

An Analysis of Union Budget 2022-23



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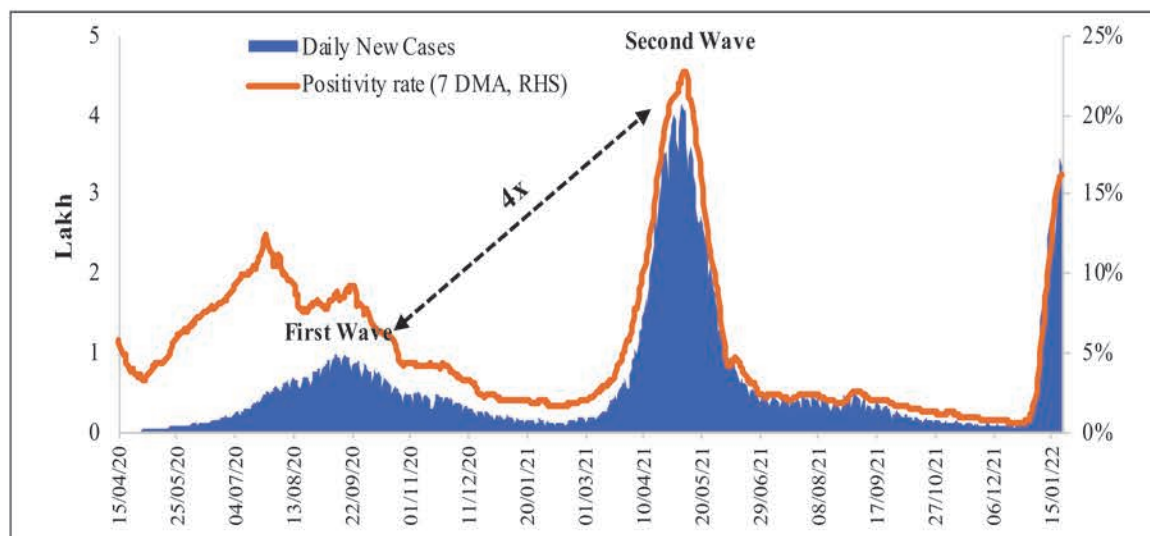
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**INDIAN ECONOMY :
FACTS & FIGURES**

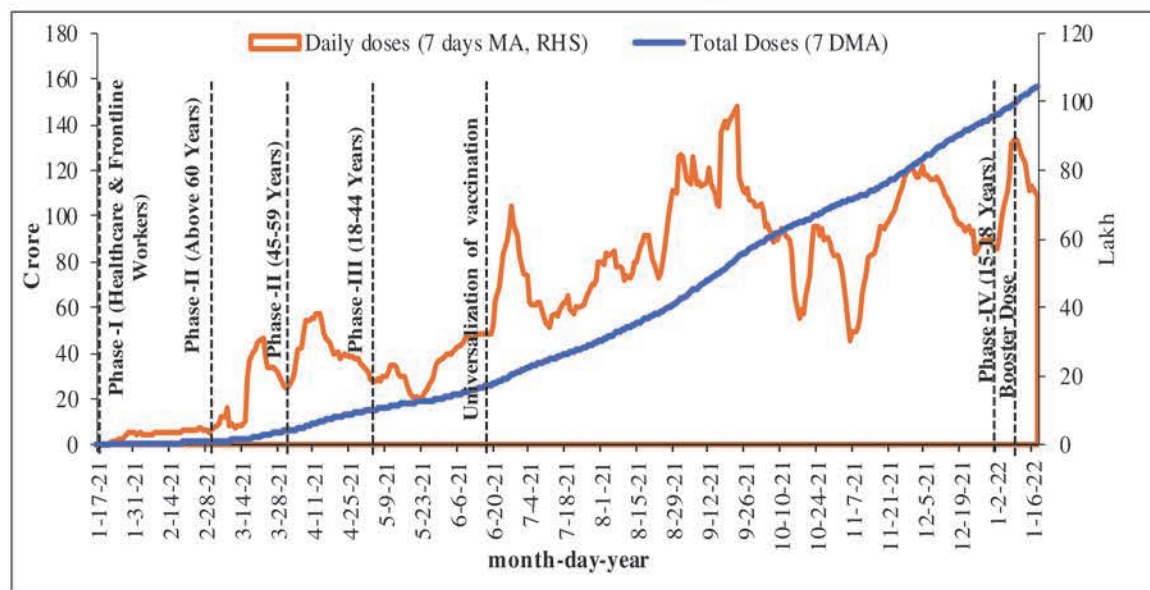
Waves of COVID-19



Source: Data accessed from Ministry of Health and Family Welfare (MoH&FW)

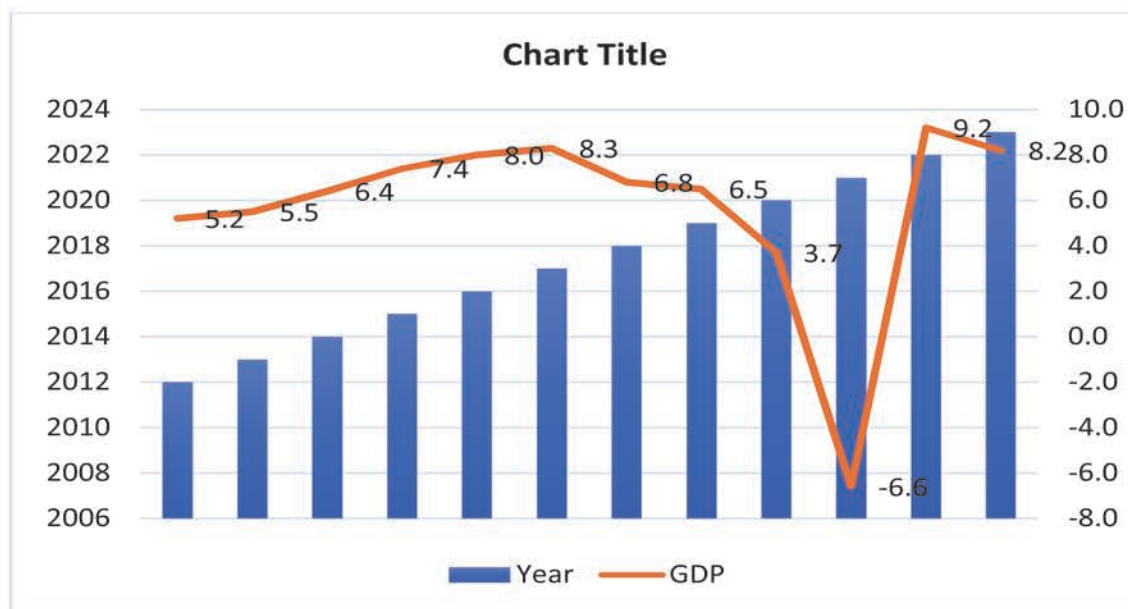
Note: DMA stands for Daily Moving Average

Vaccination Coverage

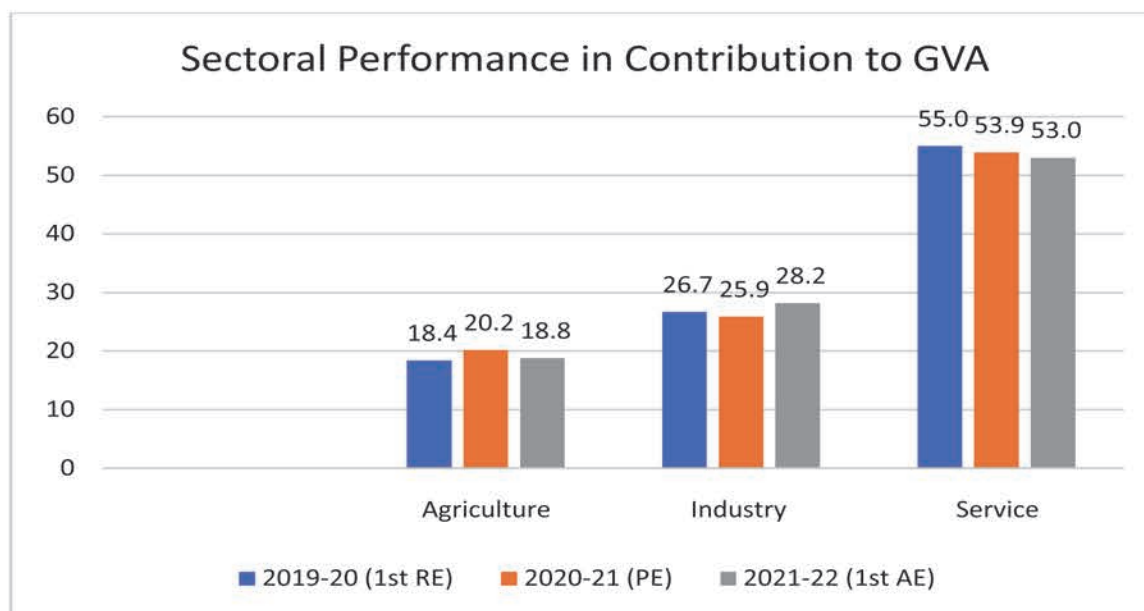


Source: Survey Calculations using data from MoHFW

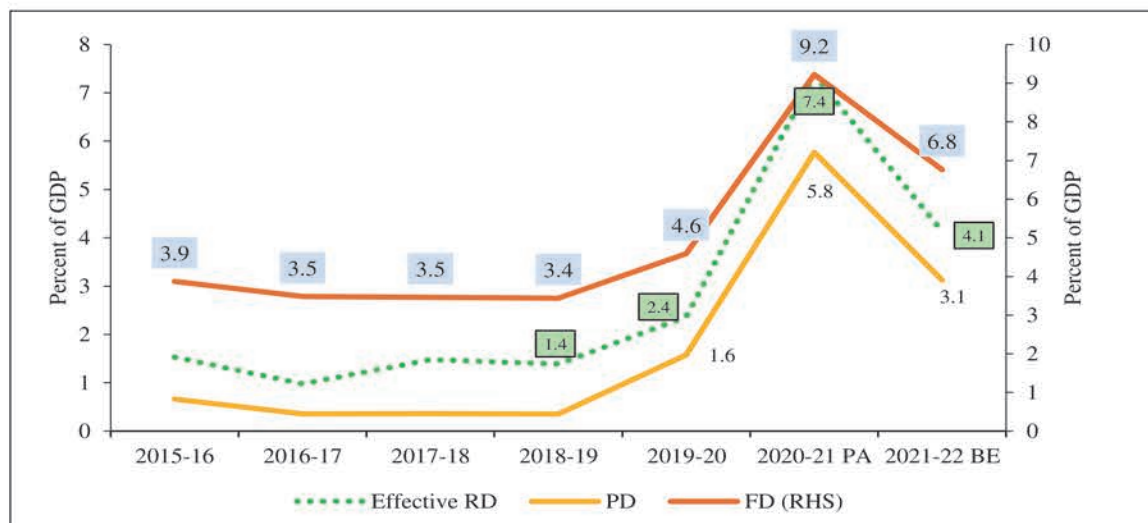
Trend In GDP Growth



Sectoral Contribution to GDP



Trends in Deficits

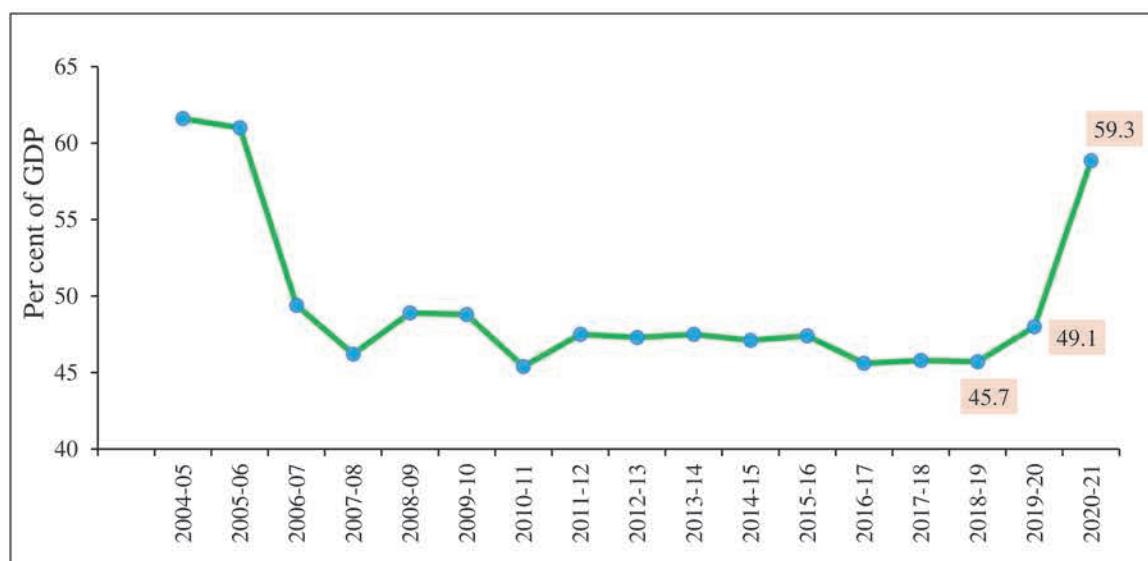


Source: Union Budget Documents & CGA

BE: Budget E-Dimate, PA: Provisional Actuals

FD: Fiscal Deficit; RD: Revenue Deficit; PD: Primary Deficit

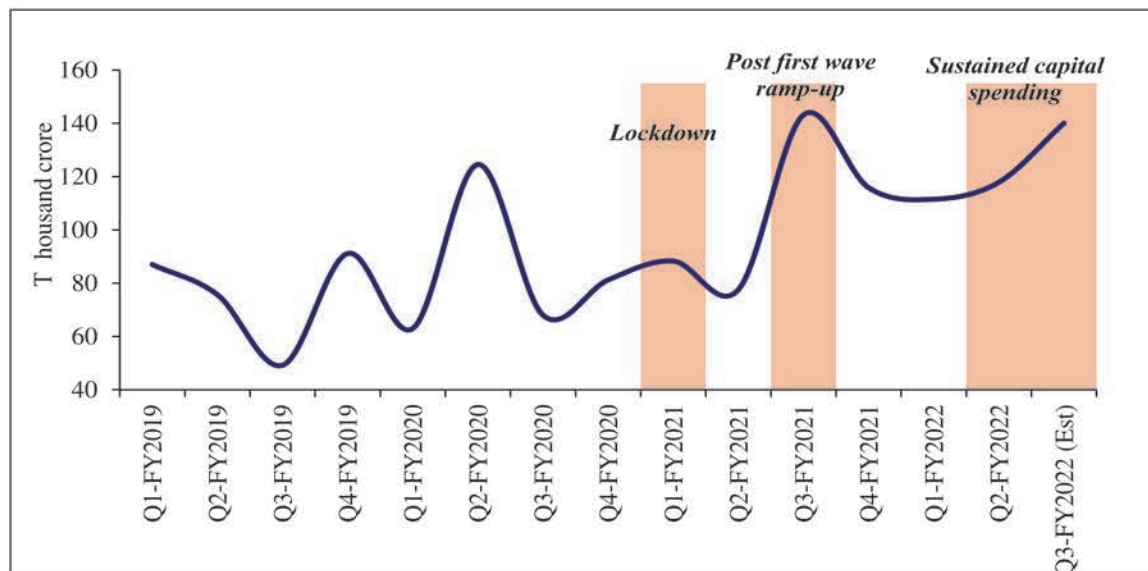
Trend in Centre's Debt-GDP ratio



Source: Various issues of Status Paper on Government Debt

Note: The figures for 2020-21 are Provisional

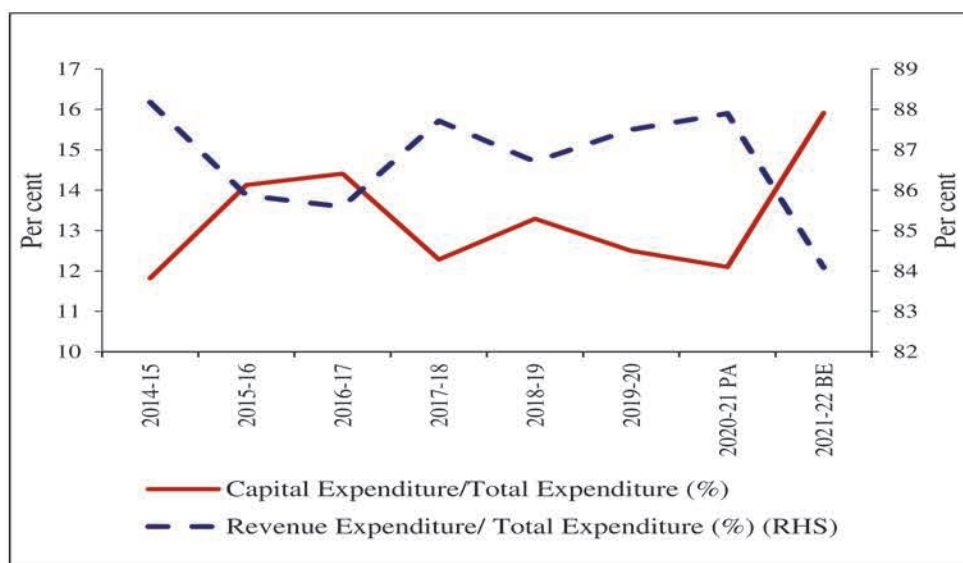
Trends in quarterly capital expenditure



Source: CGA Monthly Accounts

Note: The e-Dimate for Q3 FY2021-22 uses flash figures for Dec 2021.

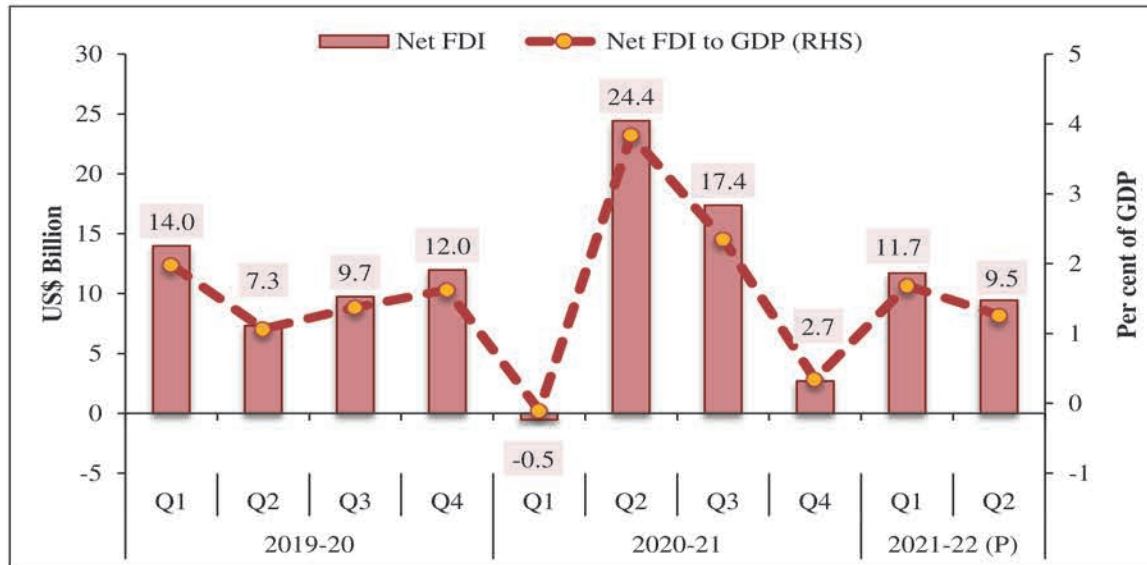
Share of Revenue and Capital Expenditure in Total Expenditure



Source: Union Budget Documents & O/o CGA

BE: Budget E-Dimate, PA: Provisional Actuals,

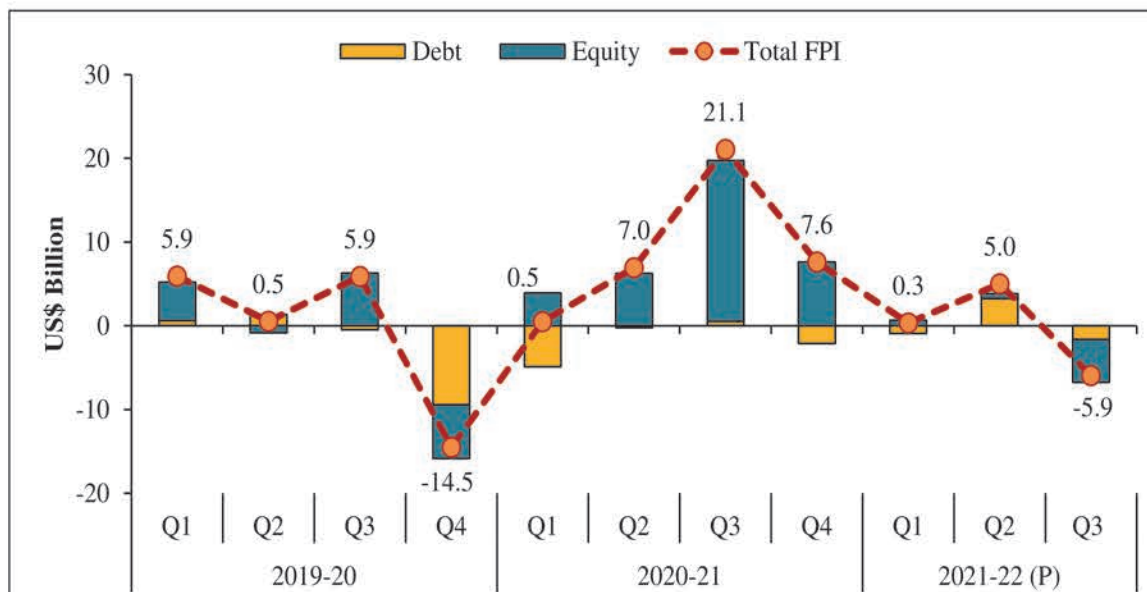
Foreign Direct Investment



Source: RBI

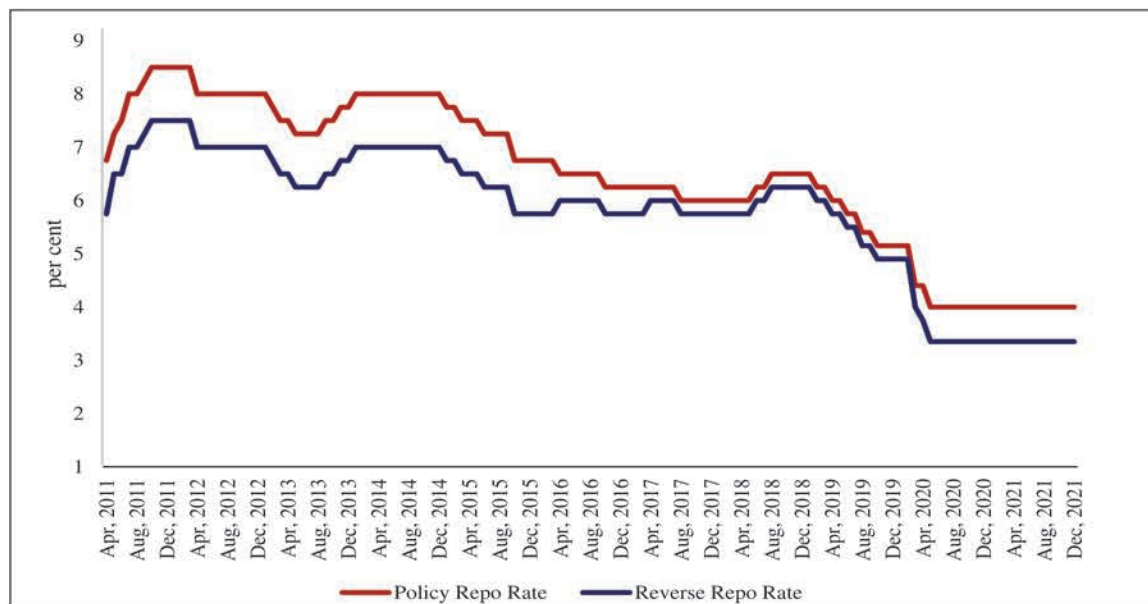
Note: P: Provisional

Foreign Portfolio Investment remained volatile



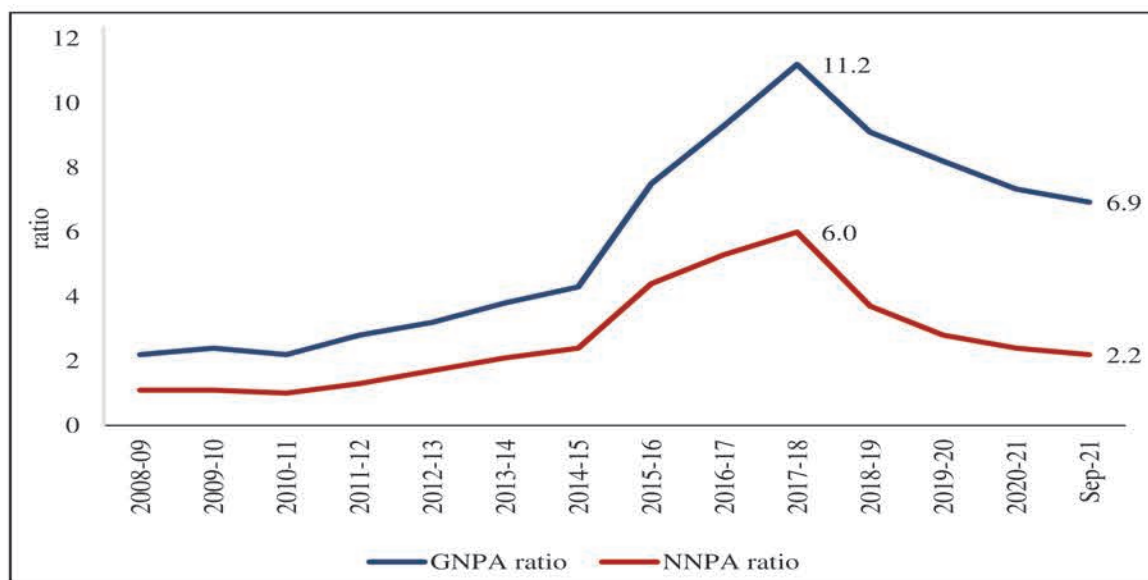
Source: National Securities Depository Limited (NSDL).

Repo and reverse repo rate (per cent)



Source: RBI

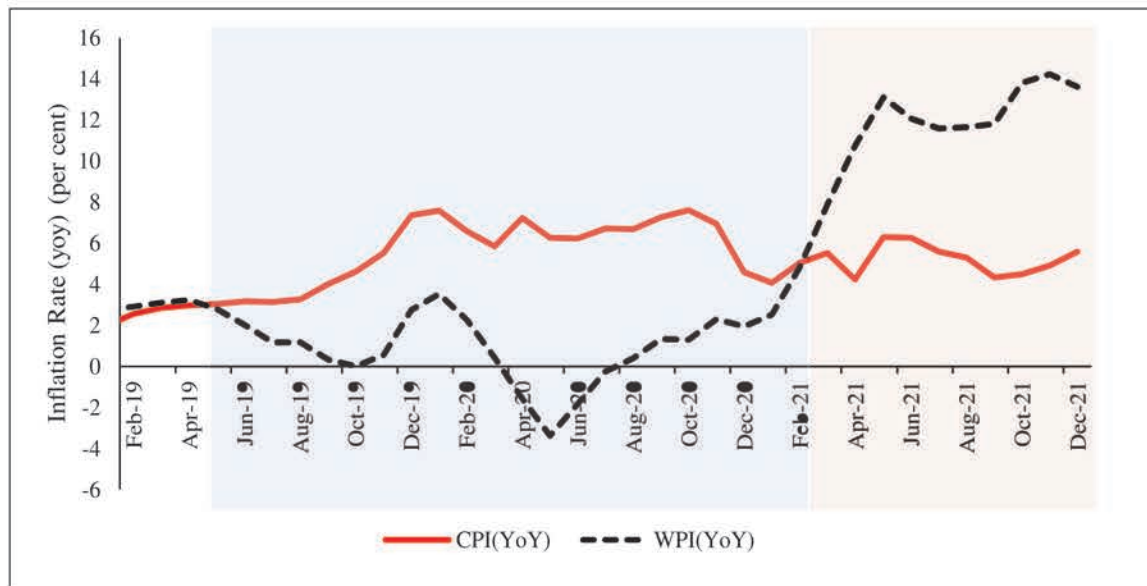
GNPA and NNPA ratio



Source: RBI

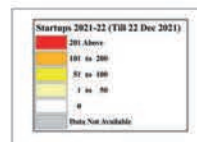
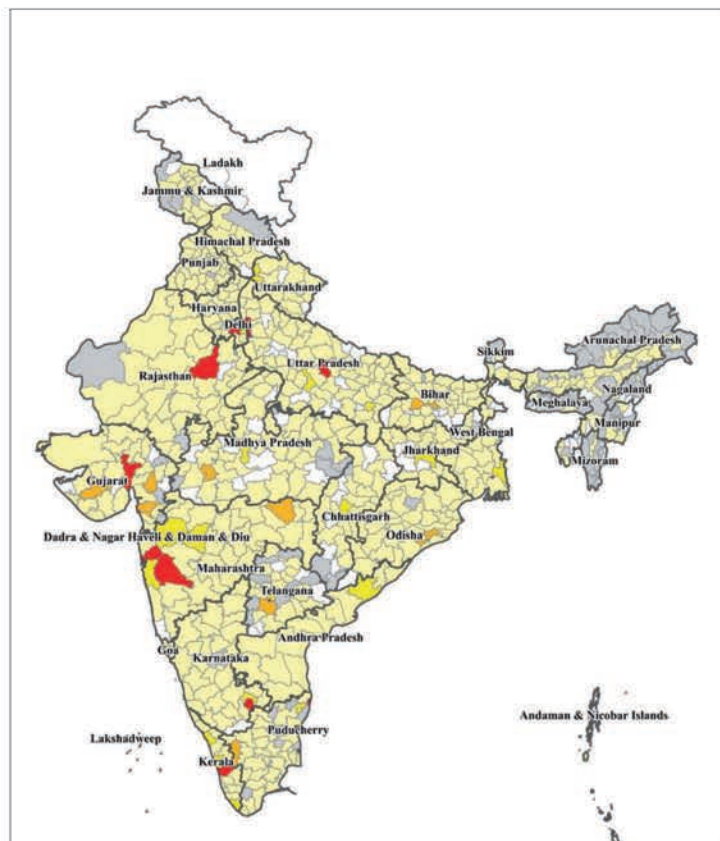
Note: Number for September 2021 is based on o5site returns data

Divergence between YoY inflation in CPI and WPI



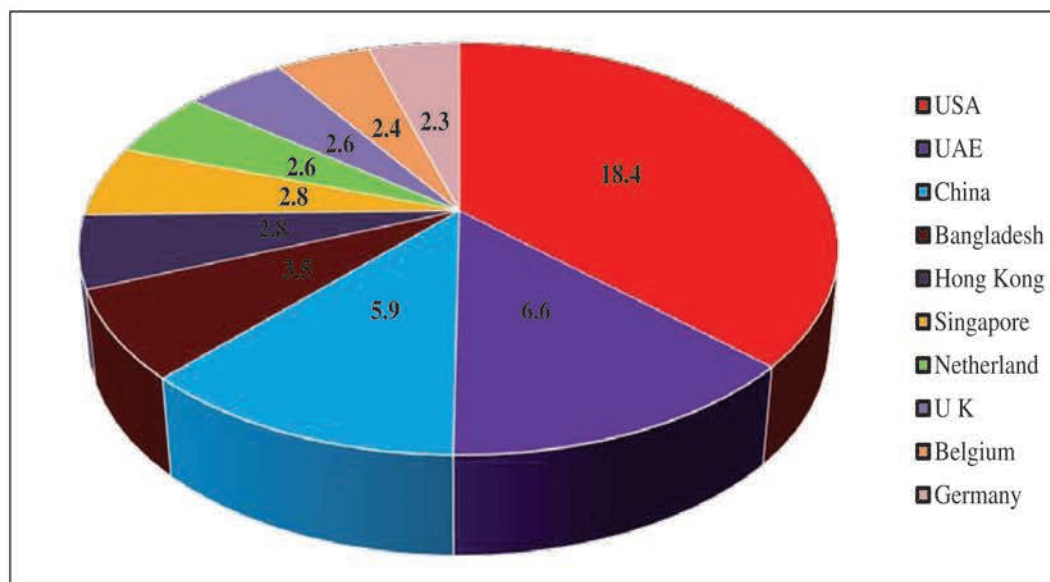
Source: NSO, MoSPI and OEA, DPIIT

10: New Startups recognised in 2021-22*



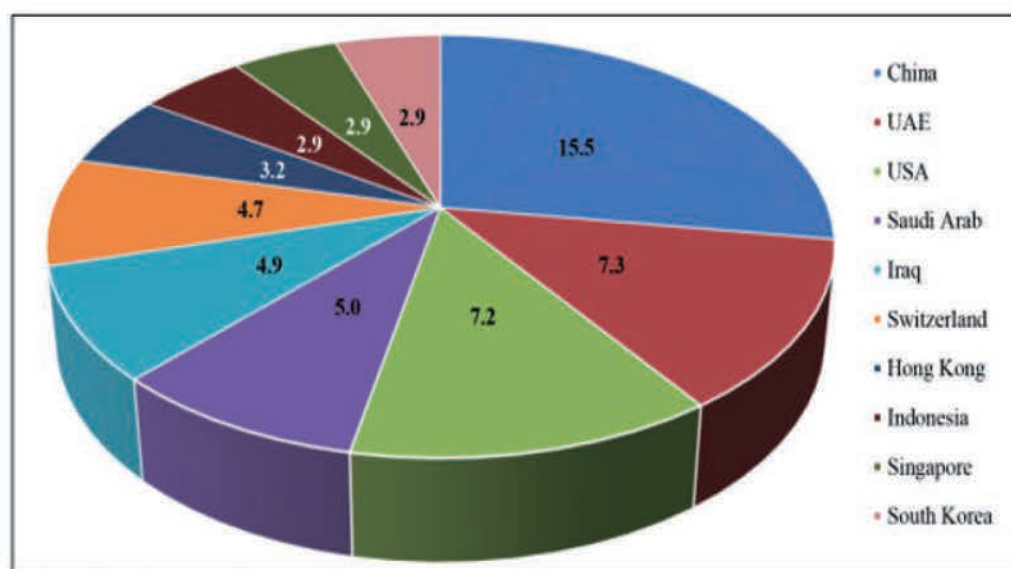
Source: DPIIT
*As on 22nd December 2021

Top ten Export Destinations in 2021-22 (April- November) [By Share in Per cent]



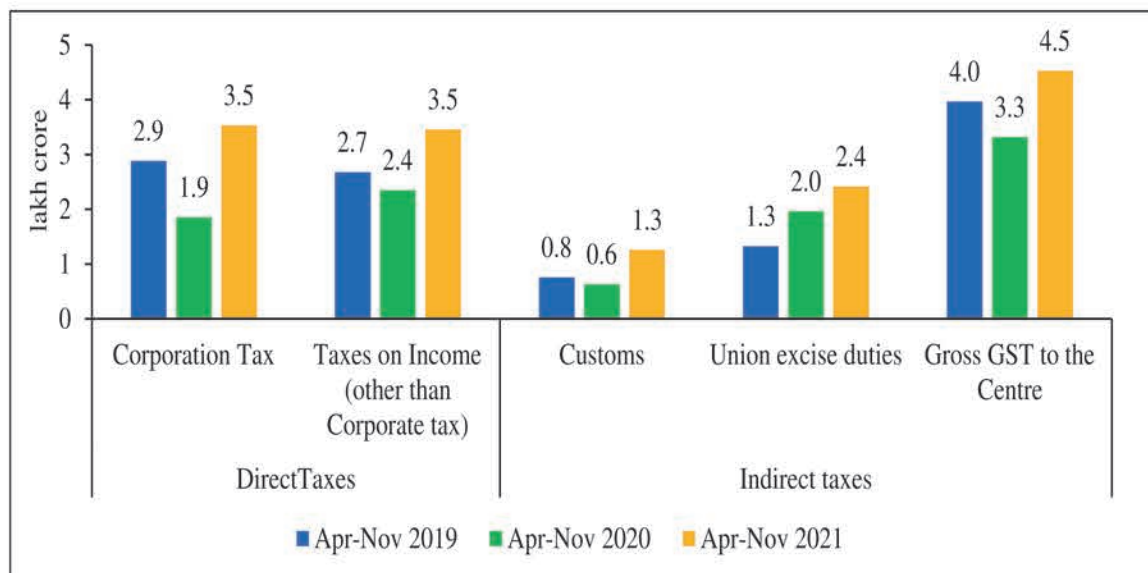
Source: Department of Commerce

Top 10 Import destination in (April-November)2021-22[By share in percent]



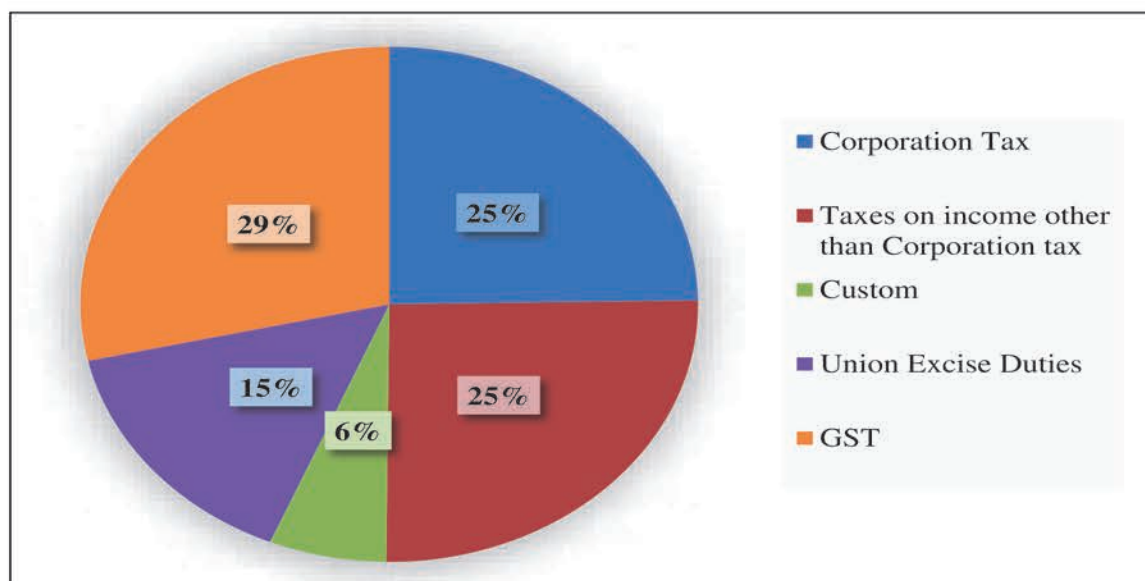
Source: Department of Commerce

Trends in major direct and indirect taxes during April-November period



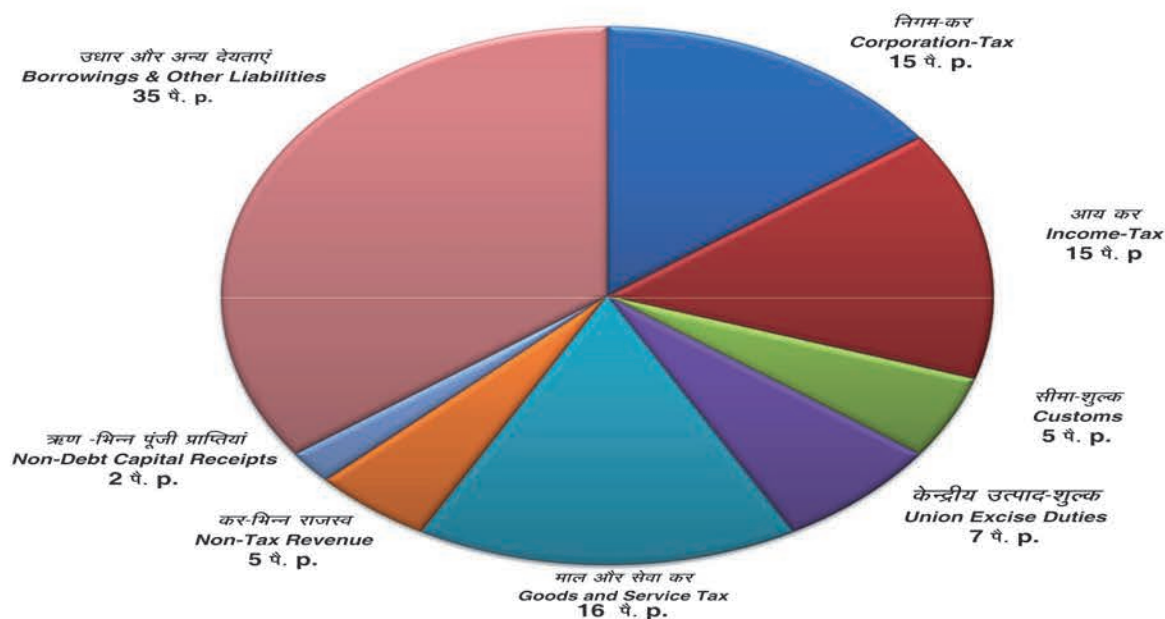
Source: CGA Monthly Accounts

Composition of taxes in Gross Tax Revenue in 2021 -22 BE

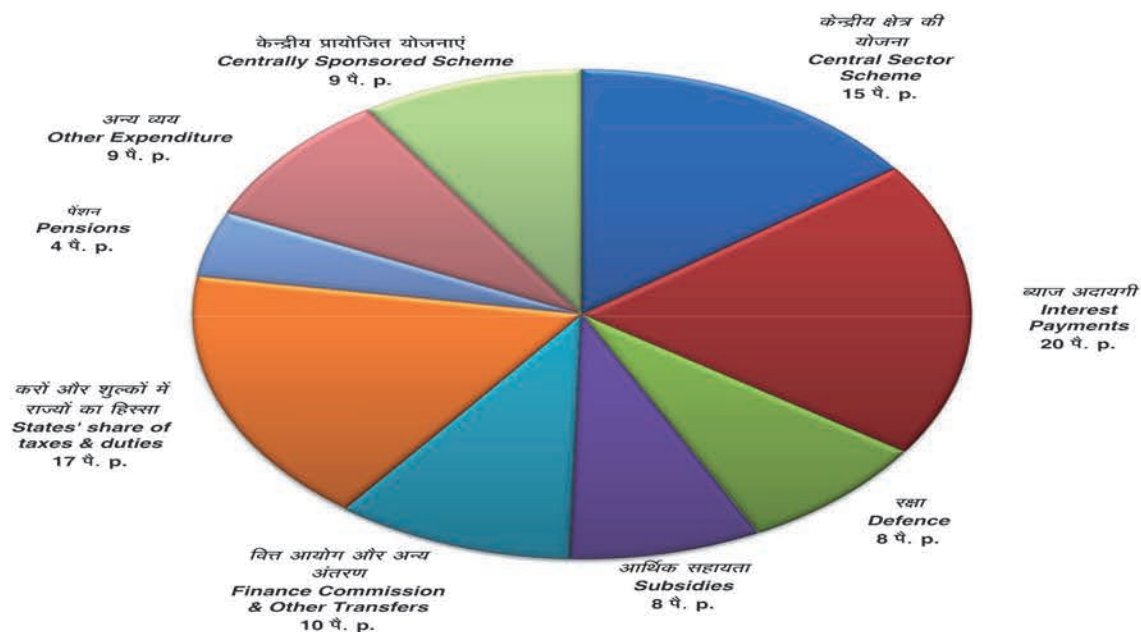


Source: Union Budget Documents

Revenue - Sources



Expenditure – Application



2

HIGHLIGHTS OF IMPORTANT AMENDMENTS RELATING TO INCOME TAX

Rates of Taxes

- No changes in comparison to A.Y. 2022-23 (Except for Co-operative Societies).
- Cap on surcharge at 15% has been proposed in certain cases[#]
- Tables reproduced for reference

For Individuals (Other than Senior Citizen and Super Senior Citizen), HUF, AOP, BOI and Artificial Juridical Person Whether Incorporated or Not*

S. No.	Rate of Tax	For A.Y. 2023-24
	Nil	Up to Rs. 2,50,000
	5%	From Rs. 2,50,001 to Rs. 5,00,000
	20%	From Rs. 5,00,001 to Rs. 10,00,000
	30%	Exceeding Rs. 10,00,000
1	Surcharge @ 10% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 50 Lakhs but not exceeding Rs. 1 crore
2	Surcharge @ 15% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 1 crore but does not exceed Rs. 2 crore.
3	Surcharge @ 25% (subject to marginal relief) [#]	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore but does not exceeds Rs. 5 crore.
4	Surcharge @ 37% (subject to marginal relief) [#]	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 5 crore.

[#] When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore, but is not covered under S. No 3 or 4 above, then the rate of surcharge is 15%.

* Individual resident can avail rebate u/s 87A of the IT Act of Rs. 12,500 or amount of tax, whichever is less where his total income does not exceed Rs. 5,00,000/-

For Senior Citizens – being a resident in India (i.e. whose age is more than or equal to 60 years but less than 80 years*

S. No	Rate of Tax	For A.Y. 2023-24
	Nil	Up to Rs. 3,00,000
	5%	From Rs. 3,00,001 to Rs. 5,00,000
	20%	From Rs. 5,00,001 to Rs. 10,00,000
	30%	Exceeding Rs. 10,00,000
1	Surcharge @ 10% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 50 Lakhs but not exceeding Rs. 1 crore
2	Surcharge @ 15% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 1 crore but does not exceed Rs. 2 crore.
3	Surcharge @ 25% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2crore but does not exceed Rs. 5 crore.
4	Surcharge @ 37% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A exceed Rs. 5 crore.

When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore, but is not covered under S. No 3 or 4 above, then the rate of surcharge is 15%.

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* Individual resident can avail rebate u/s 87A of the IT Act of Rs. 12,500 or amount of tax, whichever is less where his total income does not exceed Rs. 5,00,000/-

For Super Senior Citizens – being a resident in India (i.e. whose age is more than or equal to 80 years

S. No	Rate of Tax	For A.Y. 2023-24
	Nil	Up to Rs. 5,00,000
	20%	From Rs. 5,00,001 to Rs. 10,00,000
	30%	Exceeding Rs. 10,00,000
1	Surcharge @ 10% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 50 Lakhs but not exceeding Rs. 1 crore
2	Surcharge @ 15% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 1 crore but does not exceed Rs. 2 crore.
3	Surcharge @ 25% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore but does not exceed Rs. 5 crore.
4	Surcharge @ 37% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceed Rs. 5 crore.

When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore, but is not covered under S. No 3 or 4 above, then the rate of surcharge is 15%.

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For Certain Individuals and HUF (Rates Under Special Cases if Option u/s 115 BAC is exercised)

S. No	Rate of Tax	For A.Y. 2023-24
	Nil	Up to Rs. 2,50,000
	5%	From Rs. 2,50,001 to Rs. 5,00,000
	10%	From Rs. 5,00,001 to Rs. 7,50,000
	15%	From Rs. 7,50,001 to Rs. 10,00,000
	20%	From Rs. 10,00,001 to Rs. 12,50,000
	25%	From Rs. 12,50,001 to Rs. 15,00,000
	30%	Exceeding Rs. 15,00,000
1	Surcharge @ 10% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 50 Lakhs but not exceeding Rs. 1 crore
2	Surcharge @ 15% (subject to marginal relief)	When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 1 crore but does not exceed Rs. 2 crore.
3	Surcharge @ 25% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore but does not exceed Rs. 5 crore.
4	Surcharge @ 37% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income u/s 111A, 112 and 112A exceed Rs. 5 crore.

When total income (including the income by way of dividend or income u/s 111A, 112 and 112A) exceeds Rs. 2 crore, but is not covered under S. No 3 or 4 above, then the rate of surcharge is 15%.

Surcharge in Case of Individuals, AOP, BOI and Artificial Juridical Person, having Income u/s 115AD.

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S. No	Rate of Tax	For A.Y. 2023-2024
1	Surcharge @ 10% (subject to marginal relief)	When total income exceeds Rs. 50 Lakhs but not exceeding Rs. 1 crore
2	Surcharge @ 15% (subject to marginal relief)	When total income exceeds Rs. 1 crore but does not exceed Rs. 2 crore.
3	Surcharge @ 25% (subject to marginal relief) #	When total income (excluding the income by way of dividend or income chargeable under clause (b) of sub-section (1) of Section 115AD exceeds Rs. 2 crore but does not exceed Rs. 5 crore.
4	Surcharge @ 37% (subject to marginal relief) #	When total income (excluding the income by way dividend or income chargeable under clause (b) of sub-section (1) of Section 115AD) exceed Rs. 5 crore.

When total income (including the income by way of dividend or income referred under clause (b) of sub-section (1) of Section 115AD) exceeds Rs. 2 crore, but is not covered under S. No 3 or 4 above, then the rate of surcharge is 15%.

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For Co-operative Society

Rate of Tax	For A.Y. 2022-23	For A.Y. 2023-24
10%	Up to Rs. 10,000	Up to Rs. 10,000
20%	From Rs. 10,001 to Rs. 20,000	From Rs. 10,001 to Rs. 20,000
30%	Exceeding Rs. 20,000	Exceeding Rs. 20,000
Surcharge @ 7% (subject to marginal relief)	-	When total income exceeds Rs. 1 crore but does not exceed Rs. 10 crore.
Surcharge @ 12% (subject to marginal relief)	When total income exceeds Rs. 1 crore.	When total income exceeds Rs. 10 crore.

For Certain Co-operative Society (Rates Under Special Cases)

Rate of Tax	For A.Y. 2023-24
22 % of total income	Option U/s 115 BAD exercised
Surcharge @ 10 % (subject to marginal relief)	On the total tax liability u/s 115 BAD

For Firm and Local Authority

Rate of Tax	For A.Y. 2023-24
30%	Whole of the total income
Surcharge @ 12% (subject to marginal relief)	When total income exceeds Rs. 1 crore

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For Domestic Company

Rate of Tax	For A.Y. 2023-24
25 % of total income	Total turnover/Gross Receipt in previous year 2019-20 was upto Rs. 400 crore.
30 % of total income	Total turnover/Gross Receipt in previous year 2019-20 exceeds Rs. 400 crore.
Surcharge @ 7 % (subject to marginal relief)	when total income exceeds Rs. 1 crore but does not exceed Rs. 10 crore
Surcharge @ 12 % (subject to marginal relief)	when total income exceeds Rs. 10 crore

For Certain Domestic Company (Rates Under Special Cases)

Rate of Tax	For A.Y. 2023-24
22 % of total income	Option U/s 115 BAA exercised
15 % of total income	Option U/s 115 BAB exercised
Surcharge @ 10 % (subject to marginal relief)	On the total tax liability u/s 115BAA or 115BAB

For Company other than Domestic Company

Rate of Tax	For A.Y. 2023-24
50 %	Specific Royalty/FTS
40 %	Balance Total Income
Surcharge @ 2 % (subject to marginal relief)	When total income exceeds Rs. 1 crore but does not exceed Rs. 10 Crore
Surcharge @ 5 % (subject to marginal relief)	When total income exceeds Rs. 10 crore

Cess on Income Tax

Particulars	Existing
Health and Education Cess	4% of income tax including surcharge

#No Marginal Relief is available in respect of Health and Education Cess.

Updated Return of Income under proposed new Section 139(8A)

- Under the existing provisions of Section 139(1) of the IT Act, a taxpayer can file his original return within due date prescribed i.e. 31st July, 31st October and 30th November as the case may be.
- Belated return u/s 139(4) and revised return u/s 139(5) of IT Act can also be filed before 3 months prior to end of the relevant A.Y. or before completion of assessment, whichever is earlier.
- On account of utilization of huge information and data available in AIS, other information source, time limit available may not be adequate for voluntary tax compliance by taxpayer if Assessee wishes to suo-moto update its return of income.
- In order to overcome this problem/situation and to provide some more time to taxpayers, new Section 139(8A) is proposed to be inserted for filing an updated return of income in prescribed form and manner.
- Any person, whether such person has filed or not filed his original or belated or revised return of income, shall be eligible to file updated return of his own or for such person in respect of which he is assessable.
- Such return of income shall be filed within 24 months from end of the relevant A.Y.
- Additional tax on the tax and interest due on the additional income shall be paid by Assessee before filing the updated return under proposed section.
- The rate of such additional tax shall be 25% if return is furnished after expiry of time limit of filing revised or belated return but before completion of 12 month from end of the relevant A.Y. However, if the updated return is filed after 12 months but before 24 months from the end of the assessment year, the rate of such additional tax shall be 50%.
- In following cases proposed provisions shall not apply:
 - Where updated return is return of loss
 - Where updated return has effect of decreasing total tax liability determined under original, belated or revised return.
 - Where updated return results in refund or increase of refund.

- Following person shall not be eligible to file updated return:
 - Where search u/s 132 or requisition u/s 132A has been initiated in case of a person
 - Where survey has been conducted u/s 133A (except TDS survey)
 - Notice is issued regarding any money, bullion, jewellery or valuable article / thing seized or requisitioned in case of any other person belong to Assessee.
 - Notice is issued regarding any books of accounts or documents seized or requisitioned u/s 132 or 132A in case of any other person, pertains to or relates to such person.
- The aforesaid exceptions are applicable for A.Y. relevant to the previous year in which search is initiated or survey is conducted or requisition is made and 2 A.Ys preceding such A.Y.
- Further, in following cases also, a person shall not be eligible to file updated return:
 - Where a person has filed updated return for for such A.Y.
 - Where proceedings for assessment or reassessment or re-computation or revision is pending or has been completed for relevant A.Y.
 - In case the AO has information under the PMLA Act, Black Money Act, Benami Act or SFEM Act and such information is communicated to Assessee before filing of return of income under proposed Section 139(8A).
 - Where any information has been received under agreement referred to in Section 90 or 90A in respect of such person and such information is communicated to Assessee before filing of return of income proposed Section 139(8A).
 - Any prosecution proceedings of Chapter XXII have been initiated prior to date of filing of return.
 - If such person or class of person is notified by Board in this regard.
- Amendment has also been proposed in Section 139(9) to provide that an updated return shall be defective if it is not accompanied by proof of payment of tax as per Section 140B.
- *w.e.f. 01.04.2022*

Additional Tax, interest, surcharges required to be Paid before filing Updated Return u/s 139(8A)

- It is proposed to insert new Section 140B of IT Act to provide for mechanism of computation of additional tax, interest etc. required to be paid before filing updated return u/s 139(8A).
- It is proposed by new provision that before filing updated return, Assessee shall be liable to pay tax, interest and fee payable under any provision of IT Act for delay in filing or default or delay in payment of advance tax along with additional tax in accordance with mechanism provided for computation of additional tax in the proposed Section 140B, having regard to fact that where return was filed earlier or where no return was filed u/s 139(1)/(4)/(5).
- Additional income tax @25% shall be payable, in accordance with mechanism provided in sub-Section (1) and (2), if return is furnished after expiry of time limit of filing revised or belated return but before completion of 12 month from end of the relevant A.Y.
- Additional income tax @50% shall be payable, in accordance with mechanism provided in sub-Section (1) and (2), if return is furnished after expiry of 12 month from end of the relevant A.Y. but before completion of period of 24 months from end of relevant A.Y.
- Additional tax shall include surcharge and cess on such tax.
- Amendments have also been proposed to levy consequential interest u/s 234A/234B/234C on tax payable as per updated return.
- For the purpose of Section 234B and 234C, assessed tax has been defined to mean tax payable as per updated return.
- Consequential amendments have been proposed in Section 144, 153, 234A, 234B and 276CC.
- Borad has been given power to notify guidelines with approval of Centrla Government for the purpose of removing difficulty in giving effect to this provisions.
- *w.e.f. 01.04.2022 (AY 2022-23 onwards)*

Reducing litigation on pending cases involving Identical Question of Law

- Existing Section 158AA of IT Act provides procedure when an appeal by revenue has an identical question of law is pending before Supreme Court.
- As per existing provisions, if Commissioner and Principal Commissioner is of opinion that any question of law in case of Assessee is identical to another A.Y and such question is pending before the Hon'ble Supreme Court against an order of High Court which was in favour of assessee, he may direct to AO (revenue) to file application before ITAT that, appeal on such question of law may be filed when decision on such question become final in other case and if said decision is not challenged by Assessee.
- In order to reduce the litigation burden before jurisdictional Hon'ble High Courts or Tribunal , new provision Section 158AB is proposed to be inserted.
- Proposed provisions would apply where an appeal by revenue is pending on identical question of law.
- As per newly proposed provision, where Collegium (2 or more Chief Commissioner or Principal Commissioners or Commissioners of Income Tax) is of the opinion that, a question of law in relevant case is identical with already raised question of law related to same Assessee in any other AY or any other Assessee in any AY and same is pending before jurisdictional High Court or Supreme Court in any appeal or SLP, such collegium may decide and intimate to Commissioner or Principal Commissioner to not to file any appeal before ITAT or High Court at this stage.
- Upon receipt of communication from Collegium, Commissioner or Principal Commissioner shall direct AO to file application in prescribed form before ITAT or jurisdictional High Court within 60 days of receipt of Order of CIT(A) or within 120 days of receipt of order of ITAT, as the case may be, that appeal on question of law arising in relevant case shall be filed once the pending identical question attain finality in other case.

- The Commissioner or Principal Commissioner shall direct AO to file application prescribed form only after receiving acceptance from Assessee that question of law in other case is identical to the relevant case.
- In case no acceptance is received from Assessee, Commissioner or Principal Commissioner shall direct AO to proceed in appellate jurisdiction before ITAT or jurisdictional High Court as the case may be.
- Further, if order of CIT(A) or order of ITAT is not in conformity with final decision on such identical question of law in other case, as and when such order is received, Commissioner or Principal Commissioner may direct AO to proceed in appellate jurisdiction before ITAT or jurisdictional High Court as the case may be.
- Amendment has been proposed to provide sunset clause to existing provision of Section 158AA(1) to effect that no direction shall be given u/s 158AA(1) on or after 01.04.2022
- *w.e.f. 01.04.2022*

Giving effect to order of Dispute Resolution Committee (DRC)

- Section 245MA of IT Act allows specified persons who may opt for dispute resolution upon fulfilling prescribed conditions given namely:
 - Order of detention has not been passed under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
 - Prosecution of any offence punishable under various Acts like IT Act, IPC 1860, Narcotic Drugs and Psychotropic Substances Act 1985, Unlawful Activities (Prevention) Act 1967 etc has not been instituted.
- Existing provision does not contain any enabling provision to enable the AO to pass order giving effect to the direction of DRC.
- New sub-section is proposed to be inserted to enable AO to pass an order giving effect to the direction of the DRC.
- *w.e.f. 01.04.2022*

Clarification on Disallowance u/s 14A

- Existing provisions of Section 14A of the IT Act provides that no deduction of any expenditure shall be allowed in respect of income which is exempt.
- On account of divergent views, it is disputed issue that whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.
- In cases like (i) Cheminvest Ltd. v. CIT [2015] 61 taxmann.com 118/234 Taxman 761 (Delhi) (ii) Principal CIT v. Kohinoor Project (P.) Ltd. [2020] 121 taxmann.com 177 (Bom.) it has been held that Section 14A will not apply if no exempt income is received or receivable during relevant previous year whereas in some cases view against assessee has also been taken. Circular No. 5/2014 dated 11.02.2014 issued by the Hon'ble CBDT also clarifies for disallowance of expenditure even where taxpayer has not earned any exempt income.
- In order to make the intention of the legislation clear and to remove misinterpretation, it is proposed to insert an Explanation to Section 14A of IT Act with overriding effect to the IT Act.
- The proposed Explanation provides that Section 14A shall apply and shall be deemed to have always been applied even in case where exempt income, has not accrued or arisen or has not been received during the previous year relevant to A.Y. and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.
- It is also proposed to give overriding effect to Section 14A(1) of IT Act and include non-obstante clause in respect of other provision of IT Act by substituting the word "for the purpose of" under sub-section (1).
- *w.e.f. 01.04.2022*

Pay Interest u/s 201(1A) and 206C(7) of IT Act as per Order of Assessing Officer

- As per Section 201(1A) of IT Act, if a person fails to deduct tax or after deducting, fail to deposit the same to the credit of Central Government, then, such person is liable to pay simple interest @ 1% for every month or part of month on the amount of tax from the date on which tax deductible to the date on which such tax is deducted and @ 1.5% for every month or part of month on the amount of tax from the date on which tax is deducted to the date on which such tax is actually paid.
- Similarly, Section 206C(7) of IT Act provides that if a person fails to collect or after so collecting fails to pay the same to the credit of Central Government, then, such person is liable to pay simple interest @ 1% per month or part of month on amount of tax from the date on which tax was collectible to the date on which tax was actually paid.
- The calculation of Interest payable in aforesaid cases has been subject matter of frequent litigation in some cases.
- It is proposed to insert the 2nd proviso to Section 201(1A) of IT Act, to clarify that where order is made by AO u/s 201(1) for default in respect of TDS, interest shall be paid in accordance with such order passed.
- The AO would levy interest in accordance with provisions of Section 201(1A) of the Act as proviso is intended to bring clarity.
- Similar amendment is proposed to insert the 2nd proviso to Section 206C(7) of IT Act, to provide clarity of levy of interest in respect of default of TCS.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Clarification and widening of scope of disallowance of Expenditure Incurred u/s 37(1) of IT Act which is Offence and Prohibited by Law

- Existing provision of Section 37 provides that any expenditure, laid out or expensed wholly and exclusively for the purpose of business or profession shall be allowed.
- Explanation 1 of said Section clarify that if any expenditure incurred by an assessee for any purpose which is offence and prohibited by law shall not be deemed to have been incurred for purpose of business or profession.
- The Issue of allowability of expenditure incurred in providing Gift, Travel Facility, Hospitality or Cash or monetary grant from the pharmaceutical and allied health sector industries in violation of the provision of Indian Medical Council has been bone of contention for Assessee as well as Department.
- While in writ petition filed in Himachal Pradesh High Court in the case of **CBDT Vs. Confederation of Indian Pharmaceutical Industry [(2013 335 ITR 338 (HP))]**, the validity of CBDT circular no. 5/2012 dated 01.08.2012 on this issue was upheld. However, over the period of time, various Tribunals have allowed incurring of such expenditure to Assessee as against the intent of law clarified in CBDT Circular No. 5/2012 dated 01.08.2012, while other Tribunal and Courts have denied it.
- Now to clarify the intent of legislature, it is proposed to insert Explanation 3 to clarify the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law”, under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee-
 - for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or
 - to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of

any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or

- to compound an offence under any law for the time being in force, in India or outside India.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

“Cess and Surcharge” is not allowable as Business Expenditure.

- Existing provisions of Section 40(a)(ii) of IT Act makes any sum paid on account of any rate or ‘tax’ levied on the profit and gains of business or profession.
- Section 40(a)(ii) does not specifically mention ‘cess’ or ‘surcharge’ basis this interpretation some taxpayers claimed deduction of ‘cess’ as business expenditure.
- Hon’ble Bombay High Court in the Case of **JCIT Vs. Sesa Goa Limited (2020) 117 taxmann.com** and Hon’ble Rajasthan High Court of in case of **JCIT Vs. Chambal Fertilizers & Chemicals Ltd.** Decided issue in favour of taxpayers who were claiming deduction on account of ‘cess’ after relying on the CBDT circular no. 91/58/66-ITJ(19) dated 18.05.1967.
- Further, ITAT Kolkata in the case of **M/s Kanoria Chemicals & Industries Ltd. ITA NO. 2184/Kol/2018 (TS-1129-ITAT2021 Kol)** dismissed the appeal of Assessee for allowing ‘cess’ as business expenditure based on the judgement of Supreme Court of India in the case of **“CIT Vs. K. Srinivasan”** that “surcharge” and “additional surcharge” are tax.
- Hence, to clarify above position and intent of the law, it is proposed to insert an Explanation 3 to Section 40(a)(ii) to clarify that the term “tax” includes surcharges and cess by whatever name called, on such tax.
- *w.r.e.f. 01.04.2005 (A.Y. 2005-06 onwards)*

Rationalisation of Provisions for Successor Entity Post Business Reorganisation

- **Assessment proceedings of IT Act on predecessor once completed, cannot become illegal post the order of any Court.**
 - Section 170 of IT Act prescribed the provision related to assessment of income in case of business reorganisation other than death. As per existing provisions, predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession and successor shall be assessed in respect of the income of previous year after the date of succession.
 - The process of business reorganisation is lengthy process and requires lot of time. During the Pendency of business reorganization, many income tax proceedings/assessments are carried and completed on predecessor entities. However, many courts like in case of **DCIT Vs. Maruti Suzuki India Ltd. (2016) 72 taxmann.com 164** have held that such assessment proceedings by department are illegal as the predecessor ceases to exist on appointed date.
 - To tackle this issue, it is proposed to insert sub section (2A) of Section 170 to clarify that assessment or other proceedings pending or completed on the predecessor in the event of a business reorganization, shall be deemed to have been made on the successor.
 - Business reorganisation has also been defined in Explanation to Proposed Section to mean the reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons.
 - Further, Pendency means the period commencing from the date of filing of application for such reorganisation of business before competent authority and ending with the date on which the order of competent authority is received by Principal Commissioner or the Commissioner.
 - *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*
- **Successor shall file modified return of income for giving effect to order passed for business reorganization.**

- In the process of business reorganization, there is often difference between effective date and date on which such order of business reorganization is issued by the competent authority. This affects the financial of successor from the effective date.
- However, there are no enabling provision to enable successor to modify his return of income to give effect of business reorganization post filing of return during the Pendency of business reorganization.
- Therefore, it is proposed to insert new Section 170A in IT Act, which allows the successor to modify his return of income within 6 months from the end of month in which order was issued by High court or Tribunal or an Adjudicating Authority as defined in Section 5(1) of the IBC, 2016.
- Business reorganisation defined in an explanation of the proposed Section have the same meaning as assigned to it clause (i) of Explanation to Section 170(2A) of IT Act.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*
- **Revision of outstanding demand in accordance with order passed by competent authority.**
 - In the process of business reorganization, the order passed by competent authority recast the liabilities to ensure future viability of such entities. However, there is no procedure in IT Act to reduce the demand amount as per order passed by competent authority.
 - Therefore, it is proposed to insert new Section 156A to give effects to the orders of competent authority and to modify such demand and serve on assessee a revised notice of demand specifying the sum payable.
 - Further, if order of competent authority is further modified by NCLAT or the Supreme Court, then, AO shall revise notice of demand accordingly.
 - *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Conversion of Interest Payable into Debenture or other Instrument would not be considered as paid u/s 43B of IT Act

- Existing provisions of Section 43B of IT Act allows the deduction of certain expenditure only if they are actually paid by taxpayers.
- As per existing provision deduction of any sum, being interest payable on loan or borrowing from public financial institutions, specified NBFCs, Schedule Bank etc. is allowed only if such sum is actually paid or any interest referred to in clauses (d), (da) and (e) of Section 43B which has been converted into loan or borrowing or advance shall not be deemed to have been actually paid.
- However, taxpayers are claiming the deduction of interest payable on existing loan by converting it into debenture and this view has been upheld by several courts which defeat the intention of Section.
- Hence, it is proposed to amend the explanation 3C, 3CA and 3D of Section 43B of IT Act, to the effect that where liability of interest payable is deferred to future date by conversion into debenture or any other instrument, the same shall not be deemed to have been actually paid within meaning of Section 43B.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Extended Dates of Manufacturing for Availing Concessional Rate

- The existing provisions of section 115BAB of IT Act provides that newly incorporated and registered domestic manufacturing company on or after 01.10.2019 would be taxed at the concessional tax rate of 15% subject to the important condition that such company commences the manufacturing or production on or before 31st March 2023.

- However, in persistence of COVID impact and delay in setting up, registration and commencement of production, it has been proposed to extend the date of commencement of manufacturing to 31st March 2024.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Extension of dates of incorporation of Start-ups for exemption

- Section 80-IAC of IT Act provides for a tax incentive of 100% of profits from eligible business for 3 consecutive AYs out of 10 years to eligible start-ups incorporated before 01.04.2022.
- It is proposed to grant an extension of one year for incorporation to promote such eligible start-ups. Thus, the afore mentioned tax incentive can be availed by the eligible start-ups even if they are incorporated upto 31.03.2023.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Reduced Alternate Minimum Tax Rate for Cooperatives

- In order to bring parity between companies paying Minimum Alternate Tax (MAT) at the rate of 15% as against Cooperative Societies currently paying Alternate Minimum Tax (AMT) at the rate of 18.5% u/s 115JC of IT Act, it has been proposed to reduce the said rate of AMT for Cooperative Societies also to 15%.
- Consequential amendment is also proposed to be made in the definition of "AMT" in clause (b) of Section 115JF of IT Act.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Parity between Employees of State Government & Central Government - Clause 20

- At present an employee of Central Government is allowed a deduction of upto 14% of the salary u/s 80CCD(2) of IT Act in respect of contribution made by the Central Government as an Employer to their National Pension System (NPS) account. However, the capping for allowable deduction under the said section to the employees of the State Government for the similar contribution is only at the rate of 10%.
- Moreover, the State Governments were given an option to raise their contribution to such accounts of the employees to 14% w.e.f. 01.04.2019 at their discretion.
- Therefore, in order to ensure equal treatment to both Central and State Government employees with respect to the contributions made by the respective Governments as employers to their NPS account, it has been proposed to enhance the allowable quantum to claim deduction by the State Government employees, retrospectively, to 14% of their Salary.
- Such proposal of retrospective amendment shall ensure no additional tax liability on the contribution already made in excess of 10% if any.
- *w.r.e.f. 01.04.2020 (A.Y. 2020-21 onwards)*

Facilitating strategic disinvestment of Public Sector Companies

- Section 79(1) of IT Act provides for restriction on carry forward and set-off of losses by certain companies in which change in shareholding has taken place unless on the last day of the previous year, 51% of the shares are held by persons who held the shares not less than 51% of the voting power on the last day of the previous year or years in which the loss was incurred.

- However, relaxation for certain companies in relation to such condition has been prescribed in provisions of section 79(2) of the IT Act. It is now proposed to amend the said sub-section to provide that the restriction shall not apply to erstwhile public sector company in case where the ultimate holding company of such erstwhile public sector company, immediately after the completion of strategic disinvestment, continues to hold, directly or indirectly at least 51% of the voting power of the erstwhile public sector company.
- It has also been proposed that if there is a non-compliance of the aforesaid condition in any previous year, then the restriction as envisaged by sub-section 1 with respect to set off and carry forward of losses shall be applicable on erstwhile public company from such previous year onwards.
- Consequential amendment in the Explanation to the said section is also proposed so as to refer clause (ii) of the Explanation to Section 72A for the definitions of the terms “erstwhile public sector company” and “strategic disinvestment”.
- *w.e.f. 01.04.2022 (A.Y.2022-23 onwards)*

Tax relief to persons with Disability and their families

- According to the existing provisions of Section 80DD of IT Act, deduction shall be allowed to the Resident Individual or HUF being parent or guardian with respect to premium paid for insurance scheme subscribed for the maintenance of disabled dependant which provides for lump sum payment or annuity to the dependant upon death of the subscriber i.e parent or guardian.
- However, having considered the fact that payment shall be required by the dependant even during the lifetime of their parents/guardians as rightly observed by *Justice A.K.Sikri in W.P. no. 1107/2017 of Ravi Agrawal vs. UOI and another*, it has been proposed to provide that

deduction under the said section shall also be allowed in cases where the insurance scheme provides for payment of annuity to the dependant upon attaining of 60 years of age by the individual or in case of HUF, the member in whose name such scheme has been subscribed and payment or deposit to such scheme has been discontinued.

- Moreover, sub-section 3 of the said section provides that where the dependant predeceases the subscriber, then the amount deposited in the insurance scheme shall be deemed to be the income of the previous year in which such sum is received. It has been proposed to amend the said sub section by providing that if any sum is received by the dependant before his death upon attainment of 60 years by the subscriber, then the such amount shall not be included in the income of the subscriber for the purposes of sub-section 3. i.e. whatever income is received by dependent during his lifetime shall not be included in the income of subscriber.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Relief on Receipts for Medical Treatment and on Death due to COVID-19

- Clause (2) of first proviso to section 17 of IT Act provides that any sum paid by the employer for expenditure incurred by the employee on his or his family's medical treatment shall not be included within perquisites.
- It has been proposed to amend the said clause by inserting a sub-clause which shall provide that where the sum so paid by the employer is with respect to the expenditure incurred by the employee on his or his family's treatment for any illness relating to COVID-19, then subject to such conditions which the Central Government may notify, the said sum paid by the Employer shall not be chargeable as "Perquisites" in the hands of the Employee.

- Similar amendment is proposed to be brought in Section 56(2)(x) of IT Act. The said clause provides for taxability of any sum or property received without consideration, in excess of 50,000/- as income of the person receiving such sum/property. However, certain exceptions have also been provided in the clauses for the transaction therein.
- It has been proposed to include two new clauses as exception to the said clause. According to one of the proposed insertion any sum of money or property received by an individual from any person for his or his family's medical treatment for any illness relating to COVID-19, then the said sum shall not be taxable in the hands of the recipient individual.
- Further, the next clause proposed to be inserted provides that where any sum of money or property has been received by the family member of a deceased person, from the employer of such deceased person (without limit) or from any other person(s) subject to a maximum of Rs. 10 lakh on account of death due to COVID-19, then the said sum shall not be taxable in the hands of the family member if the amount has been received within the twelve months from the date of death.
- *w.r.e.f. 01.04.2020 (A.Y. 2020-21 onwards)*

Tax Incentives to International Financial Services Centre (IFSC)

- In order to make IFSC a global hub of financial services sector, following additional exemptions to the income received by the non-resident have been proposed to be provided:
 - Extension of exemption under clause (4E) of Section 10 of IT Act to the income from transfer of offshore derivative instruments or over the counter derivatives entered into with an Offshore Banking Unit of an IFSC.
 - Exemption provided for royalty or interest income by way of lease of aircraft to units of IFSC in clause (4F) of the said section

proposed to be extended to royalty or interest income upon lease of ships to units of IFSC.

- Exemption to any income accruing or arising outside India and is not deemed to accrue or arise in India from portfolio of securities or financial products or funds, managed or administered by any portfolio manager in an account maintained with an Offshore Banking Unit in any IFSC by insertion of new clause (4G) in Section 10.
- It has also been proposed to amend Explanation to Section 56(viib) to provide that the term specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under IFSC Authority Act, 2019. This shall have the effect that the provisions of Section 56(viib) shall not be applicable on shares issued to such funds.
- It has been proposed to include in clause (d) of Section 80LA(2), the income from transfer of an asset being ship which was leased by a unit of IFSC to any person for the purposes of sub-section 1A of the said section. Thus, where the income of a unit in IFSC included income from transfer of asset being ship, then the same shall be eligible for deduction under the said section if the unit has commenced operation on or before 31.03.2024.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Rationalizing Sections 206AB & 206CCA to Further Nudge Return Furnishing

- Sections 206AB & 206CCA provide higher TDS & TCS rates for non-filers of returns termed as “Specified person”.
- Presently, “Specified Person” broadly covers a person who has not filed return of income w.r.t. both two previous years immediately preceding the F.Y. in which tax is to be deducted or collected, for which time limit u/s 139(1) has expired and TDS and TCS in whose case is Rs. 50,000 or more in each of these two previous years.

- To expand the scope of provisions, it is proposed to amend the definition of “Specified Person” to reduce the period of non-furnishing of return and assessing the threshold of Rs. 50,000 from 2 years to 1 year.
- Further, to relieve the individuals and HUFs from deducting higher TDS while making regular payments like rent, contract, commission, brokerage, or professional fee, Section 206AB shall not apply w.r.t. transactions covered under Sections 194-IB and 194M.
- It is also proposed that Section 206AB shall not apply w.r.t. transactions covered in Section 194-IA in respect of purchase of certain immovable property.
- Correction of certain drafting errors is also proposed by omitting the reference of “deductee” and “collectee” from Sections 206AB and 206CCA respectively and substituting the term “filed” w.r.t. return with “furnished” as returns are now furnished electronically.
- *w.e.f. 01.04.2022.*

Aligning Section 194-IA with Sections 43CA and 50C

- Section 194-IA provided for TDS on payment on transfer of certain immovable property other than agricultural land where the consideration is Rs. 50 Lakh or more.
- The section does not consider the Stamp duty value of the immovable property so transferred unlike Sections 43CA and 50C dealing with computation of business income and capital gains respectively w.r.t. such transfer.
- It is now proposed to amend Section 194-IA to consider the Stamp duty value of the property for assessing the threshold as well as for TDS.
- However, the tolerance band of 10% as allowed u/s 43CA and 50C is not proposed u/s 194-IA.
- *w.e.f. 01.04.2022.*

Insertion of Section 194R – Tracking Benefit or Perquisite of a Business or Profession through TDS

- Clause (iv) of Section 28 treats the value of any benefit or perquisite arising from a business or profession as business income in the hands of recipient.
- To deepen the tax base, it is proposed to insert a new Section 194R mandating TDS @ 10% on benefits or perquisites, arising from a business or profession, provided to a resident,
- Proposed section shall not apply where value or aggregate value of benefit or perquisite does not exceed Rs. 20,000 during the F.Y.
- Proposed section shall also not apply to an individuals or HUFs whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 Lakh in case of profession during the F.Y. immediately preceding the F.Y. in which benefit or perquisite is provided.
- Where benefit or perquisite is partly provided in kind and cash component is not sufficient to meet tax liability, then deductor has to ensure that before releasing benefit or perquisite, tax has been paid.
- *w.e.f. 01.07.2022.*

Reporting by Event Managers, Programme Producers for any Platforms

- Presently, the producer of cinematographic films has to furnish Form 52A depicting particulars of all payments over Rs. 50,000 in aggregate, made by or due from him to each person engaged by him, within 30 days from the end of F.Y. or from the completion of the film, whichever is earlier.
- It is proposed to extend this requirement to persons engaged in “Specified Activities”.

- “Specified Activities” would mean event management, documentary production, production of programmes for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity specified by the Central Government.
- *w.e.f. 01.04.2022.*

Securities and Units of Pooled Investment Vehicle subject to Provisions of Bonus & Dividend Stripping

- Currently, the provisions w.r.t bonus stripping u/s 94(8) apply only to units and not to securities. While provisions w.r.t dividend stripping u/s 94(7) apply to both units and securities.
- The term “unit” u/s 94 does not cover the units of new pooled investment vehicles i.e., InvIT, REIT or AIFs.
- In this situation, securities are outside the ambit of provisions w.r.t bonus stripping and units of new pooled investment vehicles remain out of scope of both bonus and dividend stripping provisions.
- To plug this loophole, it is proposed to amend sub-section (8) of Section 94 to cover securities also.
- Further, to amend the definition of “unit” contained in Explanation to Section 94 to include the units of business trusts (such as InvIT and REIT) and AIFs.
- *w.e.f 01.04.2023 (A.Y. 2023-24 onwards)*

Taxation of Virtual Digital Asset

- **Insertion of new definition u/s 2(47A) which defines “Virtual Digital Asset” (“VDA”)**
 - The term VDA has been defined to mean
 - *Any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise.*
 - *Providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme and can be transferred, stored or traded electronically.*
 - *Non-fungible token or any other token of similar nature by whatever name called.*
 - *Any other digital asset as may be notified by the Central Government in the Official Gazette in this behalf.*
 - *w.e.f. 01.04.2022*
- **Introduction of new Section 115BBH for tax on income arising from virtual digital assets**
 - A new Section 115BBH is proposed to be introduced in the IT Act to provide income tax on income arising on transfer of VDA @30%
 - Since a special rate has been prescribed, hence, the income on which the tax payable under this section would be reduced from the total income for computing tax payable and such other total income would be computed as per normal provisions of the act.
 - For computing income from transfer of VDA, no deduction would be allowed in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss.
 - No set off of loss from transfer of VDA shall be allowed against any income under any other provisions of this Act.

- Such loss shall not be allowed to be carried forward.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*
- **Introduction of new Section 194S for deduction of tax on payment on transfer of VDA.**
 - A new Section 194S is proposed to be introduced in the IT Act to provide deduction of tax @ 1% of consideration for transfer of VDA, at the time of credit of such sum to account or at the time of payment by any mode, whichever is earlier to a resident.
 - Such TDS to be deducted if the payee is a resident, irrespective of whether the payer is a resident or not.
 - If consideration on the same being payable either wholly in kind or in exchange of another VDA or partly in cash and partly in kind, then person responsible for paying such consideration should ensure that tax should be paid on consideration of such transfer.
 - The provisions of sections 203A (Tax deduction and collection account number.) and 206AB (Special provision for deduction of tax at source for non-filers of income-tax return) shall not apply to a specified person.
 - If tax has been deducted under 194S then there is no requirement to deduct TDS under any other provisions of this Act.
 - If any sum paid for transfer of VDA is credited in books under any account including a suspense account, then also provision of Section 194S shall apply on sum credited.
 - If TDS is deductible under both section 194-O and section 194S for a transaction, then, the TDS shall be deducted u/s 194S.
 - It is proposed to empower the board to issue guidelines, with prior approval of central Government, to remove any difficulty arising in giving effects to the provisions of this section and every guideline issued should be laid before each house of parliament and the same shall be binding on income-tax authorities and person responsible for paying consideration.

Limits for deciding on TDS

- No tax is required to be deducted, if payer is specified person and value of consideration does not exceed Rs.50,000/-.
 - Explanation–For the purposes of this section “specified person” means a person,
 - ◆ Individual and HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceeds
 - ⇒ Rs 1,00,00,000/- in case of business
 - ⇒ Rs 50,00,000/- in case of profession
 - ◆ Individual and HUF, does not have any income from ‘profits and gains from business and profession’
- Rs. 10,000/- in case of other than specified person
- *w.e.f. 01.07.2022*

• Tax on gift of VDA

- It has been proposed to amend the Explanation to clause (d) of Section 56(2)(vii) in relation to the definition of the expression “property” to include VDA.
- Accordingly, it has been proposed that the provisions related to taxation of gifts shall apply on VDA as well.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Withdraw of concessional rate of tax on dividend income u/s 115BBD from FY 2022-23

- Section 115BBD provides concessional tax rate @15% on dividend income received from specified foreign company, by an Indian Company which holds 26% or more nominal value of equity shares in such specified foreign company.

- FA 2020 had abolished the dividend distribution tax provided in Section 115-O, as a result the dividend is now taxed in the hands of the shareholder at applicable rates plus surcharge and cess.
- To provide parity in the tax treatment in dividend income received from specified foreign companies and dividend income received from domestic companies, it is proposed to withdraw the concessional tax rate @15% on dividend income u/s 115BBD from FY 2022-23 and onwards. Accordingly, it is proposed that the tax on such dividend income received by an Indian Company shall be charged at the normal rate of tax applicable on such Indian Company.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Exemption under Section 10 to be phased out for certain individuals

- The finance bill proposes to phase out the exemption available under Section 10 to certain individuals engaged in India in relation to co-operative technical assistance programme/project or technical assistance grant agreement entered between
 - Government of India and
 - Government of Foreign State
- Such individual may be
 - assigned duties in India in connection with any co-operative technical assistance program [covered under Section 10(8)] or
 - engaged as a consultant [covered under Section 10(8A)], or
 - as an employee of consultant covered under Section 10(8A) [Section 10(8B)] or
 - as a family member accompanying the individual covered under Section 10(8), 10(8A), or 10(8B) to India [Section 10(9)].
- The exemptions provided to such individuals related to
 - Remuneration received by the individual from the foreign state for such duties and

- Any other income accruing or arising outside India
- Genrally, such incomes are typically covered under the tax treaties with the other countries. If under such treaty India has a right to tax such income and the other country is expected to relieve double taxation by exemption or credit method, providing such exemption by India amounts to surrender of right of taxation by India in favour of the other country.
- Accordingly, the Government has proposed to phase out these exemptions.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Insertion of New Section 79A- No Set off of Loss against Undisclosed Income

- Presently there is no Section in the IT Act to disallow set off of brought forward loss against undisclosed income detected in search & seizure or survey or requisition proceedings resulting in tax aviodance. It has been observed that in many cases where undisclosed income or suppression of sales etc. is detected, payment of tax is avoided by setting off, of losses.
- Now, in order to bring certainty and to increase deterrence among tax evaders, it is proposed to insert a new Section 79A under the IT Act which will provide that notwithstanding anything contained in the IT Act, no set off of losses (brought forward or otherwise) or unabsorbed depreciation shall be allowed to an assessee against the “undisclosed income” while computing his total income of the previous year.
- Further, the under proposed Section, the expression “undisclosed income” means,-
 - any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of accounts or other documents or transactions found in the course of search u/s 132 or a

requisition u/s 132A or a survey u/s 133A, other than under sub-section (2A) of that section, which has-

- not been recorded on or before the date of search or requisition or survey, as the case may be, in the books of accounts or other documents maintained in the normal course relating to such previous year; or
- not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, as the case may be; or
- any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year which is found to be false and which would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Rationalization of Provisions for Claiming TDS Refund by Insertion of Section 239A

- Under Section 248 of the IT Act, every person who has entered into an agreement or other arrangement wherein the person has deducted and paid tax, on any income paid to a non-resident u/s 195 of the Act, other than interest income, claims that no tax was required to be deducted, may, file an appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.
- However, to obtain a refund of the tax deducted and paid by a person, where it was not deductible, as per the provisions of the said section, a

taxpayer had no recourse to approach the Assessing Officer with such request.

- Thus, a new Section 239A is proposed to be introduced wherein such application for refund may first be filed before the Assessing Officer, in such form and manner, within 30 days from the date of payment of such tax and the said application ought to be disposed within 6 months from the end of the month in which application has been received by way of passing an order in writing. However, it is pertinent to note that no such application shall be rejected unless an opportunity of being heard is given to the applicant.
- In the same light, Section 248 of the IT Act is proposed to be amended to include a proviso stating that no appeal shall be filed under the said section on or after 01.04.2022.
- Consequent amendment has been made u/s 246A of the IT Act, thus, allowing the person aggrieved by an order passed u/s 239A of the IT Act to appeal before the Commissioner (Appeals).
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Expanding the Scope of Cash Credits under Section 68

- Presently, Section 68 of the IT Act, provides that any sum found to be credited in the books of assessee to which he offers no explanation about the nature and source thereof or an explanation offered is not satisfactory, in the opinion of the Assessing Officer, then in such cases, the sum so credited may be charged to income-tax as income of the assessee.
- Further, proviso to the said section explicitly covers the nature of explanation to be offered to the Assessing Officer, in cases of closely held companies where the said amount being credited is in the nature of share application money, share capital, share premium or any such

amount. In the said cases, the onus of explaining the nature and source of the income extends to the shareholder as well. However, in cases where the said credits in the books of assessee were in the nature of loan, various judicial decisions held that only identity and creditworthiness of creditor and genuineness of transactions for explaining the credit in the books of account is sufficient, and the onus does not extend to explaining the source of funds in the hands of the creditor..

- Henceforth, to clarify the intent of the Legislature the said section is proposed to be amended which shall now provide that where the sum credited consists of a loan or borrowing or any such amount by whatever name called, the said explanation offered shall be deemed to be unsatisfactory unless:
 - The person in whose name the credit has been recorded also offers an explanation about the nature and source of the sum credited; and
 - Such explanation offered is found to be satisfactory by the Assessing Officer.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Alignment of Provisions Related to Offences and Prosecutions

- Presently, Section 276AB of the IT Act provides for punishment on failure to comply with provisions of Sections 269UC, 269UE and 269UL, however, the said sections (i.e. Sec 269UC/UE/UL) have been made inapplicable w.e.f. 01.07.2002. Thereby, in order to align the amendment in the said sections without disrupting the prosecution proceedings already launched u/s 276AB of the IT Act, it is proposed to amend the section 276AB to introduce a sunset clause wherein it has been provided that no fresh proceedings shall be initiated under the said section on or after 01.04.2022.

- Further, Section 276B provides for prosecution for a term ranging from three months to seven years with fine for failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B. The said section, inter-alia, punishes a person for failure to pay the tax, as required by or under the *second proviso* to section 194B, however, the said 'second proviso of Section 194B' was omitted w.e.f. 01.04.2000. Thus, section 276B is proposed to be amended to align with the amendment made in Section 194B of the IT Act in Finance Act, 1999. Similar amendment has been proposed u/s 271C (Penalty for failure to deduct tax at source) of the Act.
- Section 278A of the IT Act provides for punishment in case of second and subsequent offences. Further, Section 276B provides for prosecution in case of failure to credit tax deducted at source to the Central Government while section 276BB provides for prosecution in case of failure to credit tax collected at source to the Central Government. Currently, subsequent offence committed u/s Section 276B has been covered u/s 278A while subsequent offence u/s 276BB remains outside the purview of Section 278A of the Act. Henceforth, it is proposed to amend the said section so as to bring section 276BB within the purview of Section 278A of the Act.
- Similarly, Section 278AA provides for exemption from punishment imposed in cases where reasonable cause for failure is proposed. Like in Section 278A, Section 276BB remains outside the purview of the said section as well, henceforth, amendment is proposed u/s 278AA to include Section 276B within its purview.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Rationalization of Provisions of Charitable Trust and Institutions

- **Current Provisions under IT Act**

- Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (iv), (v), (vi), (via) of Section 10(23C) ("**First Regime**") or any trust or institution registered u/s 12AA or 12AB ("**Second Regime**") of the Act is exempt subject to the fulfilment of the conditions provided under various sections.
- It is now proposed to rationalise the provisions of both the exemption regimes by ensuring effective monitoring and implementation, bringing consistency in the provisions and providing clarity on taxation.

- **Preparation of Books of Accounts**

- In order to ensure proper implementation, it is proposed to amend Section 12A(1)(b) and tenth proviso to Section 10(23C) so as to provide where the total income of trust or institution under both regimes, without giving effect to the provisions of Section 10(23C) or Section 11 and 12, exceeds maximum amount which is not chargeable to tax, such trust or institution shall keep and maintain books of account and other documents in such form and manner and at such place, as may be provided by rules, in addition to getting its books of accounts audited.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

- **Levy of Penalty for passing benefits to specified persons**

- Section 13 of the IT Act provides that trust or institutions are not required to pass on any unreasonable benefit to the trustee or any other specified persons.
- In order to discourage misuse of funds of the Trust, it is proposed to introduce a new Section 271AAE to provide for penalty in case

of violation of provisions of twenty-first proviso to Section 10(23C) or Section 13(1)(c).

- Quantum of penalty shall be a sum equal to 100% of aggregate amount of income applied, directly or indirectly, by such person, for the benefit of specified person where the violation is noticed for the first time. Further, where violation is noticed again in any subsequent previous year then penalty shall be a sum equal to 200% of the aggregate amount of income of such person applied, directly or indirectly, by such person, for the benefit of any specified person.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

- **Procedure for Approval or Cancellation of Trust in case of specified violations**

- Currently, First and Second provisos to Section 10(23C) and provisions of Section 12A(1)(ac) provides that application for the approval of any trust or institution under both regimes, shall be made to the jurisdictional PCIT or CIT and they will grant approval after examination of application. The provisional approvals are granted in an automated manner (“**Automatic Approval**”). It is essential to ensure that non-genuine trusts or institutions do not get exemption provided by these provisions.
- There is difference in provisions related to Cancellation of Trusts under both regimes. Section 143(3) provides that no order shall be made where benefits of Section 10(23C) is denied unless AO has intimated Central Government or prescribed authority and approval to such trust has been rescinded. However, there is no such provision under Second Regime.
- Also, No Limits prescribed for PCIT or CIT for withdrawal of approval-Section 143(3) provides provisions for making reference by Assessing Officer to PCIT or CIT. There is no time limit provided to decide on such reference.
- In order to resolve the above issues, it is proposed to amend the fifteenth proviso to Section 10(23C) to provide that where fund or

institution is approved under Automatic Approval and subsequently,

(i) the PCIT or CIT has noticed occurrence of one or more specified violations during any previous year or

(ii) received a reference from the AO under second proviso to Section 143(3) or

(iii) such case has been selected in accordance with the risk management strategy formulated by the Board,

then PCIT or CIT shall—

- Call for such documents or information from the trust or institution or make such inquiry as he thinks necessary in order to satisfy himself about the occurrence of any specified violation;
- Pass an order in writing cancelling the registration of such trust or institution, after giving a reasonable opportunity of being heard if he is satisfied that violation have taken place;
- Pass an order in writing refusing to cancel the registration of such trust or institution, if he is not satisfied about the occurrence of any specified violation;
- Forward a copy of the order under above clauses to the AO and such trust or institution.

- Similarly, above amendment is introduced in provisions of Section 12AB(4) where registration or provisional registration of a trust or an institution has been approved under clauses (a), (b) or (c) of Section 12AB(1) or Section 12AA(1)(b).
- Consequently, it is also proposed to insert Explanation 3 to fifteenth proviso to Section 10(23C) where a reference has been made under first proviso to Section 143(3) on or before 31.03.2022 by the AO for contravention of Section 10(23C), such reference shall be deemed to be a reference received on 01.04.2022.
- Further, it has been proposed to amend second proviso in Section 143(3) to provide that where the AO is satisfied that any trust or institution under both regimes has committed any specified violation, the AO shall:

- send a reference to the PCIT or CIT to withdraw the approval or registration, as the case may be; and
 - no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the PCIT or CIT under clause (ii) or (iii) of the fifteenth proviso to Section 10(23C) or clauses (ii) or (iii) of Section 12AB(4).
 - Consequentially, it is also proposed to insert a new clause (xiii) to provide that the period commencing from the date on which the AO makes a reference to the PCIT or CIT under the second proviso of Section 143(3) and ending with the date on which the copy of the order under clause (ii) or (iii) of fifteenth proviso of section 10(23C) or clause (ii) or (iii) of Section 12AB(4), as the case may be, is received by the AO shall be excluded in computing the period of limitation for assessment.
 - Consequential amendment is proposed to be made in Section 143(3) by deleting the references to trust or institution under First Regime in first proviso and delete the existing third proviso.
 - Additionally, Section 12AB(5) of the IT Act is proposed to be substituted to provide that order under clauses (ii) or (iii) of Section 12AB(4) shall be passed before expiry of period of 6 months calculated from the end of quarter in which first notice is issued by PCIT or CIT ,on or after 01.04.2022, calling for any document or making any inquiry under clause (i) of Section 12AB(4).
 - *w.e.f. 01.04.2022.*
- **Definition of Specified Violation and Specified Date**
 - The term “**specified violation**” is proposed to be defined by inserting an Explanation 2 to fifteenth proviso to Section 10(23C) to include the following violations-

- where any income of the trust or institution under the both regimes has been applied other than for the objects for which it is established; or
 - the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by it in respect of the business which is incidental to the attainment of its objectives; or
 - any activity being carried out by the trust or the institution is not genuine or not being carried out in accordance with conditions subject to which it was notified/approved; or
 - the trust or the institution has not complied with the requirement of other law for time being in force, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.
- Similarly, Explanation to Section 12AB(4) of the IT Act defines the “specified violation” as above with two additional specified violations-
 - the trust or the institution under the Second Regime has applied any part of its income from the property held under a trust for private religious purposes which does not enure for the benefit of the public; or
 - the trust or institution under the Second Regime has applied any part of its income for the benefit of any particular religious community or caste.
 - It is also proposed to insert an Explanation to fifteenth proviso to clause 10(23C) to provide that “**specified date**” shall mean the day on which the period of 6 months calculated from the end of the quarter in which the first notice is issued by PCIT or CIT on or after 01.04.2022 calling for any document or information, or for making any inquiry, under clause (i) expires.

- **Bringing Consistency for exemption under both First and Second Regimes**
 - **Accumulation provisions: Rationalisation of First Regime**
 - Under current provisions of the Trust, a Trust or Institution is required to apply 85% of its income during any previous year. However, if it is not able to apply 85% of its income during previous year then it is allowed to accumulate such income for a period not exceeding 5 years as per Section 11(2) under Second Regime and third proviso to Section 10(23C) of the IT Act under First Regime.
 - However, Section 11(2) provides for accumulation of income subject to fulfilment of certain conditions while there are no conditions provided under third proviso to Section 10(23C).
 - To provide conditions for Section 10(23C), it is proposed to insert Explanation 3 to the third proviso of section 10(23C) of the Act to provide that following conditions are to be complied with, namely:—
 - ♦ such person furnishes a statement in the prescribed form and manner to the AO, stating the purpose and the period of accumulation shall not exceed five years;
 - ♦ the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5) ; and
 - ♦ the statement referred to in clause (a) of Explanation 3 is furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year;
 - Further, it is proposed to insert a proviso to the proposed Explanation 3 to the third proviso to Section 10(23C) to provide that in computing the period of 5 years referred to in sub-clause (a), the period during which the income could not be applied for the purpose for which it is so

accumulated or set apart, due to an order or injunction of any court, shall be excluded.

- It is also proposed to insert an Explanation 4 to third proviso to section 10(23C) to provide that any income referred to in the proposed Explanation 3 shall be deemed to be the income of the previous year in which the following takes place –
 - ♦ the income is applied for purposes other than wholly and exclusively to the objects for which the trust or institution under the First Regime is established, or ceases to be accumulated or set apart for application thereto, or
 - ♦ the income ceases to remain invested or deposited in any of the forms or modes specified in section 11(5), or
 - ♦ the income is not utilised for the purpose for which it is so accumulated or set apart during the period referred in proposed Explanation 3,
 - ♦ the income is credited or paid to any trust or institution under the first or Second Regime.
- Further, it has been proposed to insert an Explanation 5 to third proviso to section 10(23C) of the Act to enable the AO to allow trusts or institutions under the First Regime in circumstances beyond their control to apply such accumulated income for such other purpose in India as is specified in the application by such person subsequent to fulfilment of specified conditions, except application by crediting or paying to any trust or institution. However, these other purposes are required to be in conformity with the objects.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

- **Accumulation provisions: Rationalisation of Second Regime**
 - Further, Section 11(3) provides for specific previous year in which accumulated income will be subjected to tax in case of different types of violations. It specifically provides that if the accumulated income is not applied within 5 years then it will be taxed in the 6th year. However, there are no specific provisions under Section 10(23C) and thus, if accumulated income is not applied within 5 years then it will be taxed in the 5th year itself.
 - In order to bring consistency under both regimes, it has been proposed to amend Section 11(3) to provide that any income referred in Section 11(2) which is not utilised for purpose for which it is so accumulated or set apart shall be deemed to be income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart under clause (a) of Section 11(2) but not utilised for which it is so accumulated or set apart.
 - *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*
- **Exit tax applicable under First Regime**
 - Chapter XII-EB consisting of Sections 115TD, 115TE and 115TF was introduced by FA 2016. It was inserted to impose a levy in nature of exit tax which is triggered when organisation converts into a non-charitable organisation. It provides for taxation of accreted income of trust. Currently, these provisions are applicable under Second Regime only. These provisions have now been made applicable under First Regime as well.
 - *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*
- **Filing of return within due date for claiming exemption under Section 10(23C)**

- It has been proposed to insert 20th proviso to Section 10(23C) which provides that in order to claim exemption, trust or institution under First Regime is required to furnish return of income within time allowed under Section 139(4C).
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Computation of Income of Trusts or Institutions in Cases of Denial of Exemption

- Under both the regimes, there is not much clarity on computation of total income chargeable to tax in cases exemption is denied under the following circumstances:
 - Having commercial receipts more than 20% of the annual receipts in violation of proviso to Section 2(15).
 - Not getting the books of accounts audited in violation of Section 12A(1)(b)
 - Not filing the return of income violating Section 12A(1)(ba)
- It is proposed to insert 22nd proviso to Section 10(23C) and similar sub-section (10) to Section 13 to provide for following expenditures which shall not be allowed, while computing taxable income tax in such cases:
 - any expenditure from the corpus funds standing as on the last day of F.Y. immediately preceding the previous year,
 - expenditure from any loan or borrowing,
 - depreciation w.r.t. an asset whose acquisition has been claimed as application in any assessment year and
 - expenditure in the form of contribution or donation.
- It is also proposed to insert an Explanation in 22nd proviso to Section 10(23C) and similarly Section 13(10) to make any expenditure allowable subject to Sections 40(a)(ia), 40A(3) and 40A(3A) w.r.t. TDS deduction and cash expenditures.

- Further, it is also proposed to introduce 23rd proviso to Section 10(23C) and similar sub-section (11) to Section 13 to provide that no deduction under any other provisions of the Act and no set-off of any losses shall be allowed in such cases.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

“Like Default Like Punishment” for Trusts and Institutions

- Further, trusts and institutions under both the regimes are required to keep their funds in modes specified u/s 11(5) of the Act.
- Currently, trusts and institutions are denied entire exemption if default is made u/s 13(1)(c) or 13(1)(d).
- It is proposed to insert 21st proviso to Section 10(23C) and similarly to amend Section 13(1)(c) to provide that only that part of income which has been applied to pass on unreasonable benefits to trustee and specified person shall be included in total income of the trust or deemed to be income of such person.
- Similarly, it is also proposed to amend Section 13(1)(d) to provide that only that part of income which is invested in violation to the provisions of Section 11(5) shall be included in total income of trust or institution.
- *w.e.f. 01.04.2023 (A.Y. 2023-24 onwards)*

Insertion of Section 115BBI: Special Tax Rate for Income of Trusts or Institution

- This section is proposed to be inserted to impose an income-tax rate of 30% on the aggregate of specified income without any deduction w.r.t. any expenditure, allowance or set off while computing such specified income.

- The term “Specified Income” would mean:
 - Any income accumulated or set apart, in excess of 15% where such accumulation is not allowed under provisions of the Act
 - Any income accumulated or deemed to be utilized in a previous year which is not utilized as per the proposed Explanation 4 to 3rd proviso to Section 10(23C) or Section 11(1B) or 11(3).
 - Any income due to denial of exemption due to investment of funds in other than specified modes as per 3rd proviso to Section 10(23C) or Section 13(1)(d).
 - Any income which is deemed income due to passing of unreasonable benefit to trustee or specified person as per 21st proviso to Section 10(23C) or Section 13(1)(c).
 - Any income which is not excluded from total income under Section 11(1)(c).
- *w.e.f 01.04.2023 (A.Y. 2023-24 onwards)*

Treatment of Voluntary Contributions for Renovation & Repair of Notified Temples, etc.

- Presently, it is not clear as whether donations received for renovation & repair of Temples, etc. by trust or institution notified u/s 80G(2)(b) are to be treated as corpus donation or are to be applied/accumulated.
- To clarify this position, it is proposed to insert Explanation 1A in 3rd proviso to Section 10(23C) & similar Explanation 3A to Section 11(1).
- As per the proposed insertions, an option would be provided to a trust or institution where property held under trust or institution includes any Temple, etc. or other place notified u/s 80G(2)(b). The said option would enable such trust or institution to treat voluntary contribution received for the purpose of renovation or repair as part of corpus subject to following conditions:
 - application only for specific purpose for which donation received
 - not donating such funds to any person,

- maintain separate identity of such corpus
- investment in specified modes u/s 11(5).
- Further, insertion of Explanation 1B in 3rd proviso to Section 10(23C) & Explanation 3B in Section 11(1) is proposed to deem such corpus funds as part of income of the previous year in which violation of conditions take place.
- *w.r.e.f. 01.04.2021 (A.Y. 2021-22 onwards)*

Only Actual Payment to be Application of Trusts' Income

- The term “application” apparently means actual payment. This interpretation has been held by various courts also. It is proposed to specifically clarify this meaning in case of trusts and institutions by inserting Explanation 3 to Section 10(23C) and to Section 11.
- Accordingly, any sum payable by any trust shall be considered as application of income in the previous year of actual payment irrespective of the year in which liability to pay such sum arose as per the method of accounting employed by the trust.
- Further, it is proposed to insert provisos to the above Explanations to provide that where such sum has been claimed to have applied by such trust in any previous year, such sum shall not be allowed as application in subsequent previous year.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards).*

Prescribed Authority Replaced with Principal Commissioner or Commissioner

- As per Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.e.f. 01.04.2021, 1st and 2nd provisos to Section

10(23C) of IT Act provides that application for the approval of any trust shall be filed before the jurisdictional Principal Commissioner or Commissioner and such Principal Commissioner and Commissioner after examination grants approval to the application.

- Earlier, such applications were required to be filed before the prescribed authority. However, the reference to prescribed authority continues at certain places in the Section 10(23C) of IT Act.
- Hence, it is proposed to amend the reference to prescribed authority with Principal Commissioner or Commissioner in sub-clause (iv), (v), (vi) and (via) and 19th proviso to Section 10(23C) of IT Act.
- *w.e.f. 01.04.2022*

Drafting Error in Section 35(1A) of IT Act

- As per Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, w.e.f. 01.04.2021, as per 35(1A) of the IT Act no deduction shall be allowed to the research association, university college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of Section 35(1) of IT Act if statement of donations is not filed. However, that was not the intention of the law as deduction claimed by the donor needs to be disallowed.
- Accordingly, it is proposed that no deduction to be allowed to donor with respect to the donation given to any research association, university college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of Section 35(1) if such research association, university, college or other institution or company not files the statement of donations.
- *w.r.e.f. 01.04.2021*

Rationalization of Provisions relating to Assessment and Reassessment

- **Amendments in Section 148**
 - **Insertion of New Proviso**
 - For simplification of procedures and to avoid dual approval it has been proposed to insert a new proviso u/s 148 which provides that approval for issuance of notice u/s 148 shall not be required where the AO has passed an order u/s 148A(d) treating it to be a fit case to issue notice with the prior approval of the specified authority.
 - *w.e.f. 01.04.2022.*
 - **Amendment in Explanation 1**
 - To correct the drafting errors and align the provisions with the intent of the Section, it has been proposed to amend the explanation 1 of Section 148 by omitting the word “flagged” from clause (i) and to widen the meaning of ‘information’, it has been proposed to substitute clause (ii) which presently provides for final audit objections by the CAG, with the following clauses:-
 - ◆ any audit objection 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; or
 - ◆ any information received under an agreement referred to in section 90 or section 90A of the Act; or
 - ◆ any information made available to the Assessing Officer under the scheme notified under section 135A; or
 - ◆ any information which requires action in consequence of the order of a Tribunal or a Court.
 - *w.e.f. 01.04.2022.*

- **Amendment in Explanation 2**

- As per existing provisions u/s 148, in case where search, survey, requisition is conducted or made or any material is seized on or after 01.04.2021, such search, survey or requisition which suggest that income chargeable to tax has escaped assessment in case of assessee for 3 AYs immediately preceding the AY relevant to the previous year in which the search, survey or requisition is initiated, conducted or any material is seized or requisitioned, shall be deemed to be considered as information for the AO. To widen the scope of Section 148, it has been proposed to omit the reference of 3 preceding A.Y. relevant to the year of search from the explanation 2. *w.r.e.f. 01.04.2021.*
- It has been proposed to omit the reference of Section 133A(5) from clause (ii) of Explanation 2 u/s 148 to widen the scope to include the survey conducted u/s 133A(5) within the provisions of Explanation 2 of Section 148.
- *w.e.f. 01.04.2022.*

- **Amendments in Section 148A**

- For simplification of procedures relating to conducting of inquiry and to avoid dual approval, it has been proposed to omit the requirement of prior approval of specified authority before providing an opportunity of being heard to the assessee.
- New clause (d) is proposed to be inserted in the proviso of Section 148A which provides that provisions of Section 148A shall not apply where the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.
- *w.e.f. 01.04.2022.*

- **Insertion of New Section 148B**

- To reduce avoidable inaccuracies it has been proposed to insert a new Section 148B which provides that no order of assessment

consequent to search, survey and requisition (as covered under Explanation II of Section 148) shall be passed by an Assessing Officer below the rank of Joint Commissioner, except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

- *w.e.f. 01.04.2022.*

- **Amendments in Section 149**

- In order to widen the scope of Section 149, it has been proposed to amend clause (b) of Sub-section (1) wherein time limit for issuing notice under section 148 is 10 years from the end of relevant A.Y. by including following forms of Escaped Income:

- Expenditure in respect of a transaction or in relation to an event or occasion; or
- an entry or entries in the books of account.

- It is proposed in the first proviso that for AYs beginning on or before 01.04.2021, no notice under section 148, 153A or 153C would be issued, if such notice could not have been issued at the time on account of time limits as stood immediately before the commencement of the Finance Act, 2021. *w.r.e.f. 01.04.2021.*

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

- *w.e.f. 01.04.2022.*

- **Amendments in Section 153**

- In order to provide the time limit for completion of assessment changes in the Section is proposed :
 - Insertion of new Sub-section (1A) in said Section to cover the scenario of updated return as provided in u/s 139(8A) and the period of nine month shall be renoked from the end of the financial year in which such updated return is furnished.
 - Amendment in sub-section (3) to provide period of nine month from the end of financial year to cover cases where the matter is referred to Transfer Pricing Officer u/s 92CA.
 - Amendment in sub-section (5) to provide the three months from the end of the month in order to cover the order is passed by Transfer Pricing Officer u/s 92CA in consequence to an order under section 263.
 - Insertion of new Sub-section (5A) to provide that the case where the Transfer Pricing Officer gives effect to an order or direction under section 263 by means of an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.
- It is also proposed to amend clause (iii) of the Explanation 1 to said Section so as to omit the reference of "sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10".
- *w.e.f. 01.04.2022.*
- It is also proposed to insert a new clause (xii) to provide for exclusion of the period commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of

account or other documents, or any money, bullion , jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee:

- in whose case such search is initiated under section 132 or such requisition is made under section 132A; or
- to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or
- to whom any books of account or documents seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

or one hundred and eighty days, whichever is less, in computing the period of limitation for the purpose of assessment, reassessment or recomputation.

- *w.e.f. 01.04.2021.*

- **Amendments in Section 153B**

- It is proposed to insert a new sub-section (4) in the said section to provide that nothing contained in the said section shall apply to any search under section 132 or requisition done under section 132A on or after the 1st day of April, 2021.
- *w.e.f. 01.04.2022.*
- It is proposed to insert a new Explanation to the said section, clause (xi) may be inserted to provide for exclusion of the period commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion , jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition

is made under section 132A, as the case may be or one hundred and eighty days, whichever is less.

- *w.e.f. 01.04.2021*

- **Amendment in the penalty prescribed in provisions of section 272A of the Act.**

- On being commented upon by the CAG in their report on the entertainment sector as being too low. It is now proposed to increase the amount of penalty for failures listed under sub-section (2) of section 272A to five hundred rupees from the existing sum of one hundred rupees.
- *w.e.f. 01.04.2022.*

- **Amendment in the provisions of section 179 of the Act in order to provide clarity.**

- In order to make the title of the section uniform with its provisions, it is proposed to amend the title of the section to “Liability of directors of private company” in place of existing title as “liability of directors of private company in liquidation”.
- In order to avoid unnecessary litigation and to provide further clarity, it is also proposed to insert the word “fees” in the scope of the expression “tax due” as the said explanation includes penalty, interest of any other sum payable under the Act.
- *w.e.f. 01.04.2022.*

- **Rationalization of the provisions of sections 271AAB, 271AAC and 271AAD**

- In Section 271AAB (Penalty where search has been initiated), 271AAC (Penalty in respect of certain income) and 271AAD (Penalty for false entry, etc., in books of account) the AO have power to impose penalties under this section.
- To widen the scope of this section, it is proposed that Power to levy penalties should also be provided to commissioner (Appeals) under this section in addition to AO.
- *w.e.f. 01.04.2022.*

Amendment in Search and Seizure u/s 132 of IT Act

- As per section 132(8), the books of account or other documents seized under sub-section (1) or sub-section (1A) of the said section shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment u/s 153A(Assessment in case of search or requisition) or u/s 158BC(c) (AO shall pass an order of block assessment) unless the reasons for retaining the same are recorded by him in writing and the approval of the PCCIT or CCIT, PCIT or CIT, PDGIT or DGIT or PDIT or DIT for such retention is obtained.
- To widen the scope of this section, it is proposed that this provision shall also be applicable in case of an order of assessment or reassessment or recomputation made u/s 143, 144 or 147 of the Act
- Amendment is also proposed u/s 132B(4) to compute interest under that Section till the date of order of assessment , reassessment or recomputation as against order u/s 153A or Chapter XIV-B.
- *w.e.f.01.04.2022.*

Streamlining the Procedure Specified for Faceless Assessment u/s 144B

- Section 144B of the IT Act was inserted vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 01.04.2021 to provide with the procedure of faceless assessments under the IT Act. However, severe difficulties were faced by the administration and the taxpayers in the implementation of the assessments.

- In order to streamline the process of faceless assessment, existing Section 144B (1) to (8) is proposed to be substituted. The proposed substituted Section 144B reflects the motive of the Government of simplification of the faceless assessment procedure even though minor in nature.
- The key amendments related to proposed Section 144B(1) to 144B(8) are as follows:
 - It is now proposed to be clarified that the term ‘assessment’ also includes reassessment and recomputation u/s 143(3), 144 and 147 of the IT Act
 - Regional Faceless Assessment Centre (“**RFAC**”), the authority which acted as the medium between the National Faceless Assessment Centre (“**NFAC**”) and Assessment unit (“**AU**”) to some extent has being proposed to be removed. Due to the removal of RFAC, the communication regarding the case of the Assessee would take place directly between the NFAC and the specified AU
 - Presently, Section 144B(1)(ii) specifies that even for assessments opened prior to insertion of Section 144B, procedure specified for faceless assessment u/s 144B has to be followed. Now, since the all assessments are to be taken under the new regime only, the clause has become redundant. Accordingly, the proposed substituted clauses do not have these provisions.
 - Presently, AU has to pass draft assessment order after taking into consideration all the relevant material of the case of the Assessee. Now, it is proposed to amend the term from “*draft assessment order*” to “*income or loss determination proposal*”.
 - It is proposed that *draft assessment order* shall be prepared by AU and once prepared, would be forwarded to NFAC in a case where there is no need of the review unit. Thereafter, if the NFAC is satisfied with the draft assessment order in a case of other than eligible assessee, it would convey AU to prepare *final assessment order* and initiate penalty proceedings. The copy of the final

assessment order would then be forwarded to NFAC and to Assessee through NFAC.

- At present, as per Section 144B(1)(xix), on receipt of review report from review unit by NFAC, the NFAC assigns the case of the Assessee to an AU which is other than the AU which had prepared the draft assessment order. Now, it is proposed that the review report would be forwarded to the same AU which had proposed the income or loss determination proposal.
- It is proposed that the opportunity of personal hearing shall be accorded through video conferencing or video telephony only in a circumstance where a variation is proposed either in income or loss determination proposal or draft assessment order.
- In respect of various units in the Assessment procedure, the following clarifications are proposed to be made:
 - Wherever the Section uses the term assessment unit, verification unit, technical unit, review unit, the same shall refer to an Assessing Officer having powers assigned by the Central Board of Direct Taxes ("**Board**").
 - The scope of technical unit has been proposed to be widened to also include determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter.
 - It is further proposed through proviso that the function of the verification unit may also be performed by a verification unit located in any other faceless centre set up under the IT Act. Accordingly, Section 144B(10) has been proposed to be omitted.
- The proposed Section also provides that the AU, for the reasons in writing, can request NFAC to invoke the provisions of Section 142(2A) of the IT Act.
- At present, Section 144B(9) specifies that the assessment proceedings shall become void if the procedure mentioned in the Section is not followed. It is proposed to omit Section 144B(9) from the date of its inception i.e., *retrospectively w.e.f. 01.04.2021*, which would provide

rescue to department in cases where assessment were challenged in Writ.

- Also, it is also proposed that the definition of “electronic verification code” be inserted and the definition of “originator” be omitted since there was no mention of the said term in the provision.
- *W.e.f 01.04.2022*

Extension of Date of Limitation for Issuance of Directions under Faceless Scheme

- Recently provisions under Section 92CA, 144C, 253 and 255 of the IT Act were introduced for the purpose of notifying faceless scheme in the respective provisions as follows:
 - 92CA – Faceless determination of arm’s length price
 - 144C – Faceless Dispute Resolution Panel
 - 253 – Faceless appeal to Appellate Tribunal
 - 255 – Faceless procedure of Appellate Tribunal
- In all the aforesaid provisions it has been provided that no directions will be issued post 31.03.2022.
- Now, it is proposed to extend the date of limitation for issuance of direction by the Central Government from 31.03.2022 to 31.03.2024 by suitably amending the respective provisions.
- *w.e.f. 01.04.2022*

Scope of the Term Slump Sale

- In order to make the intention of the legislature clear, the scope of the definition of the term “slump sale” u/s 2(42C) of the IT Act was amended in last year’s budget by including all types of 'transfer' as defined u/s 2(47) of the IT Act within the scope of slump sale.
- However, inadvertently, in the definition, the last word of the sentence still refers to the word “sales” instead of “transfer”.
- The existing definition is reproduced for reference:-
(42C) "slump sale" means the transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.
- Accordingly, now a retrospective amendment is proposed to substitute word “sales” with “transfer” to remove ambiguity.
- *w.r.e.f. 01.04.2021 (A.Y. 2021-22 onwards)*

Reduction of Goodwill from block of assets to be considered as Transfer

- As per amendments carried out in last year’s budget, from A.Y. 2021-2022 and onwards, goodwill of a business or profession was not considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. Rather the transfer of Goodwill shall be liable for capital gains.
- When the amendment was carried out through the Finance Act 2021, consequential amendment was carried out in Section 50 of the Act by insertion of a proviso to clause (2) of that section which read as follows:
 - *Provided that in case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the Act, the written down value of that block of the asset*

and short term capital gains, if any, shall be determined in accordance with such manner as may be prescribed.

- The rules in relation to above section 50 were notified on 7th July 2021 as the Income tax Amendment (19th Amendment), Rules, 2021 which provided that any excess portion of goodwill after reducing from block of assets as per Section 43(6)(c)(ii) shall be liable to short term capital gains. However, the enabling power to tax in respect of such excess goodwill as short term capital gain was not provided in Section 50 explicitly.
- To further clarify the above, an explanation has been proposed to be inserted after the above proviso in section 50, that for the purposes of Section 50 of the IT Act, reduction of the amount of goodwill of a business or profession, from the block of asset in accordance with Section 43(6)(c)(ii)(B), shall be deemed to be transfer. Therefore, validating the rule providing for liability to short term capital gain tax.
- *w.r.e.f. 01.04.2021 (A.Y. 2021-22 onwards)*

Increasing the Ambit of Revision of Orders when Prejudicial to the Interest of Revenue

- Section 263 of the IT Act provides for revision of order which is erroneous in so far as it is prejudicial to the interests of revenue.
- Section 92CA of the IT Act allows the Assessing Officer to refer the computation of arm's length price (ALP) in an international transaction or specified domestic transaction entered by the assessee, to the Transfer Pricing Officer (TPO). Thereafter, the TPO passes an order determining ALP in the said transaction and sends it to the Assessing Officer for final income determination. Currently, there lies ambiguity as to who has the power to revise the order of TPO passed u/s 92CA of the IT Act.

- Henceforth, it is proposed to amend Section 263 of the IT Act to provide that the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner, who is assigned the jurisdiction of transfer pricing, may call for and examine the record of any proceeding under this Act, and if he considers that any order passed by the TPO, working under his jurisdiction, to be erroneous in so far as it is prejudicial to the interests of revenue, he may pass an order directing revision of the order of TPO. Such order for revision may modify or cancel and direct passing of a fresh order u/s 92CA of the IT Act.
- Consequentially, Section 153 of the IT Act that provides for time limit for completion of assessment, reassessment and recomputation has been amended to provide two months' time to the Assessing Officer to give effect to the order of TPO consequent to the directions in the revision order [Insertion of a new sub-section (5A)]. Further, the limitations provided under sub-section (6) of the said section shall also apply to the newly inserted sub-section.
- More so, sub-section (3) of Section 153 of the IT Act is proposed to be amended to provide that the fresh order u/s 92CA in pursuance of Section 263 of the IT Act may be made at any time before the expiry of 9months from end of F.Y. in which the order u/s 263 is passed. Sub-section (5) of Section 153 of the IT Act is also proposed to be amended to provide that where effect of an order u/s 263 is to be given by TPO without making a fresh assessment or reassessment, then such effect shall have to be given within a period of 3months from the end of month in which order u/s 263 has been passed.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

Relief from Fee imposed u/s 234F in Case of Genuine Hardships

- Presently, Section 119 of the IT Act empowers the Board to issue order, instructions and directions to other income-tax authorities for proper administration of the Act. Further, Clause (a) of sub-section (2) of the said section empowers the Board to provide relaxation from certain specific sections of the Act, in respect of any class of income or class of cases, by way of general or special orders, in public interest.
- Section 234F of the IT Act provides for payment of Rs. 5,000/- as fees in case a person fails to furnish return of income u/s 139 of the IT Act within prescribed time. Currently, this section has not been included under clause (a) of sub-section (2) of Section 119 of the IT Act.
- However, considering the genuine hardships faced by certain classes of persons in filing return of income, it is proposed to include Section 234F of the IT Act in clause (a) of sub-section (2) of Section 119, so as to enable the Board to issue such orders or directions, as deemed fit.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*
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Income-tax Authorities for the Purpose of Section 133A of the IT Act

- Section 133A of the Act enables an income-tax authority to enter any place of business or profession or charitable activity within his jurisdiction to verify the books of account or other documents, cash, stock or other valuable article or thing, which may be useful for or relevant to any proceeding under this Act. Explanation to section 133A provides the definition of an income tax authority for the purposes of this section.
- Thereafter, through Taxation and Other Laws (Amendment and Relaxation of Certain Provisions) Act, 2020, the Explanation to Section 133A defines the term 'income-tax authority', was amended to provide

that specified income-tax authorities as prescribed under sub-clauses (i) and (ii) of clause (a) to the Explanation, who are subordinate to the Principal Director General of Income-tax (Investigation) or the Director General of Income-tax (Investigation) or the Principal Chief Commissioner of Income-tax (TDS) or the Chief Commissioner of Income-tax (TDS), as the case may be shall only be considered as 'Income-tax authorities' for the purposes of section 133A.

- Now, it is proposed to amend the Explanation to section 133A of the IT Act to provide that the officers specified under sub-clauses (i) and (ii) of clause(a) of the said Explanation, who are **sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner**, as the case may be, shall be treated as 'income tax authority'.
- *w.e.f. 01.04.2022 (A.Y. 2022-23 onwards)*

3

HIGHLIGHTS OF IMPORTANT PROVISIONS RELATING TO INDIRECT TAXES

GOODS AND SERVICES TAX

New Condition Inserted for Entitlement of ITC

- Section 16 of CGST Act provides for condition for availing ITC. Henceforth, a new condition for availment of ITC is proposed to be inserted under Section 16(2) of CGST Act as per which no registered person shall be entitled for ITC unless the details of ITC in respect of the said supply communicated to such registered person under section 38 has not been restricted.
- Thus, vide proposed amendment a registered person is entitled for ITC of only so much of amount which is generated under the new Section 38 of CGST Act.
- *W.e.f. date to be notified.*

Modification in Time Limit for Availment of ITC

- As per Section 16(4) of CGST Act, time limit for taking ITC is the due date furnishing return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- Section 16(4) of CGST Act has been proposed to be amended and the time limit for claiming ITC has been delinked with due date of furnishing monthly return under Section 39 of CGST Act. As per proposed amendment a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the 30th day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

- Thus, vide proposed amendment, the time limit has been prescribed in CGST Act itself and the effect of extension of due date for furnishing monthly return on taking ITC has been proposed to be eliminated.
- *W.e.f. date to be notified.*

Conditions for Cancellation of Registration Due to Non-Furnishing of Returns Amended

- Clause (b) and (c) of section 29(2) which provides for cancellation of registration due to non-furnishing of returns is proposed to be amended so as to provide that the registration of a person is liable for cancellation, where:
 - a person paying tax under composition levy has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return.
 - ◆ The proposed amendment may provide relaxation to person paying tax under composition levy.
 - a person, other than those paying tax under composition levy, has not furnished returns for such continuous tax period as may be prescribed.
- *W.e.f. date to be notified.*

Amendments in Section 37 of CGST Act-Furnishing Details of Outward Supplies

- Section 37 of CGST Act has been proposed to be amended to prescribe such conditions and restrictions for furnishing details of outward supplies of goods or services and for communicating such details to the recipient of the said supplies.

- Moreover, it has also been proposed to provide for an extended time limit upto 30th November of the following financial year for rectification of errors in respect of details of outward supplies furnished under Section 37(1) of CGST Act.
- New Section 37(4) has been proposed to be inserted which provides that a registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him. However, the Government has been empowered to exempt the taxpayers from this restriction.
- *W.e.f. date to be notified.*

New Mode of Communication of Details of Inward Supplies and ITC

- Section 38 of CGST Act which deals with furnishing details of inward supplies has been proposed to be substituted. The amended Section 38 of CGST Act provides for communication of details of inward supplies and ITC through auto-generated statement in such manner, conditions and restrictions as may be prescribed. and
- The auto-generated statement shall consist of following information:
 - details of inward supplies in respect of which ITC may be available to the recipient.
 - details of supplies in respect of which ITC cannot be availed, whether wholly or partly, by the recipient due to the prescribed categories of suppliers such as new registration, default in payment of outward tax, tax not paid as per return, excess credit availed, etc.
- *W.e.f. date to be notified.*

Two-Way Communication Process in Return Filing has been Proposed to be Eliminated

- Section 42, 43 and 43A of CGST Act have been proposed to be omitted.
 - Section 42 provides for matching, reversal and reclaim of ITC.
 - Section 43 provides for matching, reversal and reclaim of reduction in output tax liability.
 - Section 43A procedure for furnishing return and availing ITC.
- Consequential amendments in Section 16(2)(c), Section 49(2), first proviso to Section 37(1), Section 37(2) and Section 39(9) of CGST Act has been proposed.
- Section 38 of CGST Act has been proposed to be substituted.
- *W.e.f. date to be notified.*

Modification in Time Limit for Rectification of Return

- Section 39(9) has been proposed to be amended to provide modified time limit for rectification of any omission or incorrect particular furnished in return filed under Section 39 of CGST Act. The said errors or omissions can be rectified on or before 30th November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.
- Section 52 of CGST Act provides for collection of tax at source. Section 52(6) of CGST Act has been amended and rectification of any omission or incorrect particulars furnished under Section 52 shall be allowed on or before 30th November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.
- *W.e.f. date to be notified.*

Availment of ITC

- As per existing law, every registered person shall be entitled to take eligible ITC on self-assessed basis and such amount is credited on a provisional basis to his electronic credit ledger. Section 41 of CGST Act has been proposed to be substituted to provide for availment of self-assessed ITC and such amount shall be credit to electronic credit ledger without any provisional acceptance. The proposal amends the words “be entitled to take the credit of eligible input tax” with the words “be entitled to avail the credit of eligible input tax”.
- Further, as per the proposed amendment, ITC availed by a registered person under Section 41 in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed. The registered person may re-avail the amount of credit reversed by him when the said supplier makes payment of the tax payable in respect of the said supplies.
- *W.e.f. date to be notified.*

Modification in Condition for Utilization of Amount Available in Electronic Credit Ledger

- Section 49 of CGST Act has been proposed to be amended to prescribe restriction on utilization of amount available in electronic credit ledger.
- New Section 49(12) has been proposed to be inserted which provides that the Government may specify such maximum proportion of output tax liability which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.
- *W.e.f. date to be notified.*

Amendments in Relation to Electronic Cash Ledger

- Further, Section 49(10) has been proposed to be amended to allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger for, integrated tax or central tax of a distinct person as specified in Section 25(4) and 25(5) of CGST Act. However, a new restriction has been proposed which provides that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.
- Section 54 of the CGST Act has been proposed to be amended to explicitly provide that refund of amount available in electronic cash ledger can be claimed in such form as may be prescribed.
- As per existing law, such refund is to be claimed in the return furnished under section 39 in such manner as may be prescribed. However, with the proposed amendment, a new form will be prescribed for claiming refund of amount available in electronic cash ledger.
- *W.e.f. date to be notified.*

Levy of Interest on ITC Wrongly Availed and Utilized

- Section 50(3) has been proposed to be substituted to provide that where the ITC has been wrongly availed and utilised the registered person is liable to pay interest on such ITC wrongly availed and utilized at such rate , at such rate not exceeding 24%, as may be notified by the Government and interest shall be calculated, in such manner as may be prescribed.
- Moreover, it has also been proposed that the rate of interest under Section 50(3) of CGSt Act would be reduced to 18%.
- *W.r.e.f. 01.07.2017.*

Relevant Date for Refund Claim in Respect of Supplies Made to a SEZ Developer or a SEZ Unit

- New Clause (ba) has been proposed to be inserted under Clause 2 to Explanation to Section 54 of CGST Act which provides a relevant date for filing refund claim in respect of supplies made to a SEZ developer or a SEZ unit.
- Thus, in case of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the relevant date is the due date for furnishing of return under section 39 in respect of such supplies.
- *W.e.f. date to be notified.*

Miscellaneous Amendments

- Section 34(2) of CGST Act has been proposed to be amended so as to provide for an extended time limit for furnishing detail of credit note in monthly return. As per the proposed amendment, the details of credit note can be furnished in any monthly return falling before 30th November following the end of the financial year in which such supply was made.
- Section 39(5) of CGST Act has been proposed to be amended to provide that the non-resident taxable person shall furnish the return for a month within 13 days after the end of a calendar month or within seven days after the last day of the period of registration specified under Section 27(1), whichever is earlier.
- First proviso to Section 39(7) has been proposed to be substituted to provide that those registered persons who are furnishing return on

quarterly basis under proviso to Section 39(1) shall pay to the Government either the self-assessed tax or in lieu of the self-assessed tax, an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

- Section 39(10) has been proposed to be amended to provide for furnishing of details of outward supplies of a tax period under Section 37(1) of CGST Act as a condition for furnishing the return under section 39 for the said tax period. However, as per the proposed amendment, Government has been empowered to exempt the registered person from such restriction.
- Section 47 of the CGST Act is proposed to be amended so as to provide for levy of late fee for delayed filing of return under section 52 (Collection of tax at source).
- As per the proposed amendment in Section 54(2) of CGST Act, the persons notified under Section 55 of CGST Act, may make an application for refund of tax paid on inward supplies before the expiry of 2 years from the last day of the quarter in which such supply was received. Prior to amendment, the said time limit was 6 months.
- Section 54(10) has been proposed to be amended to extend the scope of withholding of or recovery from refunds. As per the existing law, it is only applicable on refund due under Section 54(3) of CGST Act. With the proposed amendment, refund can be withhold of or recovery from refund can be made in all cases.
- *W.e.f. date to be notified.*

Miscellaneous Amendments with Retrospective Effect

- Notification 9/2018- Central Tax dated 23.01.2018 has been proposed to be amended so as to notify www.gst.gov.in as the Common Goods and Services Tax Electronic Portal, for all functions provided under CGST Rules, other than those provided for e-way bill and for generation of invoices under Rule 48(4) of CGST Rules. (*W.r.e.f. 22.06.2017*)

- Clarificatory amendment stating that service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service. However, this has been made subject to the condition that no refund shall be made of tax which has been collected, but which would not have been so collected, had the said notifications been in force at all material times. (*W.r.e.f. 01.07.2017*)

4

HIGHLIGHTS OF IMPORTANT PROVISIONS RELATING TO MISCELLANEOUS LAWS

BANKING & FINANCE

Digital Rupee in 2022 – 23

- With the objective of giving impetus to India's growing digital economy and to leap towards an efficient and cheaper currency management system, the Hon'ble Finance Minister, in the budget speech, has announced introduction of digital rupee, using blockchain and other technologies, from 2022-23 onwards.
- In this regard, the Finance Bill proposes to insert a new definition of "bank note" in the RBI Act. The new definition covers bank notes issued in both physical and digital forms and will enable RBI to issue digital rupee.
- The Finance Bill also proposes to insert a new Section 22A which would exempt digital rupee from various limitations imposed under the RBI Act on physical bank note, e.g. denomination, re-issue, recovery in case of loss etc.
- This attempt at digital currency is also resonating global trend of digital legal tender systems with countries like China already having digital Yuan.

Credit Aid to MSMEs

- The Government had introduced Emergency Credit Line Guarantee Scheme ("ECLGS") as part of its comprehensive package announced on May 13, 2020. To mitigate the adverse impact of the pandemic on hospitality sector, the Hon'ble Finance Minister has announced that ECLGS will be extended up to March, 2023 and its guarantee cover will be expanded by Rs. 50,000 Crore to total cover of Rs. 5,00,000 crore, with the additional amount being earmarked exclusively for the 'hospitality and related enterprises'.

- The Hon'ble Finance Minister has also called for revamping of the Credit Guarantee Trust for Micro and Small Enterprises ("CGTMSE") scheme with required fund infusion. This will extend a helping hand to the potential entrepreneurs by providing them with additional credit of Rs 2 lakh crore and is simultaneously expected to create more employment opportunities.
- The budget speech also contains announcement for roll out of Raising and Accelerating MSME Performance (RAMP) programme with outlay of Rs. 6,000 crore over 5 years. RAMP is a part of government's MSME Competitiveness – A Post COVID Resilience and Recovery Programme (MCRRP). World Bank has also recently approved a loan of USD 500 million to assist in RAMP programme.

Sovereign Green Bonds

- Government has announced issuance of 'Sovereign green bonds' as part of government's borrowing programme in F.Y. 2022 – 2023. The proceeds will be deployed in public sector projects for mobilizing resources for green infrastructure that will help to reduce carbon intensity of the economy.
- A green bond is like any other bond where a debt instrument is issued by an issuer for raising funds from investors. However, what differentiates a Green bond from other bonds is that the proceeds of a Green Bond offering are 'ear-marked' for use towards financing 'green' projects.
- Green Bond introduced in 2007, featured with initial issuances from Supranational organizations such as the European Investment Bank and the World Bank, along with few government agencies mainly. However, later on, it picked up substantially. Global issuance of Green bonds in 2013 and 2014 were USD 11 Bn and USD 36.6 Bn respectively.
- This announcement also supports India's commitment to be carbon-neutral by 2070 made by Prime Minister Narendra Modi at the COP26 climate change conference in Glasgow.

DIGITAL INDIA

E-Passports in 2022-23

- At present, 101 or more countries are issuing e-passports. India also issues e-passports to diplomats and other officials under a pilot project that began in 2008. The first e-passport with biometric details in India was issued to former President Pratibha Patil in 2008.
- The Hon'ble Finance Minister has announced the issuance of E-passports using embedded chip and futuristic technology to be rolled out in F.Y. 2022-23 for ordinary citizens.
- In E-passports, the passport jacket contains an electronic chip which will have important security-related data encoded on it. The personal particulars of the applicants would be digitally signed and stored in the embedded chip. E-passports are expected to come with an internationally recognized logo that is meant for e-passports.
- E-passports will ensure security of biometric data and will help in reducing the circulation of fake passports and smooth passage through immigration posts globally for its citizens.
- The proposals are not a part of the Finance Bill and necessary measures will have to be rolled for implementation of these proposals.

Digitization of Land Records

- To facilitate the IT-based management of land records, the Hon'ble Finance Minister in her budget speech has proposed that states will be encouraged to adopt Unique Land Parcel Identification Number ("ULPIN").
- Further, the facility for transliteration of land records across any of the 22 languages mentioned in Schedule VIII of the Constitution of India will also be rolled out.

- Currently, registration is only permitted in the jurisdiction where property is situated. The government seeks to implement 'anywhere registration' of deeds and documents. For this uniform process, adoption or linkage with National Generic Document Registration System ("NGDRS") with the 'One-Nation One-Registration Software' will be promoted. NGDRS is a citizen centric software designed for online property registration, uploading of relevant documents, and booking online appointments for documents registration.

Modernisation of Public Procurement by E-Bill and Surety Bond

- Introduction of central e-Bill system for public procurement has been proposed for enabling paperless and fast payment to independent suppliers and contractors of the government. Suppliers and contractors to different central ministries may upload their e-bills on a proposed central platform and the government will endeavor to pay 75% of bill amount within 10 days. It has also been proposed that all settlement of disputes shall be done through conciliation.
- Such a central platform for payment of e-bills may be a big relief to contractors and suppliers who work with central ministries as payment in such public procurement projects has been a highly litigated issue.
- Another proposed change is to reduce indirect costs to suppliers and contractors arising from issuance of bank guarantee in public procurement projects by allowing the use of surety bonds. The recently issued IRDAI (Surety Insurance Contracts) Guidelines, 2022 ("**Surety Bond Guidelines**") by Insurance Regulatory and Development Authority of India ("**IRDAI**"), gives framework for 6 different types of surety bond which shall be used from April 01, 2022. The effect of such a proposed change shall be that any supplier or contractor will be able to extend personal guarantee instead of spending on bank guarantee however, only when he has general insurance and fulfills the requirements of Surety Bond Guidelines.

- Thus, effectively such a proposed change would aid small time contractors while participating in tenders and having not to worry about payments and taking additional bank guarantee.

Ease of Doing Business 2.0

- In past few budgets, the government has emphasized on 'Minimum government & Maximum governance'. Owing to the initiatives of the government, the Ease of Doing Business of India has seen a meaningful improvement from 130 in 2015-16 to 63 in 2019-20.
- It is, now, proposed to roll out the next phase of Ease of Doing Business 2.0 ("EODB 2.0") and Ease of Living to improve productive efficiency of capital and human resources, with the idea of 'trust-based governance'.
- EODB 2.0 will be guided by an active involvement of the states, digitisation of manual processes and interventions, integration of the central and state-level systems through IT bridges, a single point access for all citizen-centric services, and a standardization and removal of overlapping compliances. Crowdsourcing of suggestions and ground level assessment of the impact with active involvement of citizens and businesses will be encouraged.
- Few of the other key measures proposed by the Hon'ble Finance Minister are as follows:
 - Necessary reforms under Insolvency and Bankruptcy Code ("IBC") to enhance efficiency of resolution process and to facilitate cross-border insolvency resolution.
 - Introduction of IT-based systems "Centre for Processing Accelerated Corporate Exit" (C-PACE) with process re-engineering, to facilitate and speed up the voluntary winding-up of the companies from the currently required 2 years to less than 6 months.

HEALTH AND EDUCATION

National Digital Health Ecosystem

- A National Digital Health Ecosystem (“NDHE”) is in work for F.Y. 2022-23 which will consist of digital registries of health providers and health facilities, unique health identity, consent framework, and universal access to health facilities. This platform for connecting to healthcare service providers *via* NDHE is in an initiative under the already existing Ayushman Bharat Digital Mission (ABDM).
- The need for NDHE has been felt strongly during the unprecedented times of COVID-19 pandemic.
- The government has recently launched the Unified Health Interface Initiative on January 15, 2022 and renamed the Health ID to Ayushman Bharat Health Account (“ABHA”).
- ABHA is a hassle-free method of accessing and sharing health records digitally. It enables patient’s interaction with participating healthcare providers, and allows patient to receive his digital lab reports, prescriptions and diagnosis seamlessly from verified healthcare professionals and health service providers.

Boost to GIFT City

- The government aims to make Gujarat International Finance Tec-City (“GIFT”) a global hub for financial services. Every year various measures are introduced to strengthen the regulatory framework in GIFT City.
- In this budget, creation of a regulatory sandbox has been proposed for world class foreign universities which will allow them to set up campuses in the GIFT City offering courses mainly targeting FinTech

space, e.g. Financial Management, FinTech, Science, Technology, Engineering and Mathematics. It has been proposed that domestic regulations applicable to educational institutes would not apply to these Universities. This would fill in the gap existing for high-end human resources for financial and technology sector.

- Another major reform proposed is establishment of an International Arbitration Centre within GIFT City with the objective of timely settlement of disputes under international jurisprudence. This reform comes as way forward to place India on the center stage of international arbitration by incentivizing foreign parties to come to India for administering their disputes.

INFRASTRUCTURE

Substitution of SEZ Act

- The Special Economic Zones Act, 2005 (“SEZ Act”) provides for the establishment, development and management of the Special Economic Zones (“SEZs”) for the promotion of exports and for matters connected therewith or incidental thereto.
- To boost exports, it has been proposed in the budget speech that the SEZ Act will be replaced with a new legislation that will enable the states to become partners in ‘Development of Enterprise and Service Hubs’. This will cover all large existing and new industrial enclaves to optimally utilise available infrastructure and enhance competitiveness of exports.
- In 2018, an expert committee headed by Bharat Forge chairman Baba Kalyani had recommended significant changes in the SEZ policy.
- Additionally, to enable the ease of doing business in SEZ units, reforms are also announced in Customs Administration of SEZs. The administration will be fully IT driven and function on the Customs

National Portal with a focus on higher facilitation and with only risk-based checks. The implementation target date has been set as 30.09.2022.

PM Gatishakti

- The Hon'ble Finance Minister has announced PM Gatishakti for preparing India to face next century after *Amrit Kaal* (until 100 years of independence). The goals of PM Gatishakti are (a) accelerated economic growth and development; (b) increased productivity and (c) sustainable development.
- In this endeavor during the *Amrit Kaal*, PM Gatishakti is to be supported by “seven engines” or crucial sectors of importance which are: (i) Roads, (ii) Railways, (iii) Airports, (iv) Ports, (v) Mass Transport, (6) Waterways and (7) Logistics Infrastructure. A major focus of PM Gatishakti shall also be on energy transmission, IT communication, bulk water and sewerage and social infrastructure along with clean energy and efforts by everyone.
- The Hon'ble Finance Minister has proposed that multiple national infrastructure pipeline will be undertaken in the sphere of “seven engines” during *Amrit Kaal*. A major focus for implementing these projects shall be on (a) planning, (b) financing, (c) innovation and (d) speed. One of the primary features of PM Gatishakti is logistical synergy and the Finance Minister has for that reason announced PM Gatishakti Master Plan for expressways aimed at faster movement of goods and people.
- A PM Gatishakti National Master Plan is based on “seven engines”, seamless multimodal connectivity, logistic efficiency, and efforts of state governments. The Finance Minister has also announced allocation of an interest free 50 years loan of Rs. 1,00,000 crores to state governments for undertaking PM Gatishakti projects.

List of Abbreviations


AO	Assessing Officer
AR	Authorized Representative
Customs Act	Customs Act, 1962
Excise Act	Central Excise Act, 1944
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
Companies Act	Companies Act, 2013
Tariff Act	Custom Tariff Act, 1975
FCRA	Forward Contract (Regulation) Act, 1952
FEMA	Foreign Exchange Management Act, 1999
FRBM Act	Fiscal Responsibility and Budget Management Act, 2003
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IGST Act	Integrated Goods and Services Tax Act, 2017
IGST Rules	Integrated Goods and Service Tax Rules, 2017
IRDA	Insurance Regulatory and Development Authority Act, 1999
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1961
ITAT	Income Tax Appellate Tribunal
ITO	Income Tax Officer
ITR	Income Tax Return
ITC	Input Tax Credit

NBFC	Non-Banking Finance Company
PBPT Act	Prohibition of Benami Property Transaction Act, 1988
PE	Permanent Establishment
PMLA	Prevention of Money Laundering Act, 2002
RBI	Reserve Bank of India
RBI Act	Reserve Bank of India Act, 1934
RERA	Real Estate (Regulation and Development) Act, 2016
SCRA	Securities Contracts (Regulations) Act, 1956
SCR Rules	Securities Contracts (Regulations) Rules, 1956
SEBI	Securities and Exchange Board of India
SEBI Act	Securities and Exchange Board of India Act, 1992
SEZ	Special Economic Zone
SEZ Act	Special Economic Zones Act, 2005
Stamp Act	Indian Stamp Act, 1899
TRO	Tax Recovery Officer



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— Prime Minister Narendra Modi



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