M2K Advisors

FINANCE ACT, 2023

A Comprehensive Insight

The amendments made post introduction of Finance Bill, 2023 in Lok Sabha as part of Union Budget are highlighted in Green for ready reference.

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Rates of taxes

Rates of taxes for individuals, HUF, AOP, BOI and AJP

- There is no change in the tax slabs in the old tax regime.
- Tax slabs in the alternative tax regime under section 115BAC are proposed to be amended as follows:

Existing tax regime u/s 115BAC (upto AY 2023-24)		Proposed tax regime u/s 115BAC (AY 2024-25 onwards)	
Total Taxable Income	**Rate of tax**	**Total Taxable Income**	**Rate of tax**
Up to 2,50,000	Nil	Up to 3,00,000	Nil
2,50,001 to 5,00,000	5%	3,00,001 to 6,00,000	5%
5,00,001 to 7,50,000	10%	6,00,001 to 9,00,000	10%
7,50,001 to 10,00,000	15%	9,00,001 to 12,00,000	15%
10,00,001 to 12,50,000	20%	12,00,001 to 15,00,000	20%
12,50,001 to 15,00,000	25%	Above 15,00,000	30%
Above 15,00,000	30%		

- Rebate under section 87A has been increased on tax on income up to **Rs. 7,00,000** under the new regime.
- **Further, marginal rebate is allowed if the total income marginally exceeds Rs. 7,00,000 under the new regime (similar to marginal relief available for surcharge computation).**
- Further, the applicable rate of **surcharge is capped at 25%** under the new regime.

Rates of taxes for individuals, HUF, AOP, BOI and AJP

Amendments proposed in Section 115BAC (New Tax Regime)

- Section 115BAC is amended to include AOP (other than co-operative society), BOI and artificial juridical person apart from individuals and HUF.

- Section 115BAC has **now been made the default tax regime**, meaning that, persons can opt for the old tax regime only by way of exercising the option under section 115BAC(6).

- Persons covered under this new regime can now claim the following deductions under section 16 (standard deduction of Rs. 50,000), clause (iia) of section 57 (1/3 of the family pension, subject to a maximum of Rs. 15,000) and sub-section (2) of section 80CCH (government's contribution to Agnipath Corpus Fund) in addition to section 80CCD(2) and Section 80JJAA.

Personal Tax

Personal tax

Rationalizing provisions relating to valuation of residential accommodation to employees

- Clause (i) and (ii) of Section 17(2) deals with taxability of rent-free accommodation ('RFA') and concessional rate accommodation respectively as perquisites. However, rules for valuing such perquisites are prescribed separately for each (Rule 3 for RFA and Explanation to Section 17(2)(ii) for concessional rate accommodation). In order to simplify the valuation methodology for both the perquisites, it is proposed that for both clause (i) and (ii) of section 17(2), uniform rules are to be prescribed. Hence, existing rules shall cease to operate from AY 2024-25 onwards.

Life insurance policies

- Section 10(10D) provides an exemption in respect of sum received under a Life insurance policy, including bonus. However, such a provision was used by the HNIs by investing in policies having higher premiums, thereby having higher value on maturity leading to no tax implications.

- An amendment is proposed to tax the sum received from Life insurance policies (other than ULIP), **having premium** (in aggregate during a year) **exceeding Rs. 5 lakhs**, shall not be exempt from tax under Section 10(10D). The said receipt shall be taxable under the head "Income from Other Sources" with a deduction being allowed for the premium paid during the tenure of the policy. Such sum received, however, shall be **exempt from tax, if the receipt is on account of the death of the insured person**.

- The aforesaid amendment would apply for the policies issued on or after 01 April 2023 (FY 2023-24 onwards) and there shall not be any change in the tax implications for the policies issued before 01 April 2023.

Gift of money to RNOR

- For a Resident Not Ordinarily Resident (RNOR), the scope of total income chargeable to tax includes any income accruing or arising or deemed to accrue or arise to him in India during such previous year.
- The Finance Act 2019 provided that any sum of money received without consideration by a non-resident from a person resident in India shall be deemed to accrue or arise in India, provided the sum of money exceeds Rs. 50,000.
- The above provisions have now been made applicable to a resident not ordinarily a resident (RNOR). In other words, if an RNOR receives any sum of money in excess of Rs. 50,000 for no consideration from a person resident in India, it shall be chargeable to tax under the head “Income from other sources” at the applicable slab rates.

Our comments: Gift of money to RNOR under 6(6) (including deemed resident under Section 6(1A)) shall be covered. However, the gift of money to a relative as defined in Section 56, shall not be covered.

It is to be noted that the amendment in relation to RNOR is only with respect to a gift of a sum of money and not with respect to property.

Corporate & Presumptive Tax

Enhancement of scope of deductions on actual payments

Deduction in respect of payments to micro and small enterprises beyond the specified time limit only on actual payment

- Section 43B of the Act provides for certain deductions to be allowed only on actual payment. However, if such payments are made on or before the due date of filing the original return of income, then it is allowed on accrual basis.

- It has been proposed to include the payments to micro and small enterprises beyond the time limit specified under Micro, Small and Medium Enterprises Development ('MSMED') Act, 2006 under the ambit of Section 43B. Further, deduction **would not be allowed on accrual basis in respect of the payments made on or before the due date of filing original return of income**. i.e. deduction would be allowed only in the financial year in which the delayed payment to micro/ small enterprises are made.

- 'Micro enterprise' and 'small enterprise' as defined under the MSMED Act, 2006 are as follows (conditions to be satisfied cumulatively):

Particulars	Micro enterprise	Small enterprise
Investment in plant and machinery (for manufacturing)/ equipment (for service)	Not > Rs. 1 Crore	Not > Rs. 10 Crores
Turnover	Not > Rs. 5 Crore	Not > Rs. 50 Crore

- MSMED Act, 2006 provides that the due date of payment to a Micro and Small enterprises shall be as follows:
  - in accordance with written agreement, which shall not be later than 45 days from the date of acceptance/ deemed acceptance and,
  - 15 days from the date of acceptance/ deemed acceptance, in the absence of written agreement.

Enhancement of scope of deductions on actual payments

- The implications of the above provisions can be illustrated with the help of below examples of payments to micro/ small enterprises.

Date of accounting & acceptance	Payment terms as per written agreement	Due date of payment under MSMED Act	Actual Date of payment	FY in which deduction is allowable	Remarks
01-Mar-2024	15-Apr-2024 (45 days)	15-Apr-2024 (45 days)	15-Apr-2024	FY 2023-24	Refer **Note 1**
01-Feb-2024	17-Mar-2024 (45 days)	17-Mar-2024 (45 days)	01-Apr-2024	FY 2024-25	Refer **Note 2**

Notes:

1. Those payments made to micro/ small enterprises **beyond the specified time limit** would only fall within the scope of section 43B. In other words, payments made to micro/ small enterprises within the specified time limit would not fall under section 43B.
2. The proviso to section 43B allowing a deduction for payments till the due date of filing the original return of income would not be applicable to delayed payments to micro/ small enterprises.

Our Comments: The processes and internal controls for identification of micro/ small enterprises vendors, timely updating of change in status of micro/ small enterprises of the vendors, capturing the date of acceptance/ deemed acceptance in the ERP for determining the due date of payment assumes significance for ensuring the compliance with this proposed provision.

The provisions of S. 43B may also extend to year-end provisions in respect of goods/services received by Micro and Small Enterprises. Further, S. 43B shall override provisions of S. 40(a)(ia) of the Act.

Benefit / Perquisites arising from business or profession

Perquisites arising from business or the exercise of profession

- S. 28(iv) provides that income under PGBP includes **value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession.**
- The **Supreme Court** in [**CIT v. Mahindra & Mahindra Ltd. [2018] 404 ITR 1 (SC)]**, in the context of waiver of loan, had held that the benefit or perquisite in case of waiver of loans is in the nature of cash, hence not covered under the ambit of 28(iv).
- To neutralize the ratio of the SC ruling, an amendment is proposed under S. 28(iv) to include the benefit/perquisite in cash form is also covered.
- This amendment is effective from AY 2024-25.

Amendment in 194R

- A similar amendment is also proposed in S. 194R to cover the benefit/perquisite provided fully in the form of cash and this amendment is effective from 01 April 2023.

Our Comments: The industry felt that the issue of waiver of a loan was settled once and for all by the Hon'ble SC in Mahindra & Mahindra in their favour. However, this amendment has overruled the SC judgment, although prospectively. The judgment was widely applied in the context of S. 194R interpretation to argue that benefit/perquisite fully in the form of cash cannot be subject to 194R. Now this argument is also neutralized by amendment. While Circular 18/2022 had provided some respite for one-time settlement of loans by certain taxpayers, no such exclusions are available under 28(iv) of the Act.

Whether waiver of loan can be argued as 'capital receipt' not taxable under S. 28(iv)?

Preliminary expenses

Deduction for preliminary expenses

- Preliminary expenses incurred by the assessee before the commencement of business or extension of existing undertaking or setting up of new unit of specified nature are allowed as deduction over a period of five years (subject to certain limits).
- The said deduction was hitherto allowed in respect of expenses in the nature of the preparation of feasibility report or project report, market or other survey or engineering services, subject to the condition that these activities are carried out by the assessee on its own or through the concern approved by the CBDT.
- The said condition is proposed to be removed. Further, a statement of information to be furnished by the taxpayers will be prescribed.

Our Comments : Relaxation has been provided from the conditions imposed in the claim of preliminary expenses of certain nature. This shall provide convenience to the taxpayer to claim the deduction

Presumptive Taxation (1/2)

Increasing the scope of Presumptive taxation

- The existing schemes of presumptive taxation of eligible businesses/ profession can be summarized as follows:

Particulars	Eligible Business	Profession
Eligible Tax-payers	Individual, HUF, firm (other than LLP) who have not claimed certain specified deductions	Individual, HUF, firm (other than LLP)
Eligible Business	Any business except plying, hiring or leasing good carriages, **turnover not exceeding Rs. 2 Crore**. Professions, agency business, persons earning commission and brokerage are not eligible.	Specified Professions, **gross receipts not exceeding Rs. 50 Lakhs**
Deemed Profits/ Income: Receipt in non-cash mode Other cases	 6% or more (of the turnover/ gross receipts), as claimed by the tax-payer 8% or more (of the turnover/ gross receipts), as claimed by the tax-payer	50% or more (of the gross receipts), as claimed by the tax-payer

- The scheme of presumptive taxation is proposed to be extended to **eligible businesses with turnover/ gross receipts up to Rs. 3 Crores** and **professions with gross receipts up to Rs. 75 Lakhs**, **provided turnover/ gross receipts received in cash or bearer cheques/ drafts do not exceed 5%.**

Our Comments: This is a welcome step for small businesses/ professionals with enhanced turnover limits, who would be relieved of compliance burden, including maintenance of books of account for eligible businesses/ profession.

Presumptive Taxation (2/2)

Restriction on set-off of carried forward losses in case of the taxpayers opting for presumptive taxation

- Non-residents/ foreign companies engaged in the business of exploration etc. of mineral oils and foreign companies engaged in the business of civil construction, etc., in certain turnkey power projects can opt for a scheme of presumptive taxation and offer profits @ 10% of specified gross receipts to tax.

- In order to curb the practice of claim of actual profits/ losses in the years where profits are lesser than 10% of specified gross receipts and carry forward the losses and set-off such losses in the years where profits are offered to tax under presumptive scheme, set-off of losses are proposed to be prohibited in the years where option of presumptive taxation is exercised by the tax-payers.

Startups & Business Reorganisation

Startup related amendments (1/4)

Sunset clause extension

- S. 80-IAC provides for a deduction of 100% of profits derived from an eligible business by an eligible start-up for 3 consecutive AYs out of 10 years at the option of the assessee, provided certain conditions are satisfied. The sunset clause for **incorporation of the startup has been extended from 31 March 2023 to 31 March 2024**.

Carry forward and set off of losses

- In Startups, a substantial change in shareholding pattern is quite common each time there is a fundraise. This results in a lapse of losses available for set-off.

- The aforesaid provisions were relaxed for Eligible Startups vide Finance Act 2017 i.e., an eligible startup can set off the losses even if there is a change in shareholding pattern of more than 51% if **all the shareholders** of the company **who held the shares** at the end of the financial year in which loss is incurred **continue to hold shares in the year in which losses are set off**.

- Further, it was also provided that the losses should have been incurred during a period of 7 years from the date of incorporation of the eligible startup.

- In order to align with the period of 10 years provided under startup tax holiday provisions and given that there is also a long gestation period for making profits, the time when the losses should have been incurred **has been increased from 7 years to 10 years** from the date of incorporation of the startup.

Startup related amendments (2/4)

- An illustration of the set off mechanism is provided below:

Shareholders of I Co.	Year 8 (Loss)	Year 9 (Loss)	Year 10 (Profit)
A	50%	1%	1%
B	25%	33%	33%
C	25%	-	5%
D	-	66%	61%

As per the table, the shareholding pattern has changed in Year 9 and 10. Further, C is not a shareholder in Year 9 but has subsequently become a shareholder in Year 10. The shareholders who held shares in the year of loss (Year 8 and 9) are the same as the shareholders who held shares in the year of set off (Year 10) though there is a break in the shareholding pattern. In such a case, irrespective of the fact that shareholding pattern has changed for **more than 51%,** would the startup be eligible to set off the aforesaid losses?

Angel tax applicability to non-residents

- Where a company in which the **public is not substantially interested** is issuing shares at a premium, any amount that is received by the company exceeding the fair market value is liable to be taxed in the hands of the company (**angel tax**) under income from other sources. The **excess amount is treated as income;** hence, the receiver (company) shall pay taxes. Further, there is no step-up of cost available under this provision, unlike 56(2)(x) of the Act.

- Earlier, the angel tax was applicable only if the excess premium was received from residents. The Finance Budget 2023 has extended the provisions to shares issued to non-residents.

Startup related amendments (3/4)

- An example of the impact is provided below:

Face Value	Issue Price	Fair Market Value	Income subject to angel tax
100	200	150	50
100	150	150	0

Our comments: The notification issued by DPIIT on 19th February 2019 provides that the above angel tax provisions shall not apply to eligible start-up companies which fulfill the conditions specified. Therefore, eligible startup companies may resort to applying for angel tax exemption if the conditions specified are fulfilled. However, given that when a startup is either a holding or a subsidiary company or becomes a holding or a subsidiary company, the startup would not be recognized or would get derecognized, this route may not be available for most startups.

It is pertinent to note that the investment from FVCIs which generally did not require a valuation report under exchange control regulations, would now require a valuation report for the purpose of income tax. This would also impact non-resident investors, who generally invest at a price higher than the fair market value for certain rights, such as anti-dilution rights.

In the context of transfer pricing, the Hon'ble Bombay High Court, in the case of Vodafone & Shell, held that the issue of shares are capital transactions and there is no income arising from such transactions. **Will the judiciary view still hold good in view of the amendment proposed?** This will pose more challenges during the assessment, as there is no coherence across regulations regarding the valuation mechanism. (Refer to subsequent slide)

Startup related amendments (4/4)

- The impact of the amendment on issuing unlisted equity shares to overseas investors is as follows:

Statute	Rights Issue (valuation)	Private placement (valuation)	Valuer	Method	Principle
Income tax	Required	Required	Merchant Banker or Chartered Accountant	Discounted Cash Flow or Net Asset Value	Issue price should not be at more than fair market value
FEMA	Not required (conditions apply)	Required	CA or Merchant Banker (Cat 1) or practicing cost accountant	Internationally accepted pricing methodology	Issue price should be at or more than fair market value
Corporate law	Not required	Required	Registered Valuer	Internationally accepted valuation methodology or valuation standards	Issue price should be at or more than fair market value

- The issue price should not be at more than fair market value as per income tax but not less than fair market value for exchange control purposes / corporate law purposes. Further, the type of valuer who has to certify the valuation is also different. This results in a mismatch in requirements between the different legislations.

- It is to be noted that valuation methodology is already challenged by the tax authorities, and in most cases, the Tribunal has held that valuation methodology cannot be modified by the tax authorities, although they can question the assumptions made in the reports.

- Now the taxpayers are not only required to substantiate the identity and creditworthiness of the investor under S. 68 of the Act, the aspect of valuation is also required to be substantiated.

Our Comments: If non-residents invest by way of CCDs, would section 56(2)(viib) be applicable?

Modified Return

- Where business reorganizations are approved with the appointed date covering the period for which income tax return is already filed and the timeline for filing revised return is elapsed, there was no enabling provisions in Act to furnish a return of income duly giving effect to the business reorganizations.

- This was amended in Finance Act 2022 by introducing the concept of filing modified return within 6 months from the date of the order of reorganization.

- However, there was no provision for modification of return if the original return was filed by the predecessor entity. The Finance Bill has proposed to modify the provisions such that if any entity (i.e. both predecessor and successor entities) furnishes the return of income, the successor shall file modified return within 6 months from the date of order of reorganization.

- Further, it has been provided that if proceedings of assessment or reassessment for the relevant AY to which the order applies has been completed or is pending as on the date of furnishing modified return, the assessing officer shall pass an order modifying the total income in accordance with the modified return.

Our comments: The provision defines “successor” as resulting companies and a strict reading covers only resulting entities and amalgamated entities. The Bill should clarify that demerged and amalgamating companies (in case of mid year reorganization) can also file the modified return.

Strategic disinvestment

- Section 72A allows carry forward and set off accumulated loss and unabsorbed depreciation allowance arising from the amalgamation or demerger.
- The definition of strategic disinvestment under section 72A has been amended to include sale of shareholding by Central government, State government and even a public sector company in a public sector company or any company.
- Further the scope of section 72AA has been extended to include the amalgamation of one or more banking company with any banking institution or company subsequent to strategic disinvestment provided the amalgamation is carried out within five years from the year of strategic disinvestment.
- The definition of strategic disinvestment as mentioned in section 72A shall equally apply to section 72AA. Consequential amendments have been proposed in section 153.

Capital Gains

Capital Gains – JDA & Intangibles

Capital Gains arising to Individual/ HUF tax-payers from Joint Development Agreement ('JDA')

- Where an individual or a HUF enters into a specified agreement for the transfer of capital assets in the form of land or building or both, the capital gains arising from the same in the year of issuance of a completion certificate for whole or part of the project by the relevant authority.

- The manner of determination of "full value of consideration" for the purpose of computation of capital gains had been prescribed as stamp duty value of the share of land and building of the taxpayer and any cash consideration received under the agreement.

Our Comments: Earlier language of the section intended to cover only consideration received in the form of cash as part of full value consideration. Now the proposed amendment has clarified that consideration received by way of cheque, draft or any other mode is to be included as part of full value consideration.

Cost of acquisition for intangibles

- As per the amendments in the earlier years, the cost of self-generated goodwill was held to be ''nil''. The Finance Bill proposes that the cost of acquisition or the cost of improvement of **any intangible asset or right** should also be considered as ''nil''. ***The judgement in the case of Bharat Serums and Vaccines Limited [2019] 112 taxmann.com 316 (ITAT Mumbai) has been overruled.***

Double deduction of interest on house property loan

- The interest on borrowed capital for acquiring, renewing or reconstructing house property was claimed as a deduction under multiple sections as follows:

  - Under section 24(b) for computation of Income from House Property
  - As an additional deduction under section 80EE over and above the section 24(b) limit
  - As cost of acquisition or cost of improvement at the time of transfer of such house property under capital gains

- It is now provided that the cost of acquisition or cost of improvement for the purposes of computation of capital gains shall not include the amount of interest claimed under section 24(b) or under Chapter VIA.

Our comments: The amendment applies only to an amount already claimed as a deduction, and it does not extend to an unclaimed amount of interest. A question may arise as to whether the interest claimed as a deduction under section 24(b) and not able to be set off within 8 years due to the specified limits will also be covered by the proposed amendment?

Select judgements in favor of taxpayer - overruled by amendment

- K.S. Gupta (1979) [119 ITR 372] (AP High Court)
- C. Ramabrahmam [2012] 27 taxmann.com 104 (ITAT Chennai)

Select judgments against taxpayers – approved by amendment

- Shree Bal Properties & Finance P. Ltd (ITA. 2848 / Mumbai / 2019) (Mum ITAT)
- Maithreyi Pai (1985 152 ITR 247) (Karnataka High Court)

Deduction under Section 54 and Section 54F

- Sections 54 and 54F provide for deduction from capital gains arising from the transfer of residential property and transfer of any other capital asset (not being a residential property) respectively, if the assessee purchases a residential property within the specified timeline.

- It is now proposed that the maximum amount of deduction that can be claimed by an assessee under sections 54 and 54F shall be limited to **rupees ten crores**.

- Illustration: Assuming Mr. A sold a residential property for a consideration of Rs. 17,50,00,000 and purchased a new residential property at a **cost of Rs. 12,00,00,000** within one year from the date of such sale, the taxability would be as follows:

Particulars	Pre-amendment	Post amendment
Full value of consideration	175,000,000	175,000,000
Less: Transfer expenses	100,000	100,000
Net consideration	174,900,000	174,900,000
Less: Indexed cost of acquisition	50,000,000	50,000,000
Long term capital gains	124,900,000	124,900,000
Less: Deduction u/s 54	120,000,000	100,000,000*****
Taxable long term capital gains	4,900,000	24,900,000

** Earlier the whole of the amount invested in the residential property to the extent of capital gain was allowed as deduction. Currently, such deduction is limited to maximum of Rs 10,00,00,000*

Other amendments (1/2)

Tax on conversion of physical gold to EGR and vice versa

- Under the Union Budget 2021-22, SEBI was made the regulator for the entire ecosystem of the proposed gold exchange.
- To promote the concept of electronic gold, conversion of physical gold to Electronic Gold Receipt ('EGR') and vice-versa by a SEBI registered vault manager is exempted from levy of capital gains.
- For determination of the type of capital gain (Long term/ Short term), it is proposed that the holding period shall include the period up to which the assessee held the gold before such conversion.

Capital gains tax on Market Linked Debenture and Specified Mutual Funds

- A new tax regime has been included to provide for taxation of market linked debentures **and specified mutual funds** under section 50AA of the Act. Market linked debentures are defined to include securities with an underlying principal component in the form of debt and the returns are linked to market returns. **A mutual fund where not more than 35% of its total proceeds is invested in the equity shares of domestic companies is "specified mutual fund".**
- Transfer or redemption or maturity of such "market linked debentures" and **"specified mutual funds"** shall be chargeable as short-term capital gains (chargeable at applicable slab rate) irrespective of the period of holding. However, the gains should be entitled to exemption under 54F/54EC on reinvestment in specified assets if the debenture/ specified mutual fund is a long-term capital asset. Further, no deduction in respect of any sum paid on account of securities transaction tax shall be available.
- The above provisions shall be applicable from FY 2023-24 onwards.

Other amendments (2/2)

Exemption from capital Gains on transfer of interest in joint venture by Public Sector Companies in certain cases

- Transfer of interest in a Joint Venture by a public sector company in exchange for shares in a foreign company is not to be considered as ‘transfer’ and hence would not be subject to taxed under the head “Capital gains”.
- The term ‘joint venture’ is defined to mean a business entity as may be notified by the Central Government in the Official Gazette.
- Consequentially, it has been provided that the cost of the interest in the joint venture shall be deemed to be the cost of acquisition of shares acquired by the Public Sector Company in such exchange.

Assessments & Litigations

Reference to cost accountant for valuation of inventory

Reference to cost accountant for valuation of inventory

- Powers were conferred to the Assessing Officer to direct the taxpayer to get the inventory valued by a cost accountant nominated by the prescribed authority as part of the assessment proceedings. Further, powers to make rules or prescribe forms for inventory valuation are also proposed to be conferred to the CBDT vide amendment to S. 295.

- Further, the time taken for inventory valuation by a cost accountant is proposed to be excluded in the computation of time limitation for completion of assessment.

Our Comments: The valuation of inventories is one of the key factors that impact the taxpayer's total taxable Income of the taxpayer. section 145A read with Income Computation and Disclosure Standards, prescribes the methodology for the valuation of inventories, which are to be followed by all taxpayers. An appropriate opportunity has to be granted to taxpayers before issuing such direction.

At present, the valuation of inventories is subject to statutory audit and also subject to Cost Audit in the case of a certain class of taxpayers, and the same was enclosed as part of the tax audit report. The rules made under the powers conferred should contain adequate safeguards to ensure that the reference to cost accountant is made only in the cases where the same would be warranted. Otherwise, the same could result in an additional burden cast on the taxpayers.

It is pertinent to that S. 144B(1)(xxxii) provides power for invocation directions under 142(2A), and subsection (7) of 144B deals with the procedure to be followed in such cases.

Key sector in focus - Real Estate, Infrastructure Sector and Large Manufacturing

Provisions for Reassessment proceedings

- *Time limit for filing return* - The timeline for filing of return in response to notice under 148 is specified as 'three months' or such extended period granted. If the return of income is furnished beyond such allowed period, it shall not be deemed to be a proper return.

- As per the existing provisions of the Act, in cases of search and survey, the assessing officer is not required to collect any evidence for re-opening an assessment, however other procedures such as issuance of show cause notice and passing of order on concluding whether there is a fit case to open is required to be conducted ('notice for reopening').

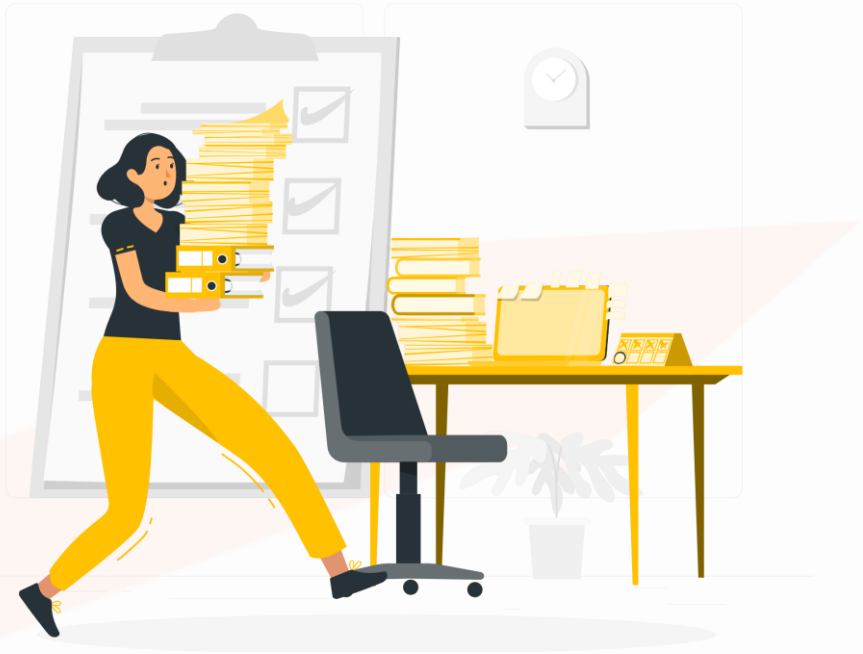
- *Period of limitation in certain situations* – S. 149 provides for a timeline for issuance of notice under S. 148. In case of search requisitions/surveys are conducted by other officers after 15 March of a financial year, it takes time to collate information and to issue a notice under 148. Therefore, the period of limitation under S. 149 is extended by 15 days.

Our comments: In the context of reopening, the Courts have held that a notice u/s. 143(2) is not required if a return is not filed by the taxpayers in response to 148 of the Act. The proposed amendment expressly provides that if the return in response to S.148 notice is filed after the timeline, then it is not treated as a valid return. Hence **in such circumstances, a notice under S. 143(2) is not a prerequisite; hence the taxpayer cannot argue that the proceedings are invalid in the absence of such notice.**

Transfer Pricing

Reducing timelines for furnishing Transfer Pricing ('TP') Documentation

- Under section 92D(3), Transfer Pricing Officer or the Commissioner (Appeals) may require the taxpayer to furnish the TP documentation within a period of 30 days.
- Further, the said timelines can be extended for a further period not exceeding 30 days upon application from the assessee. The original timeline including an additional timeline for submission of TP documentation is proposed to be reduced to 10 days.



Our Comments: Pertinent to note that S. 271G levies a penalty of 2% on the value of international or SDT in case of failure to furnish information or documents under Sec 92D(3).

Extending TP Provisions

- Provisions of TP is extended to eligible Cooperative opting for lower rate of corporate tax u/s. 115BAC

Changes in Timelines

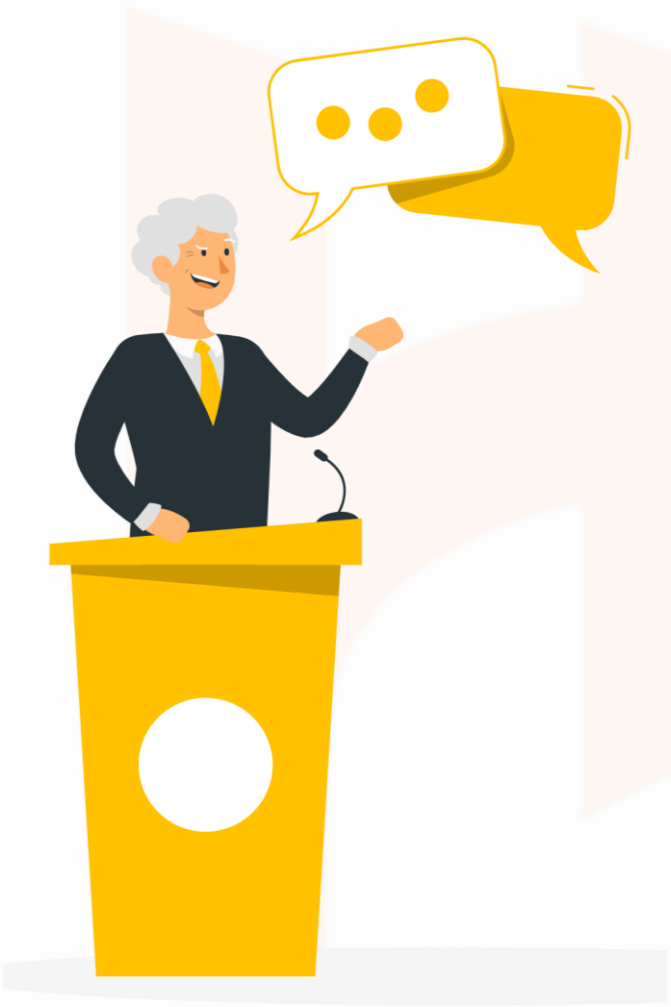
Increase in timelines for completion of assessment

- The timelines of completion of assessment in respect of AY 2023-23 and thereafter is proposed to be increased to 12 months from the end of the AY in which the income was first assessable. Further, timelines of completion of assessment in case of furnishing of updated returns are increased to 12 months from the end of the FY in which the updated return was furnished.

- Section 263 was amended in Finance Act 2021, which provided powers to Principal Chief Commissioner ('PCCIT') and Chief Commissioner ('CCIT') to pass orders under that section. However, the consequential amendment has not been made in section 153. In order to remove ambiguity, the words PCCIT and CCIT have been added in section 153, wherever applicable.

- Assessment proceedings in case of search u/s 132 and 132A initiated from 1 April 2021 are carried out under section 147. In order to allow the AO to conduct proper scrutiny of the case taken up u/s 132 or 132A, it is proposed to extend the timelines for completing the assessment (u/s 143(3), 144B and 147) where the search is initiated u/s 132 or 132A by a period of 12 months.

Other amendments



Introduction of a new authority of Joint Commissioner (Appeals)

- In order to clear the long litigations pending with the Commissioner of Income-tax (Appeals), who was currently burdened with huge number of appeals, **a new authority for appeals is being proposed to be introduced at the Joint Commissioner / Additional Commissioner level** for disposal of cases as may be prescribed

Search and seizure

- It is proposed that during the course of search proceedings, the Authorized officer may requisition the services of any person or entity, as approved by the specified authority, for assistance in the search proceedings. Further, the Authorized officer may now make a reference to any person or entity or any registered valuer, as approved by the specified authority, for the determination of a fair market value of the property. The person shall value the property in the prescribed manner and submit the report within 60 days from the date of receipt of reference.

Extension of time limit for disposing / filing rectification applications with Interim Board for Settlement ('IBS')

- It is proposed that where the time limit for passing any rectification order by the IBS or filing of rectification application with the IBS expires on or after 01 February 2021 but before 01 February 2022, then **such time limit shall stand extended till 30 September 2023**.

Other amendments

Faceless schemes and e-proceedings

- It is proposed to **confer powers to the Central Government to amend any direction** issued by it for the smooth functioning of various faceless schemes such as e-Verification Scheme, 2021, Faceless Penalty Scheme 2022, Faceless Appeal Scheme, 2021, etc.,

Filing of cross-objections with the Income Tax Appellate Tribunal ('ITAT')

- It is proposed to include the orders passed by the Commissioner (Appeals) under section 271AAB (penalty in search cases), Section 271AAC (penalty in respect of certain income) and section 271AAD (penalty for false entry in books of accounts) **in the list of orders appealable before the ITAT**.

- It is further proposed to provide that **memorandum of cross-objections** can be filed with the ITAT in respect of **any order which is an appealable order before the ITAT** (for instance, directions passed by DRP, Principal Commissioner, etc.,).

Our comments: S. 254(4) provides the power of filing cross-objections, and the ITAT has to dispose off the objections as if it were an appeal presented. The memorandum provides that cross objections can be filed by the AO against directions of the DRP. In law, the DRP directions are subsumed within the final order, which is usually a subject matter of appeal before the ITAT. In practice, the ITATs have taken the view that the directions of the DRP are not appealable before them. Therefore, allowing the filing of cross-objections by AO creates unnecessary hassle and creates further litigation.

TDS & TCS

TDS / TCS provisions (1/4)

Relief from higher TDS rates for persons not liable to file return of income

- Finance Act 2021 inserted two provisions that mandated deduction or collection of taxes at a higher rate in case of certain non-filers of income tax returns from whom TDS/ TCS has been deducted or collected more than rupees fifty thousand. These provisions specifically excluded non-residents not having a permanent establishment under its ambit.

- However, persons who were not required to file the return of income were not excluded from the ambit of a specified person. Hence, it has been proposed to exclude these persons also from these provisions.

Increased rates of TCS

- Rates of TCS to be collected by an authorized dealer for the purchase of overseas tour packages (irrespective of limit) or for any other reasons other than a loan obtained from a financial institution for education purposes or for medical treatment is increased to 20% from existing rate of 5%, w.e.f. 1st July 2023. **The scope of TCS has been widened by including the remittances made within India under LRS in the ambit of TCS. Thus, payments made under LRS to GIFT CITY would be within the ambit of TCS.**

- TCS is deductible at the higher of the following rates, in case the collectee does not furnish PAN or is a non-filer:
  - twice the applicable rate or
  - 5% **(The same is increased to 20%, w.e.f. 1st July 2023).**

Increasing threshold limits for TDS on cash withdrawals by Cooperative Society

- Section 194N requires tax to be deducted @ 2% (5% in case of non-filers) on cash withdrawals exceeding Rs. 1 Crore in aggregate during a financial year from banks or post office by any person. The said threshold of Rs. 1 Crore is proposed to be increased to Rs. 3 Crores if the recipient is a co-operative society.

TDS / TCS provisions (2/4)

TDS on interest income earned from business trust by a non-resident

- Withholding of taxes under section 194LBA with respect to certain payments made by business trust to non-residents is currently capped at 5% without any option of availing lower withholding certificate. The Finance Bill now proposes to included such payments under the ambit of obtaining a lower withholding certificate u/s 197 of the Act.

TDS on accumulated balance paid from EPF account

- The TDS rates under section 192A with respect to the discharge of accumulated balance lying in the Employee Provident Fund account of the employees are currently capped at the maximum marginal rate ('MMR') (for Non-PAN cases).

- Under section 206AA, the rate of deduction of taxes in case of a person not having PAN is specifically provided at a higher of 20% or rates prescribed under the relevant section.

- In order to align the provisions, it is proposed in the Finance Bill to reduce the rate of TDS under 192A to 20% from 1st April 2023.

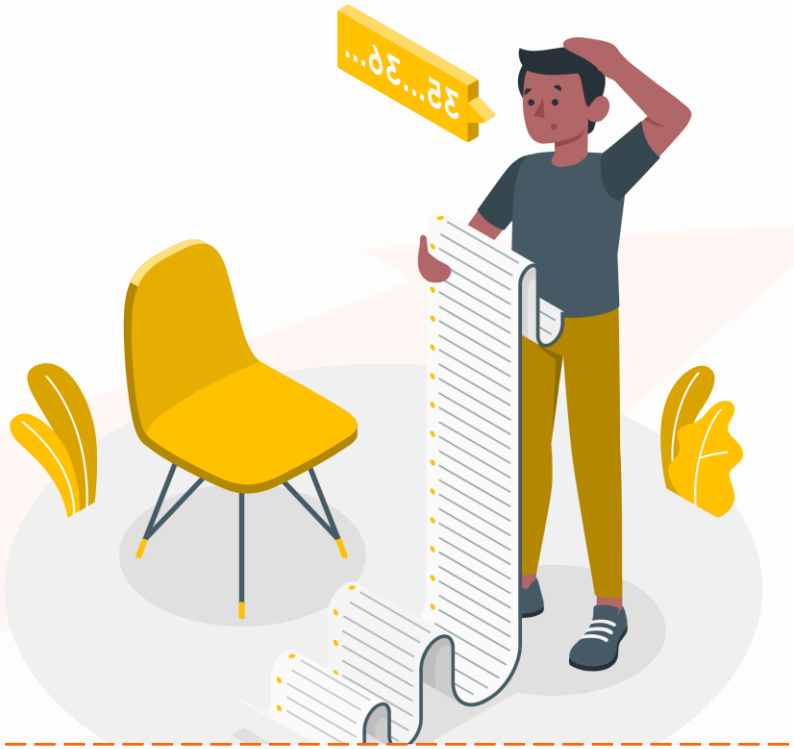
TDS / TCS provisions (3/4)

TDS for interest on listed debentures

- Currently, the proviso to section 193 provides an exemption for TDS on interest payment made to a resident individual against listed securities. This has led to non-disclosure of such interest income by the recipients. To curb such practice of non-disclosure, this exemption is now removed and hence TDS shall be deducted by the listed companies against the interest payments discharged by them.

TDS on income from mutual funds to non-residents

- TDS on payments made to Non-Resident with respect to income from Mutual funds are currently deducted at 20%. The rates are now been amended at lower of 20% and rates provided under the tax treaty (subject to furnishing of TRC etc).



Our comments :

TDS on listed debentures will increase the compliance in the hands of corporates taxpayers

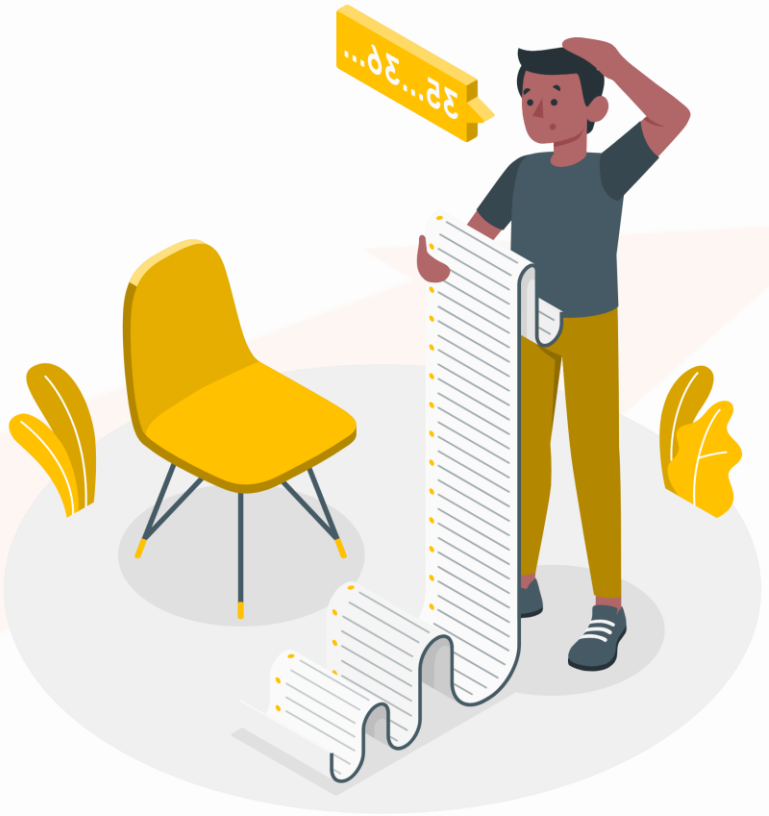
While the Finance Act, 2021, had provided relief to FII under S.196D, the investors from the mutual funds were left out, and the taxes were withheld at 20% (plus surcharge and cess). Given this amendment, the non-resident can now entitle to treaty rates.

TDS / TCS provisions (4/4)

TDS for interest on long term or rupee denominated bond

- Currently, section 194LC levies TDS on interest arising from long term or rupee denominated bond listed on a recognized stock exchange in IFSC (issued between 01 April 2020 to 30 June 2023), paid by an Indian Company or a business trust to a non-resident, at the rate of 4%.

- **The applicable TDS rate in respect of interest on long term or rupee denominated bond issued on or after 01 July 2023 (other conditions remaining same as above) has been prescribed as 9%.**



Rollback of TDS Credit to year of accrual

- Currently, there is a mismatch in the year of income offered by the taxpayer and corresponding taxes discharged by the tax deductor. Due to this anomaly, the Form 26AS of the taxpayer does not reflect the credit for taxes deducted in the relevant year in which the income is offered. During the return processing under 143(1) and during the course of assessment proceedings, the taxpayers were denied tax credit on the premise that TDS were not reflected in Form 26AS.

- To resolve this, FB has proposed an amendment in S. 155, wherein the assessing officer on an application by the assessee, shall amend the order of assessment or intimation to allow the credit for such taxes.

- The timeline for application by the assessee (2 years) and order under 154 (4 years) shall be reckoned from the end of the year in which TDS is deducted

Our comments :

Rule 37BA provides that the credit for TDS shall be given in the year in which such income is assessable. Judicial precedents have time and again explicitly provided that TDS credit shall be granted in the year in which the income is offered to taxation.

The provisions only cover a situation of TDS being paid to the credit of the payee in subsequent financial years, there are instances where the TDS are deducted in the earlier year. However, the income is offered by the payee in subsequent years. While the return form permits carry forward of TDS credit, disputes have still arisen during the assessment. It is appropriate to clarify this also as part of the proposed amendment.

E.g. TDS on advance payments, EPC Contracts where taxes are deducted on billing and income is offered on percentage completion method etc.

Taxability of Online Gaming

- New section is introduced for taxing the income earned from online gaming, thereby providing a distinction between a online games and other games (covered under 115BB). The net winning from the online game is taxed at the rate of 30% and the manner of computation shall be prescribed
- Section 194BA is introduced to deduct taxes on 'net winnings' from online games in the user account at the end of the financial year. **The provisions of 194BA shall be effective from 1st April 2023 (advanced as compared to the Finance Bill which had provided for an effective date of 1st July 2023). Further, the TDS rate of 30% has been made applicable to the cases of non-filer deductees as well.**
- If the person withdraws the net winnings before the year-end, then TDS has to be deducted on net winnings comprised in such withdrawal.

Our comments: The definition of the term 'online game' is drafted widely to cover games of skill and chance, which is a matter of dispute under the GST law from a rate perspective. While the section has defined the terms 'internet' or 'computer resource', the manner of computation of the 'net winnings' shall be provided in the guidelines. Ideally, the stake amount should be reduced from gross winnings to arrive at the 'net winnings'.

It is also provided that if net winnings are partly in cash or partly in kind and such cash portion is not sufficient to meet the liability, the deductor shall ensure tax is paid in respect of net winnings (Similar to section 194BB).

Unlike other TDS provisions, where withholding is done earlier of payment or credit, the provision expressly allowed withholding at the yearend subject to withdrawal. Further, no threshold is specified for this section.

Similar to recently introduced TDS provisions, the board is authorized to issue circulars/notifications to remove difficulties, and such circular/notification is binding on authorities and taxpayers.

Non-Profit Organisation

Rationalization of provisions of charitable trust

- The Charitable Trust and Institutions-related provisions were subject to a detailed overhaul in the previous year's budgets. This year's budget also witnesses few proposals made to rationalize certain provisions.

S No	Particulars	Amendment	Effective from
1	Application of income out of corpus and loans / borrowings	Application of income out of a corpus fund or loans / borrowings shall be considered as an application only when such amount is invested back in corpus fund or on repayment of such loan / borrowing, as the case may be and **subject to fulfilment of the following conditions**: • Such re-investment in corpus or repayment of loan / borrowing is made **within 5 years** from the end of the year in which such application was made; • Such application from corpus or loan / borrowing should be made **on or after 01 April 2021**; • Such application of money has **satisfied the prescribed conditions** at the time of making an application from the corpus or loan / borrowing.	AY 2023-24

Rationalization of provisions of charitable trust

S No	Particulars	Amendment	Effective from
2	Treatment of donation to other trusts	Multiple layers of trust were used to accumulate 15% of the income of each trust. Donations to other trusts were treated as applications of income. It is proposed to provide that **donations made by a trust to another trust shall be treated as application of income** of the first trust **only to the extent of 85% of such donations**.	AY 2024-25
3	Combining of registrations	In order to further streamline the process of registration of trusts, it is proposed to provide that trusts or institutions shall apply for **provisional registration one month prior to the commencement of the previous year for which the registration is sought.** The approving authority shall grant registration for 5 years after being satisfied with the objects and genuineness of the trust / institution. Order granting or rejecting approval to be passed within 6 months.	01 Oct 2023

Rationalization of provisions of charitable trust

S No	Particulars	Amendment	Effective from
4	Cancellation of registration	Registration of trusts can be cancelled subsequently if it is found that **incomplete / false information** was given by the trust at the time of application for registration.	AY 2023-24
5	Exit Tax	Exit tax provisions shall apply to a trust that has **not applied for renewal of registration**. The exit tax is applied on MMR on the accreted income.	AY 2023-24
6	Filing of special forms	Filing of Form 9A / Form 10 shall be done **at least 2 months prior** to the due date of filing ROI.	AY 2023-24
7	Denial of exemption	Exemption under section 10(23C) / section 11 and 12 shall be allowed only if the trust has furnished the ROI under section 139(1) or 139(4) of the Act (i.e., **original / belated return**) and not under section 139(8A) (i.e., updated return).	AY 2023-24
8	Donations – 80G	It is proposed to **remove certain funds** (Jawaharlal Nehru Memorial Fund, Indira Gandhi Memorial Trust and Rajiv Gandhi Foundation) from the list of funds that qualify for deduction under section 80G.	AY 2023-24

Rationalization of provisions of charitable trust

Development authorities

- Activities undertaken by any body or authority, etc., notified under section 10(46) has been a long-drawn debatable issue, specifically when it comes to interpretation of the word **commercial activity**. It is therefore proposed to introduce a **new exemption provision for the development authorities (other than company)** vide S. 10(46A) that has been established under a Central or State Act and has **certain specified objectives** (benefit of general public, need for housing accommodation, etc.,) and such amendment shall be effective from the AY 2024-25 onwards. Consequential amendment has been made in section 11(7) to provide that benefit of section 10(46A) can be claimed by trust registered under section 12AA/ 12AB.

- Section 10(23EC) provides exemption to income received by Investor Protection Fund by way of contribution from commodity exchanges and its members. **Consequential amendment is now made in section 11(7) to provide that benefit of section 10(23EC) can be claimed by trust registered under section 12AA/ 12AB.**

Our comments: The Supreme Court in the case of ACIT (Exemptions) vs **Ahmedabad Urban Development Authority** [2022] (449 ITR 1) (SC) held that the word "commercial" has the same meaning as "trade, commerce, business" as defined in section 2(15) of the Act (definition of "charitable purpose"). Therefore, sums charged by such notified body, authority, Board, etc. will require similar consideration, i.e., whether it is at cost with a nominal mark-up or significantly higher so as to determine whether its primary purpose is to carry our "commercial activity" or not. However, the Apex Court have subsequently clarified that body, authority, Board, etc., established by the Central or State Government for public welfare / services have to be construed as been set up not for commercial activities.

The introduction of the new provisions will settle any debate from a litigation standpoint as regards certain activities by certain body/board etc.

Other Amendments

Penalty & prosecution

Penalty for furnishing inaccurate statement of financial transaction

- It is proposed to introduce a penal provision with respect to inaccurate information / statement furnished by a financial institution **based on the self-certification given by the prescribed class of persons** (reportable persons and account holders). The proposed amount of penalty is **Rs. 5,000** for every inaccurate reportable account. The penalty shall be levied on the financial institution and such institution can recover the said penalty from the account holder.

Penalty provisions for non-payment of TDS

- Penalty for failure to deduct TDS is expanded to include defaults in case of
  - S. 194R - benefits/ perquisites relating to business or profession,
  - S. 194S - transfer of virtual digital assets and
  - S. 194BA – net winnings from online gaming, consideration can either be in the form of cash or in kind. In case of payment in cash, the penalty provisions

Decriminalisation of Section 276A of the Act

- Section 276A provides that a liquidator who fails to give notice in accordance with section 178(1) or fails to set aside the amount as required under section 178(3) shall be imprisoned for up to 2 years. It has been stated policy of the Government to decriminalize minor offences as a step towards improving ease of business. Hence, it is proposed that no fresh prosecution shall be launched under this section from 01 April 2024

International Financial Services Centre (1/3)

- Section 10(4E) provides an exemption of the income of non-residents on transfer of Offshore Derivative Instruments (ODI). However, though the IFSC Banking Unit (issuer of the ODI to non-resident investors) pays tax on the income earned in the form of interest, dividend etc. through its investments, the same income is again taxed in the hands of the ODI holders. Section 10(4E) is proposed to be amended to exempt the income distributed to the ODI holders.

- Section 47(viiad) provides for exemption from capital gains on relocation of an offshore fund into IFSC upon satisfaction of certain conditions. The date within which the transfer for relocation of the original fund to the resultant fund should be undertaken has been extended from 31st March 2024 to 31st March 2025.

- The definition of original fund is expanded to include an investment vehicle wholly owned and controlled by Abu Dhabi Investment Authority ('ADIA') or Government of Abu Dhabi and ADIA being the sole beneficiary.

- Delegation of powers under the SEZ Act to IFSCA thereby avoiding duality of approvals and opening the single window clearance for various approvals would simplify the process of setting up of a unit in an IFSC.

- The definitions of Specified Fund, Resultant Fund and Investment Fund have been given reference to IFSCA (Fund Management) Regulations, 2022.

International Financial Services Centre (2/3)

Expansion of scope of exemption provided to non-resident under Section 10(4G)

- Section 10(4G) provides exemption to income received by a non-resident from portfolio of securities or financial products or funds managed by any portfolio manager on behalf of such non-resident.
- Such income is exempt provided the same is received in an account maintained with an Offshore Banking Unit in IFSC and such income is not accruing or arising or deemed to accrue or arise in India.
- **The scope of this section is now enhanced to provide exemption to income received by a non-resident from specified activity carried out by specified person (to be notified)**

Exemption of income to non-resident under Sections 10(4H) and 10(34B)

- **Income earned by a non-resident or a unit of IFSC engaged in the business of leasing of aircraft by way of capital gains arising from transfer of equity shares of a domestic company is exempt (subject to below conditions).**
- **Such domestic company shall be a unit of IFSC engaged in the business of leasing of aircraft and has commenced its operations on or before 31 March 2026.**
- **Equity shares of such domestic company must be transferred within 10 years of commencing its operations. However, if the domestic company commenced its operations before 01 April 2024, the 10-year time limit shall be counted from 01 April 2024.**
- **Further, new section 10(34B) is inserted which provides exemption of dividend income received by an IFSC unit from another IFSC unit subject to the condition that both the receiver and the payer of dividend are engaged in the business of aircraft leasing.**

International Financial Services Centre (3/3)

IFSC unit allowed to opt for tonnage taxation scheme

- Tonnage tax scheme is a presumptive tax scheme applicable to a shipping company in which the income arising from the operation of a ship is determined based on the tonnage of the ship.
- A company that wishes to opt for the tonnage tax scheme has to make an application to the Joint Commissioner within three months from the date of incorporation or the date on which it became a qualifying company, subject to fulfillment of other conditions prescribed under the Act.
- A unit in IFSC hat has availed deduction under section 80LA is allowed to opt for tonnage tax scheme within three months from the date deduction under section 80LA ceases.

Enhancing the amount of deduction for Offshore Banking Units under Section 80LA

- Section 80LA provides deduction of income to Offshore Banking Units ('OBU') in SEZ (100% deduction for first 5 consecutive years and 50% for next 5 consecutive years).
- The 50% deduction available in the next 5 consecutive years is enhanced 100%, hence, OBU set up in SEZ can claim deduction of 100% of income for 10 consecutive years.

Surcharge and Cess not applicable for income taxable for specified fund

- Income not exempt for specified fund* gets taxed under section 115AD. However, it is proposed to remove surcharge and cess applicability to such taxable income for a specified fund under section 115AD provided the specified fund is an AOP or trust.

* Cat-III AIF or an investment division of OBU that is set-up in IFSC fulfilling such conditions as specified in section 10(4D)

Business Trust / InVIT

Distribution by business trusts

- Currently, the Business Trust / InVIT invests the funds from unit holders in the form of loans. The characterization of receipts in the hands of the unit holder is the same as the nature of receipts by these trusts. Therefore, the repayment received from the investment was passed on to the unit holder in like manner, and these were not subject to tax.
- The repayment of debts by the business trusts to its unit holders did not suffer tax either in the hands of the business trust or in the hands of unitholders. An amendment is proposed to tax any such sum received by a unit holder from a business trust under income from other sources. **It is provided that if such sum is higher than the cost of acquisition of such unit and tax charged under this provision, then the value shall be deemed to be zero.**
- It is also proposed to allow the cost of acquisition in the hands of unit holders in case of redemption of the units.
- **Further, cost of acquisition of units shall be reduced by such sum received if the same is not taxable in the hands of unitholder and the business trust.**

Our comments: The amendment needs to be extended to state that the tax rate should be the maximum marginal rate, especially considering the fact that most of the tax treaties provide a right of taxation to the source country.

S. 10(23FE) provides for exemption in the case of Sovereign Wealth Funds and Pension Funds in case of interest, dividend, or long-term capital gains arising from its investment in India. The investment includes business trust, infrastructure investment fund etc. The proposed amendment as regards repayment of debt is not listed under S. 10(23FE); accordingly, it may be subject to taxation.

Deduction and Exemptions (1/2)

Deductions for SEZ Units

- To align the provisions of section 10AA and section 143(1), a new proviso to section 10AA(1) has been inserted to provide that no deduction shall be allowed to the assessee who has not furnished the return of income before the due date specified under section 139(1).
- The deduction shall be available to SEZ units only if **export proceeds are received in or brought into India in convertible foreign exchange** within a period of **6 months from the end of the PY** or such further period as allowed by the competent authority.
- Export proceeds shall be **deemed to be received in India** if such **proceeds are credited in a separate account maintained by the assessee with any bank outside India with the approval of RBI**.
- Consequential amendment is made in section 155(11A) which provides power to AO to amend order under section 154 when the export proceeds are realized after the permitted period and the period of 4 years shall apply from the end of the PY in which such income is received / brought into India

Withdrawal of exemption available to notified News agency

- The exemption available to a notified news agency, under section 10(22B) of the Act, is proposed to be withdrawn from AY 2024-25 in line with the Government's policy of phasing out of various exemptions and deductions.

Deduction and Exemptions (2/2)

Relief granted to Sikkimese women for exemption of income under section 10(26AAA)

- The existing section 10(26AAA) granted exemption on the following incomes of a Sikkimese individual:
  - Income accruing or arising from any source in the State of Sikkim; or
  - Income by way of dividend or interest on securities.
- However, the exemption was not available to a Sikkimese woman if, on or after 01-04-2008, she married an individual who was not a Sikkimese [proviso to section 10(26AAA)]. Further, exemption is not available even to individuals domiciled in Sikkim but their names are not appearing in Register of Sikkim Subjects.
- The Hon'ble Supreme Court in the case of Association of Old Settlers of Sikkim v. Union of India[1] ended this discrimination and struck down the said proviso with retrospective effect from 01 April 1990 as being ultra vires Articles 14, 15 and 21 of the Constitution of India. Further, Apex Court held that exemption should be provided to individuals domiciled in Sikkim on or before 26 April 1975 (day when Sikkim merged with India) though their names are not appearing in the Register.
- To give effect to the Apex Court ruling (mentioned supra), proviso to section 10(26AAA) restricting the exemption to such Sikkimese woman is done away with. Further, definition of Sikkimese is now expanded to include those individual who are domiciled in Sikkim on or before 26 April 1975 even though their names did not appear in Register of Sikkim Subjects.

Exemption to income of credit guarantee trusts/funds

- It is proposed to insert a new provision section 10(46B) which exempts the income of the following specified credit guarantee trusts and funds:
  - National Credit Guarantee Trustee Company Limited ('NCGTC').
  - Credit guarantee funds established and wholly financed by the Central Government and managed by NCGTC.
  - Credit Guarantee Fund Trust for MSMEs created by CG and SIDBI

[1] *[2023] 146 taxmann.com 271 (SC)*

Non-Banking Financial Companies (NBFC)

Limitation of interest (Section 94B) not applicable for specified NBFCs

- Section 94B casts limitation in allowability of interest expense under the head PGBP to a maximum of 30% of EBITDA if the debt is issued by/ guaranteed by a non-resident Associated Enterprise ('AE') to an Indian Company or a PE. This section does not apply if the Indian Company or the PE is engaged in the business of banking or insurance. It is now proposed to extend the exemption to an Indian Company, or a PE **classified as NBFC** as notified by the Central Government.

Our Comments: NBFCs, like banking companies, due to the very nature of their business, would have a higher magnitude of loans taken as compared to their capital. The extension of the exemption from thin capitalization to NBFCs brings a huge relief, removing an impediment cast on them from taking loans/ guarantees from their foreign AEs. There are various of classes of NBFCs are permitted by the RBI and one has to wait for the classification to be notified by the CG. It is pertinent to note that in the context of 194R, the class of NBFCs are notified in a restrictive manner

NBFC Categorisation

- It is further proposed to amend section 43B and section 43D of the Act, to substitute the words, "a deposit taking non-banking financial company" and "systemically important non-deposit taking non-banking financial company" with "such class of non-banking financial companies as may be notified by the Central Government in the official gazette in this behalf" due to change in categorization of such names by RBI.

Other amendments

Taxation aspects of Agnipath Scheme

- As we are aware, the Ministry of Defence has framed Agnipath Scheme, 2022 for the recruitment of Indian youth (referred to as 'agniveers' to serve in the Indian Army for service for a duration of 4 years. The taxation aspects with effect from AY 2023-24 are proposed as follows:

  - It is proposed that the Central Government's contribution to Agniveer's Corpus Fund to the account of the agniveer would be included in the definition of "salary".
  - The Central Government's contribution and the Agniveer's Contribution to the said fund is proposed to be allowed as deduction under section 80CCH. The said deduction would be available to both old and new tax regimes.
  - Further, any amount received by the agniveer of his nominee from the Agniveer's Corpus Fund would be exempt from tax.

Relief to sugar co-operatives from past demand

- Deductibility of payment made over and above the statutory minimum price by the sugar co-operative society for the purchase of sugarcane from farmers was a subject matter of litigation. S. 36(1)(xvii) of the Act was inserted vide Finance Act 2015 w.e.f. AY 2016-17 to provide a deduction for the payment made at a price equal to or less than the price fixed or approved by the Central Government.

- In order to address the pending litigations on this aspect relating to earlier AYs, it is proposed to allow the taxpayers can make an application to the AO for re-computation of total income u/s. 155(19) of the Act, allowing the deduction as per the above provision. The limitation period for the same is provided as four years from 31st March 2023.

Other amendments

Interest under Section 234B in case of Updated Return

- Amendments are proposed to provide clarity in the manner in which interest under section 234B for non-payment/ short payment of advance tax should be computed, in case of filing of an updated return.

Rationalization of provisions of PBPT Act

- The timeline for filing of appeal by the aggrieved party/ initiating officer with the Appellate tribunal with respect to an order passed by adjudicating authority under the Prohibition of Benami Property Transactions Act, 1988 ('PBPT Act') has been linked with the receipt of order instead of the date of order. This is to ensure that sufficient time is available with the parties.

- As regards jurisdiction for non-resident not having ordinary residence/place of business, it is clarified that the filing of appeal with the High Court will be the place where the initiating officer is located.

Increasing the threshold for receiving and repayment of loans or deposits in cash in certain cases

- Section 269SS and 269T prohibit acceptance or repayment of loan or deposit exceeding Rs. 20,000 in cash. Exemption from the applicability of these provisions has been provided to certain persons like the government, banks, post offices, government corporations etc. The aforesaid limit of Rs. 20,000 is proposed to be increased to Rs. 2 lakhs in case of Primary Agricultural Credit Society or Primary Co-operative Agricultural and Rural Development Bank.

Other amendments

Change in the tax rates on specified income of non-residents

- Section 115A applies to a non-resident and a foreign company with respect to taxability of income in the nature of dividend, interest, royalty and fees for technical services (FTS) on a gross basis without deduction of any expenditure.
- The tax rate applicable for royalty and FTS is increased from 10% (plus surcharge and cess) to 20% (plus surcharge and cess) with effect from 01 April 2023.
- Further the tax rate on dividend received from a unit in IFSC is reduced from 20% (plus surcharge and cess) to 10% (plus surcharge and cess).

Our Comments:

- The amendment would result in increased tax liability in India in the hands of non-resident where the tax treaty rates for royalty and FTS are more than 10% (For example, Tax rates for royalty/ FTS in tax treaties: US – 15%, UK – 15%, Denmark – 20%, Italy – 20%). The deductor may have to bear higher cost in case of tax grossing up arrangements.
- Non-residents who paid tax under section 115A (pre-amendment) were exempted from filing return of income under Section 115A(5), however, will now be required to file return of income if tax treaty benefits are availed, which in turn would require e-filing of Form 10F and obtaining PAN. This would lead to additional compliance burden on the non-residents.

Other amendments

Change in the tax rates on specified income of non-residents (Contd…)

Our Comments:

- Section 206AA provides for higher rate of TDS at 20% in the absence of PAN with a relaxation given in Rule 37BC for payments made to non-residents in the nature of royalty, FTS, etc. subject to availability of TRC, tax identification number, etc. Post amendment, relaxation provided in Rule 37BC would lose its practical relevance as tax rate under section 115A (including surcharge and cess) would be more than 20%

- Liability to deduct TDS under Section 195 arises at the time of accrual or payment, whichever is earlier. Considering this amendment, deductor may have to be watchful of year-end accrual entries booked in March 2023, subsequent reversal of the same and re-booking of invoice in April 2023. The tax authorities may allege that higher rate of tax may be applicable to these cases.

Goods & Service Tax Amendments

Mode of Reversal of Credit in case of non–payment to Vendor

Proposed amendment

- *'Provided further that where a recipient fails to pay to the supplier of goods or services or both the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~added to his output tax liability, along with interest thereon~~ paid by them along with interest payable under section 50, in such manner as may be prescribed.*

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Rationale for Amendment : To align the legal provisions with the present return filing structure.

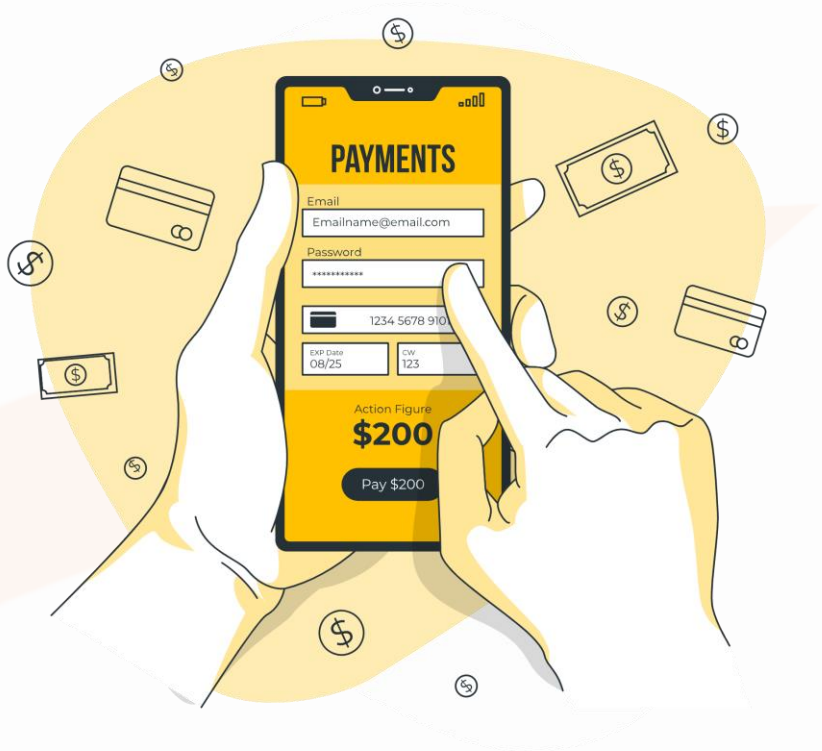
Our comments - The Board had issued circular 170/02/2022- GST dated 06 July 2022 highlighting that credit reversal for non-payment of consideration must be reported in Table 4(b)(2) under column 'others'. However, the present legal provision was requiring the amount to be added to the output tax liability, thereby causing a disharmony between the Act and Form. The reversal of ITC in table 4(b)(2) – Others, may be considered as satisfaction of the proposed amendment.

Open Issue : The provision now links interest liability with section 50 explicitly. Interest under section 50 gets attracted only after utilization of ITC. Where ITC was not utilized even after 180 days, can it be construed that interest will not be payable ?

ITC available on payment made to Supplier

Proposed amendment

- The recipient shall be entitled to avail of the credit of input tax on payment made by him **to the supplier** of the amount towards the value of supply of goods or services or both along with tax payable thereon.



Rationale for Amendment : In the Memorandum, government has stated that this amendment is also made o align the legal provisions with the present return filing structure.

Our comments - The proposed amendment may not have connection with the return filing system. This proposal will require the recipient to make payment only to the supplier (including his agent) of the goods/ services for claiming the credit.

Open Issue : In cases like assignment of receivables or netting of third party payments, whether the recipient can avail ITC when payment is not made by him directly to the supplier but an unrelated third party ?

Deeming fiction of exempted supply – now enlarged

Proposed amendment

- For the reversal of common credit, the value of exempt supply shall include supply of warehoused goods to any person before clearance for home consumption.

Rationale for Amendment : To restrict availment of ITC in respect of certain transactions which are not considered as “Supply” under Schedule III.

Our Comments : The deeming fiction of exempted supply for the limited purpose of reversal of credit is now enlarged to also include the supply of warehoused goods before clearance for home consumption. This transaction does not qualify as a supply prior to the amendment, hence ITC could have been availed on CG, inputs and inputs services. The amendment may have significant impact for traders who actively involve in effecting supply from bonded warehouse in terms of loss of ITC.

Open Issue : Can the Department treat this as a clarificatory amendment and require reversal of ITC for the past transactions

Blocked ITC – List expanded

Proposed amendment

- The input tax credit shall not be available on goods or services or both received by taxable person, which are used or intended to be used for activities relating to his obligations under Corporate social responsibility referred to in section 135 of the companies Act, 2013.

Rationale – To restrict ITC on CSR related expenditure

Our Comments : The admissibility of ITC for CSR expenditure was a convoluted topic with few AAR holding that no ITC can be availed and few others taking the opposite position. This debatable issue been put to rest through this amendment.

Further, the Company may evaluate considering the GST paid on the goods / services taken for CSR activities as CSR expenditure.

Open Issue : Whether this provision will assist recipient to argue that ITC was available prior to amendment and is barred only now ? Department on the other spectrum may argue that this is a clarificatory provision and hence applicable with retrospective effect.

Time Limit for Return Filing

Return Type	Remarks
GSTR 1, GSTR 3B, GSTR 9 / 9C & GSTR 8 (TCS Return)	The registered taxpayer cannot file the return after the expiry of 3 years from the due date of furnishing the return. The Government on the notification may allow the registered person or a class of person on certain condition to furnish the return after the expiry of the said period of 3 years of furnishing the said return.

Rationale for Amendment : To provide Time limit upto which return can be filed

Our comments - The proposed amendment now will restrict the taxpayer from filing the return after the expiry of 3 years from the due date of furnishing of the said return.

Open issues :

1. Whether this provision will have a retrospective effect, i,e if the taxpayer has not filed the GSR 1 / GSTR 3B return for the period FY 2019-20, now he will not be allowed to file the same ?

2. Whether the benefit of extension of limitation granted by Supreme Court will apply to this amendment ?

Beneficial Changes

Composition Suppliers supplying on E-commerce platform:

- The supplier of goods operating under composition scheme can supply goods on e-commerce platform. However, such supplies can only be Intra State Supplies.

- Further, E-Commerce Operator have also been made responsible to ensure that supplier registered under Composition Scheme are not allowed to undertaken Inter state supply of goods or services.

Decriminalization of certain offences and reduction in compounding fees

- Amendments have been made to be decriminalized in case of following offences
  - Obstruction or preventing any officer in discharge of his duties;
  - deliberate tempering of material evidence;
  - failure to supply the information.

  Further, the minimum threshold of tax amount for launching prosecution under GST has been increased from Rs. One Crore to Rs. Two Crores, except for the offence of issuance of invoices without supply of goods or services or both;

- Further, there reduction in fee for compounding of offences from the present range of 50% to 150% of tax to 25% to 100% of tax involved.

Miscellaneous changes

OIDAR Services:

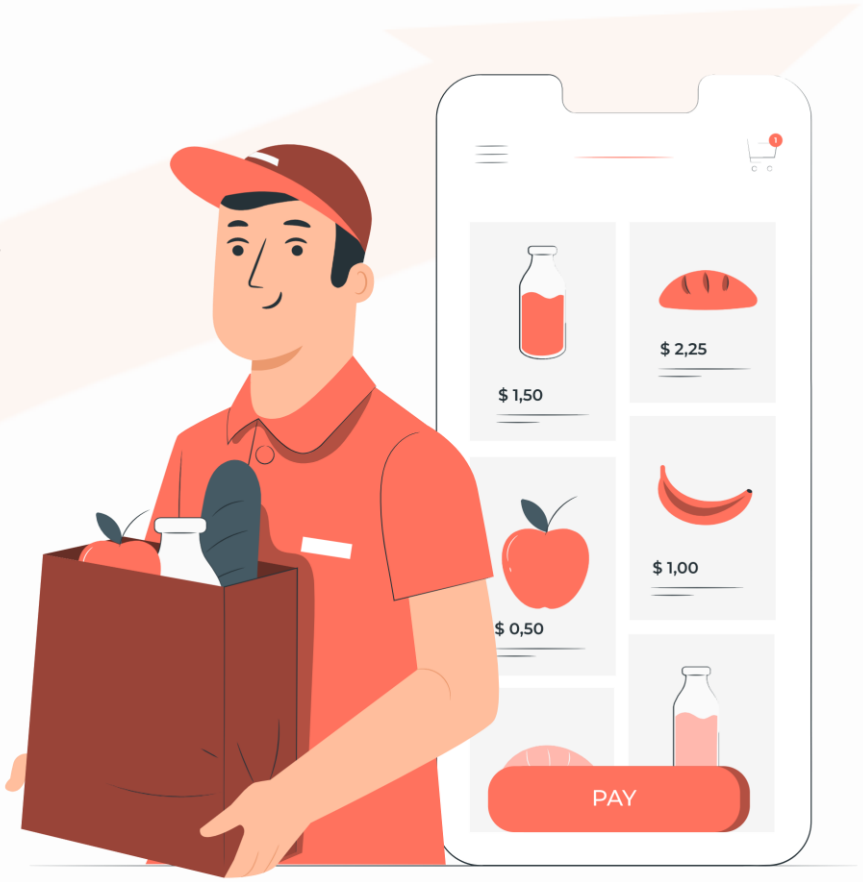
- The taxpayer registered under the GST Act under section 24(vi) who are required to deduct tax under TDS *i.e* Government will be deemed to be an unregistered taxpayer and ODIAR service provider will be required to charge tax under forward charge basis.

Provision for Shipment of Outbound transportation:

- Proviso in section 12(8) of IGST Act omitted. The nature of supply viz inter v. intra state based on location of supply for export will now require revalidation.

Penalty on e-commerce platform for permitting specified transaction:

- E-commerce operator shall be liable to pay penalty of an amount equal to tax involved or Rs. 10,000 (whichever is higher) if the e-Commerce Operator allows
  - Supplies by unregistered person, other than a person specifically exempted from obtaining registration by way of notification.
  - Inter-state supplies by person operating under Composition scheme
  - fails to furnish correct details in the TCS return in respect of supply of goods by person exempted from registration.



Insertion of new conditions in MooWR

New Provision section 65A introduced in the Customs Act

- A new section 65A is proposed to be introduced in the Customs Act, 1962 to provide that IGST and Compensation Cess would be payable on imported goods deposited in the Customs warehouse for carrying out the manufacture and other operations (under section 65)

Provision not applicable to existing Warehoused goods

- This proposed provision will act prospectively and will not apply to goods already in the Warehouse

Power to notify goods/importers/ processes

- The proposed amendment also empowers the Central Government to notify certain class of goods or class of importers or manufacturing processes to which the MooWR scheme will not be available.

Our comments - The proposed amendment is going to have a major impact on various assessee operating under the MooWR scheme where the upfront exemptions available on import of goods for IGST and Compensation cess is now withdrawn. For entities not facing blockage of ITC, the impact will be mitigated due to immediate utilization. The date from which the provision will be effective is yet to be notified

New Provisions for Constitution of GST Tribunal

Section 109, Section 110 and Section 114 of the existing Act substituted with new provisions

- The provisions relating to appointment of members, formulation of State and Central GST Tribunals have been amended
- A Principal Bench will be created in New Delhi
- On State Government's request, State benches at such places and with such jurisdiction will be created.
- Principal bench will consist of a President, a judicial member, a Technical member (Centre) and Technical Member (State)
- The State Bench will consist of two Judicial members, a Technical member (Centre) and Technical Member (State)

Our comments – The Amendments stems from the recent 49th GST Council meeting where the Council adopted the report of Group of Ministers with certain modifications.

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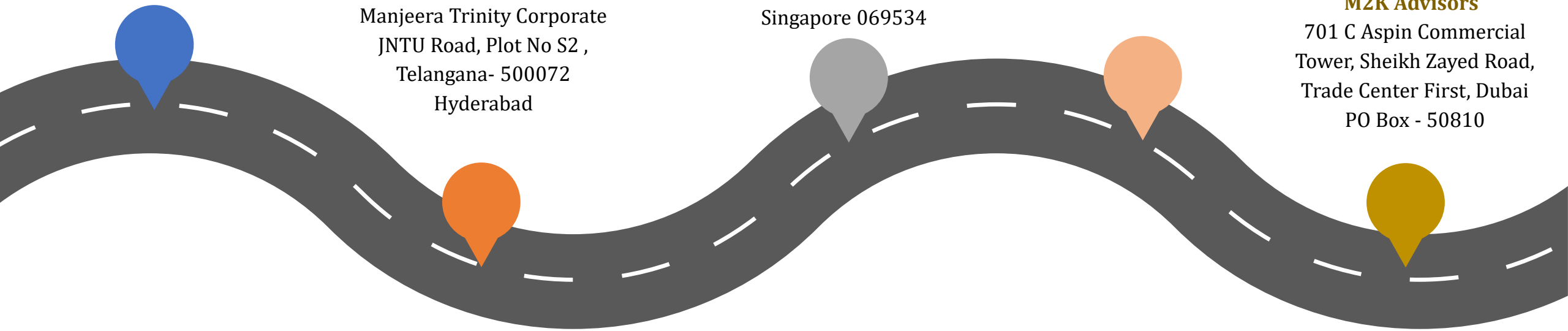

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