proposed to apply on any sum or amount received by a collectee from a specified person. The proposed tax collection rate in the said Section shall be higher of the following:

- twice the rate specified in the relevant provision of the Act or
- the rate of five percent– Further, if the provisions of Section 206AA [requirement to furnish Permanent Account Number (PAN] or Section 206CC (requirement to furnish PAN by collected) are applicable to a 'specified person' in addition to the proposed Sections, that is, Section 206AB and Section 206CCA, the tax shall be deducted/collected at higher of the two rates provided in the proposed Sections and in Section 206AA or Section 206CC of the Act.

INCOMES NOT INCLUDED IN TOTAL INCOME[SECTION 10(11) AND 10(12)]

- Section 10(11) and 10(12) of the Act provide for exemption in respect of any payment from the provident fund, whether set up by the Central Government or whether it is a recognized provident fund respectively.
- *With respect to Section 10(11) and 10(12), a proviso is proposed to be inserted which states that the exemption would not be applicable to income by way of interest accrued during the previous year where the aggregate amount of contribution made by that person exceeds INR 2.5 lakhs and will be taxable and computed in the manner as prescribed.*
- The above amendment is proposed to be effective from 1 April 2022.

RATIONALIZATION OF THE PROVISIONS OF CHARITABLE TRUST AND INSTITUTIONS[SECTION 11 AND SECTION 10(23C)]

- Section 11(1)(d) has been proposed to be amended so as to provide that voluntary contributions should be invested or deposited in one or more of the forms or modes specified in Section 11(5) maintained specifically for such corpus. Explanation 4 to Section 11(1) is proposed to be inserted so as to provide that:
- Application out of the corpus shall not be considered as an application for charitable or religious purposes for the purposes of clause (a) and (b) of sub-Section (1).
- However, when it is invested or deposited back, into one or more of the forms or modes specified in sub-Section (5), from the income of the previous year, such amount shall be allowed as an application in the previous year.

RATIONALIZATION OF THE PROVISIONS OF CHARITABLE TRUST AND INSTITUTIONS[SECTION 11 AND SECTION 10(23C)]

- For the computation of income required to be applied or accumulated during the previous year, no set-off or deduction or allowance of any excess application, of any of that year preceding the previous year shall be allowed.
- A reference to Section 12AB shall be made in sub-Section (3) which provides for the procedure of registration.
- For claiming exemption by universities, educational institutions and hospitals, or other institutions under Section 10(23C) (iiiad) and (iiiae) respectively, the annual receipt threshold has been increased from INR 1 crore to INR 5 crore.

AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION

- The threshold limit for a person carrying on business is increased from INR 1 crore to INR 5 crore, where:
- the aggregate of all receipts in cash during the previous year does not exceed 5% of such receipt and the aggregate of all payments in cash during the previous year does not exceed 5% of such payment.
- The threshold limit of tax audit in specified cases is now proposed to be increased to INR 10 crore, however, the conditions mentioned above would still be applicable.

PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES [SECTION 281B]

- In line with Section 271AAD of the Act as inserted vide the Finance Act, 2020, the provisions of Section 281B are proposed to be amended to provide that an assessing officer (AO) may exercise power under this Section which pertains to the provisional attachment of property during the pendency of proceedings.–
- The words ‘or for the imposition of penalty under Section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said Section exceeds two crore rupees’ are inserted– This provision is amended to safeguard the department in case a taxpayer evades penalty under Section 271AAD of the Act.

DEFINITION OF 'DEMERGER' [SECTION 2(19AA)] AND CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION OF PUBLIC SECTOR COMPANIES IN CASE OF AMALGAMATION, ETC.[SECTION 72A]

- Section 72A of the Act states the provisions relating to carry forward and set off of an accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.
- In order to ease the amalgamation/demerger of public sector enterprises, some amendments have been introduced.

DEFINITION OF 'DEMERGER' [SECTION 2(19AA)] AND CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION OF PUBLIC SECTOR COMPANIES IN CASE OF AMALGAMATION, ETC.[SECTION 72A]

- Explanation 6 is proposed to be inserted to Section 2(19AA) clarifying that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resultant company; and
- The resultant company is a public sector company on the appointed date indicated in the scheme approved by the government or any other body authorized under the provisions of the Companies Act, 2013 or any other Act governing such public sector companies in this behalf.

DEFINITION OF 'DEMERGER' [SECTION 2(19AA)] AND CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION OF PUBLIC SECTOR COMPANIES IN CASE OF AMALGAMATION, ETC.[SECTION 72A]

- Further, Section 72A(1) is also proposed to be amended to the below extent: The provisions of Section 72A(1)(c) have been substituted and shall now apply in case of amalgamation of one or more public sector company or companies with one or more public sector company or companies.
- *Section 72A(1)(d) has been inserted and provides that in case of amalgamation of an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company; and*

DEFINITION OF 'DEMERGER' [SECTION 2(19AA)] AND CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION OF PUBLIC SECTOR COMPANIES IN CASE OF AMALGAMATION, ETC.[SECTION 72A]

- A proviso has been inserted to Section 72A(1) to provide that in case of an amalgamation under Section 72A(1)(d), the accumulated loss and unabsorbed depreciation of amalgamated company shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company, as on the date on which the public sector company ceases to be one as a result of strategic divestment.
- An Explanation is inserted to Section 72A(1)(d) to define the expressions 'control', 'erstwhile public sector company', and 'strategic disinvestment'.

ADVANCE TAX INSTALMENT FOR DIVIDEND INCOME [SECTION 234C]

- Section 234C of the Act provides for payment of interest by an assessee who does not pay or fails to pay on time the advance tax installments as per section 208 of the Act. The assessee is liable to pay simple interest at the rate of 1% per month for a period of three months on the amount of shortfall calculated with respect to the due dates for advance tax installments.
- The first proviso of the subsection (1) provides for the relaxation that if the shortfall in the advance tax installment or the failure to pay the same on time is on account of the income listed therein, no interest under section 234C shall be charged provided the assessee has paid full tax in subsequent advance tax installments.

ADVANCE TAX INSTALMENT FOR DIVIDEND INCOME [SECTION 234C]

These exclusions are: – (a) the number of capital gains; or
(b) the income of nature referred to in sub-clause (ix) of clause (24) of section 2, or
(c) income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time; or
(d) the income of nature referred to in sub-section (1) of section 115BBDA.
Aforesaid relaxation is to insulate the taxpayers from payment of interest under section 234C of the Act in cases where the accurate determination of advance tax liability is not possible due to the intrinsic nature of the income. Therefore, after considering various representations favorably, it is proposed to include dividend income in the above exclusion.

CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF RELOCATION BETWEEN ORIGINAL FUND AND RESULTANT FUND [SECTION 79(2)]

- Section 79(2)(e) is inserted, to specify the restriction pertaining to carry forward and set off of losses in case of a change in shareholding pattern of the company will not apply to a company wherein the change in shareholding pattern has taken place on account of relocation between the original fund and resultant fund, as proposed to be defined vide amendments in Section 47.

TAX ON INCOME OF SPECIFIED FUND OR FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES OR CAPITAL GAINS ARISING FROM THEIR TRANSFER [SECTION 115AD]

- Section 115AD is proposed to be amended to make the provision of this Section apply to the investment division of an offshore banking unit in the same manner as it applies to the specified funds.
- *The provisions of this Section shall apply to the extent of income that is attributable to the investment division of such banking unit as a Category-III portfolio investor under the SEBI (FPI) Regulations, 2019 calculated in the prescribed manner.*

SPECIAL PROVISION FOR PAYMENT OF TAX BY CERTAIN COMPANIES [SECTION 115JB] (PART II)

- The provisions of Section 115JB state that 15% of the book profits of the company are payable as income-tax, in case the amount arrived at, is higher than the income-tax computed as per the normal provisions of the Act.
- Sections 92CC and 92CE of the Act, deal with the provisions of Advance Pricing Agreements and Secondary Adjustments respectively.
- Both the Sections result in changes to income which gets reflected in the current yearbook profits of the company, even though the additions to the income as per the Act is of that particular year in which the adjustment is made.

SPECIAL PROVISION FOR PAYMENT OF TAX BY CERTAIN COMPANIES [SECTION 115JB] (PART II)

- This resulted in inflation of the book profits of the current year, as the adjustments to the books of accounts are made in the current year, even though the additions are pertaining to the income of the earlier years.
- It has now been proposed that the AO, on the receipt of an application from the assessee, may re-compute the book profits for all the past years and then determine the tax liability for the previous year under consideration.
- The said process would be considered as a proceeding akin to proceedings under the ambit of Section 154, as also the time limit of 4 years from the end of the financial year in which the application was received.

INCOME BASED DEDUCTIONS FOR UNITS LOCATED IN IFSC FROM PAYMENT OF INCOME-TAX [SECTION 80LA]

- The deduction will now be available to a unit of an IFSC if it is registered under the IFSC Authority Act, 2019. No need for obtaining permission under any other relevant law.
- The income arising from the transfer of an asset, being an aircraft or aircraft engine which was leased by a unit under Section 80LA(2)(c) to a domestic company engaged in the business of operation of aircraft before such transfer shall also be eligible for 100 percent deduction, subject to the condition that the unit has commenced operations on or before 31 March 2024.

[SECTION 10(23FF)] EXEMPTION FROM CAPITAL GAIN TAX ON ACCOUNT OF TRANSFER OF SHARES OF AN INDIA COMPANY ON ACCOUNT OF RELOCATION [SECTION 47]

- Section 10(23FF) is proposed to be newly inserted. The same exempt any income of the nature of capital gains, arising or received by a non-resident, which is on account of relocation from the original fund to the resultant fund.
- Section 47 is also amended to insert new clauses in the said provision so as to provide that any transfer, in relocation, of a capital asset by the original fund to the resultant fund shall not be considered as a transfer for capital gains tax purpose.

CERTAIN ACTIVITIES NOT TO CONSTITUTE BUSINESS CONNECTION IN INDIA [SECTION 9A] [SECTION 10(4D)] [SECTION 10(4E) AND 10(4F)]

- A new sub-Section (8A) has been inserted under Section 9A to provide that the Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in Section 9A(3) (a) to (m) or Section 9A(4) (a) to (d) of the Act shall not apply (or apply with modification) to an eligible investment fund or its eligible fund manager if the fund manager is located in an IFSC and has commenced operations on or before 31 March 2024.
- Section 10(4D) has been amended so as to provide that the exemption to specified funds.

CERTAIN ACTIVITIES NOT TO CONSTITUTE BUSINESS CONNECTION IN INDIA [SECTION 9A] [SECTION 10(4D)] [SECTION 10(4E) AND 10(4F)]

- Section 10(4E) has been newly inserted to exempt in the hands of a non-resident, any income accrued or arisen to, or received by a non-resident as a result of the transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC which commenced operations on or before the 31 March 2024 and fulfills prescribed conditions.
- Section 10(4F) has also been newly inserted to exempt any income of a non-resident by way of royalty, on account of the lease of an aircraft in a previous year, paid by a unit of an IFSC referred to under Section 80LA(1A), if the unit is eligible for deduction under Section 80LA for that previous year and has commenced its operations on or before 31 March 2024.

PROVISIONS RELATING TO EQUALIZATION LEVY – AMENDMENT TO SECTION 163, 164 AND 165A OF THE FINANCE ACT, 2016

- The Finance Act, 2016 had introduced the Equalisation Levy (EQL) of 6% which was to be levied on a 'Specified service' which means an online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement would include any other service as may be notified by the Central Government.
- The Finance Act, 2020 widened the ambit of the EQL, to not just cover payments made for online advertising, but also to any online sale of goods or online provision of services or facilitation of any of them by an E-Commerce operator.
- The Finance Act, 2021, has proposed that certain clarifications be inserted so as to provide certainty regarding the ambit of the EQL provisions.

PROVISIONS RELATING TO EQUALIZATION LEVY – AMENDMENT TO SECTION 163, 164 AND 165A OF THE FINANCE ACT, 2016

- Section 163 provides the scope of the EQL. The said section is proposed to be amended by way of inserting a proviso which states that the EQL would not cover within its ambit, any consideration which is otherwise taxable as royalty or fees for technical services under the provisions of the Income-tax Act, 1961 read with the applicable tax treaty.
- The consequential amendment has also been introduced under section 10(50) of the Act, to clarify the said exclusion under the Act. It is further proposed to amend section 10(50) so as to provide that the said section would be applicable from 1 April 2020 and not 1 April 2021 as stated earlier, so as to align the exemption with the date of introduction of the expanded EQL provisions.

PROVISIONS RELATING TO EQUALIZATION LEVY – AMENDMENT TO SECTION 163, 164 AND 165A OF THE FINANCE ACT, 2016

- It is further proposed to clarify regarding the applicability of the EQL provisions to the "online sale of goods" and "online provision of services", by defining the said terms to include one or more of the following online activities: acceptance of offer for sale placing of purchase order acceptance of the purchase order payment of consideration supply of goods or provision of services, partly or wholly.
- Further, under section 165A(3), the meaning of the word "specified circumstances" has been clarified to include consideration received for the sale of goods or provision of services, irrespective of the fact whether the goods are owned or not and whether the service is provided or only facilitated by the E-commerce operator respectively.

PROVISIONS RELATING TO INCOME DECLARATION SCHEME, 2016 – AMENDMENT TO SECTION 191 OF THE FINANCE ACT, 2016

- *Income Declaration Scheme, 2016* was introduced to provide an opportunity to persons who have not paid taxes in the past, to make a voluntary disclosure of their undisclosed income and pay taxes accordingly.
- It is now proposed to insert the words "without interest" in the proviso to Section 191, so as to state that even in cases where the Central Government notifies a class of persons to whom the excess amount is refunded, the same would not include interest on the said amount of refund.

CLARIFICATION REGARDING THE SCOPE OF VIVAD SE VISHWAS ACT, 2020 (VSV ACT, 2020)

- [Section 2] With a view to removing any ambiguity, it is proposed to amend the provisions of VSV Act, 2020, to clarify that the proceedings before the Income-tax Settlement Commission (ITSC) would not be covered under the VSV Act, 2020. The said amendment is proposed to take effect retrospectively from 17 March 2020.

THANK YOU

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