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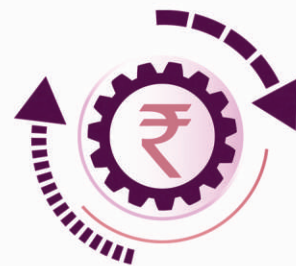
BUDGET ASSAYER

Union Budget 2023 - 2024



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A Thought Leadership Publication

We now present this report to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

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FOREWORD

The Union Finance Minister delivered the first Budget in Amrit Kaal and the last full Budget before the general elections due next year. Indian economy has remained a strong performer with 7% GDP growth during the past year, inspite of the impact of Ukraine war, high inflationary environment in most developed countries, uncertain Chinese COVID-19 impact, significant energy and food crisis, etc. While acknowledging this uncertain global turmoil, the FM remained cautiously optimistic about the Indian economy for the coming year and has assured that it is in good hands, and we are even expected to do better than all the other major economies.

In terms of budgetary announcements, the FM has proposed the biggest-ever Capex outlay of INR 10 trillion, which happens to be the biggest ever outlay. The FM has also assured to improve the ease of doing business in India by promising to reducing over 39,000 corporate compliances and decriminalising more than 3400 provisions under various legislations.

In furtherance of the Government's motto of providing a non-adversarial tax regime, no significant new taxation measures were announced. The Government had already phased out various corporate tax deductions/exemptions provided under the direct tax regime and had incentivised the corporate sectors with reduction in tax rates for the newly established manufacturing companies. This Budget proposes to extend this facility to newly set up units by co-operative societies too.

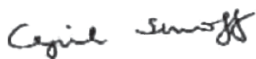
However, the most important message as well as positive news from the Budget is reserved for the much abused Indian middle class. Expectedly, the FM has come up with a slew of tax incentives targeting the Indian middle class for tax concessions.

To provide additional incentives to the start-ups, the benefit of carry-forward of losses has been extended from 7 years to 10 years. To protect the MSME enterprises, it is proposed to allow tax deductions only when the payments are actually made which may coerce large conglomerates not to delay payments to their MSME vendors.

We have put together our analysis of the changes proposed to be introduced through the Budget, and hope you will find it useful and thought provoking.

We look forward to receiving your comments about this report.

Yours Sincerely,



Cyril Shroff
Managing Partner
Mumbai

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SECTION A:

ANALYSIS OF THE PROPOSED CHANGES IN DIRECT TAXES

Personal Taxation

1. Changes to the personal income tax regime

The Finance Bill proposes no changes in the rates of income tax, surcharge, as well as health education cess for corporates and LLPs. However, certain key changes in tax rates for individuals are mentioned below:

a) Relief for the super rich

The Finance Bill proposes to limit the highest surcharge rate for taxpayers to 25% under the new tax regime. This would reduce the highest effective tax rate for individual taxpayers with income above INR 50 million from 42.74% to 39%. The effective tax rate for taxpayers with income in excess of INR 10 million, can be summarised as below:

Tax Slab	Effective Tax Rates	
	Old Regime / Existing New Regime	Proposed New Regime
From INR 10 million to INR 20 million	35.88%	35.88%
From INR 20 million to INR 50 million	39.00%	39.00%
Above INR 50 million	42.74%	

The highest surcharge rate applicable to taxpayer opting for the old tax regime is still 37% and hence, the highest effective income tax rate under the old tax regime shall continue to be 42.744%.

It is pertinent to note that this reduction in the personal income tax rate does not automatically change the Maximum Marginal Rate (**"MMR"**). Hence, the MMR for trusts, association of persons, etc. may continue to be 42.74%.

b) Deemed accrual of gift by person resident in India to a non-ordinarily resident person

The taxation of property received without consideration/ for an inadequate consideration under Section 56(2)(x) of the IT Act received by a non-resident from a person resident in India was specifically brought into deeming income under Section 9 of the IT Act. Since certain non-ordinarily residents were not offering such gift income to be taxed in India, Section 9(1)(viii) of the IT Act is now being amended to extend the ambit of taxation under Section 56(2)(x) of the IT Act to non-ordinarily residents defined under Section 6(6) of the IT Act. However, the exemption for gifts/ property received by a non-ordinarily resident from his/ her relatives shall continue.

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c) Revising the slab rates under the new personal income tax regime

Section 115BAC of the IT Act provides an option to individual and HUF taxpayers to opt for lower income tax rates provided the individual taxpayer forgoes certain tax exemptions and deductions.

The Finance Bill proposes to simplify this regime by reducing the number of tax slabs from six to five and increasing the tax exemption limit to INR 300,000. The changes to the tax slabs proposed under the Finance Bill can be summarised as below:

Existing New Regime		Proposed New Regime	
Tax Slab	Tax Rate*	Tax Slab	Tax Rate*
Up to INR 250,000	Nil	Up to INR 300,000	Nil
From INR 250,001 to INR 500,000	5%	From INR 300,001 to INR 600,000	5%
From INR 500,001 to INR 750,000	10%	From INR 600,001 to INR 900,000	10%
From INR 750,001 to INR 1,000,000	15%	From INR 900,001 to INR 1,200,000	15%
From INR 1,000,001 to INR 1,250,000	20%	From INR 1,200,001 to INR 1,500,000	20%
From INR 1,250,001 to INR 1,500,000	25%	Above INR 1,500,000	30%
Above INR 1,500,000	30%		

** Excluding applicable surcharge and cess.*

d) Relief to middle-income taxpayers

Section 87A of the IT Act provides that an individual resident in India, whose income does not exceed INR 500,000 in an FY, may claim rebate of 100% of the income-tax payable by such individual. The Finance Bill proposes to provide relief to the hard-working middle class by extending this benefit to INR 700,000 in the FY, provided they opt for the new tax regime.

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Special Regimes

1. GIFT City

The Government has been consistently incentivising the IFSC to promote its brainchild - GIFT City. Benefits provided to IFSC-GIFT City include 100% income tax holiday scheme to them for continuous 10 years, reduced minimum alternate tax, provided exemption from capital gains tax on transfer of certain securities, etc. One of the important incentives is a tax neutral relocation of offshore funds to GIFT City. The deadline to transfer assets of the original fund (or of its wholly owned SPV) to the IFSC fund was on or before March 31, 2023. This Finance Bill proposes to extend this incentive by another two years, until March 31, 2025.

Further, the income in the hands of non-residents on transfer of non-deliverable forward contracts or Offshore Derivative Instruments (**"ODI"**) or over the counter derivatives entered with an IFSC Banking unit ("**IFSC IBU**") is exempt. The income the IBU receives is taxed as capital gains, dividends or interest under Section 115AD and post-tax proceeds distributed to investors are again taxed in the hands of investors. Under the existing regime, exemption is available to non-resident investors only on the transfer of ODIs but not on the distributions made to them. In order to address this event of double taxation, the Budget proposes to amend 10(4E) of the IT Act to also provide an exemption for any income distributed (on which the IBU has already paid tax under Section 115AD) by the IFSC IBU to a non-resident investor. This proposal should encourage non-resident participation in ODIs, issued by banking units in the IFSC, thereby boosting the IFSC's banking industry.

2. REITs and InvITs

Section 115UA of the IT Act, *inter-alia*, provides a pass-through status to REITs and InvITs in respect of income distributed by such business trusts to their unitholders. Further, Section 10(23FC) and 10(23FCA) of the IT Act specifically exempt interest income and dividend income received by the business trust from a special purpose vehicle and rental income in case of REIT. Such income is taxable in the hands only in the hands of the unitholders. In addition to income in the nature of interest, dividend or rent, unitholders may also receive other distributions from the business trusts such as (i) amount received on repayment of debt/ return of capital or (ii) amount received on redemption of unit held by unitholder.

The Finance Bill proposes to amend Section 56 of the IT Act in order to make such other distributions (i.e., other than interest, dividend and rent) from a business trust to a unitholder taxable under the head 'income from other sources' from FY 2023-24, provided such distributions are not chargeable to tax in the hands of the business trust under Section 115UA(2) of the IT Act.

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Redemption of units: In case where a unit holder receives any sum from a business trust for redemption of units, it will be reduced by the cost of acquisition of units.

Currently, income from transfer of units of a business trust is taxable as capital gains. The Finance Bill has proposed that cost of acquisition will be reduced from distributions received from such business trust for redemption of units, but the amendment provides that such income will be taxed under Section 56 of the IT Act at the higher tax rate as against the tax rates applicable for capital gains. In such a case, such distributions received by unit holders on redemption of units will be taxable under the head 'other income' instead of capital gains. The distributions received on redemption of units qualifies as 'transfer' under Section 2(47) of the IT Act and should be taxable as capital gains. This seems to be an unintended consequence and puts non-resident investors at a great disadvantage.

Repayment of debt: In case where a unit holder receives any sum from a business trust for repayment of debt, it has been prescribed that such income shall be subject to tax as income from other sources under Section 56 of the IT Act. It is pertinent to note that the proposed provisions are silent about the value of loan originally granted by the unitholder.

Hence, there is a possibility that the unitholder may be asked to pay tax on its gross receipts without adjusting the total amount of loan granted to the business trust. In the absence of a specific provision asking for a reduction in the value of loan granted, the possibility of claim of deduction for the same being denied cannot be ruled out.

This seems to be an unintended error and it is expected that it shall be rectified before the Finance Bill becomes FA.

Extending benefit of lower or NIL Rate of TDS to Business Trusts: Section 194LBA of the IT Act, *inter-alia*, obligates business trusts to deduct TDS at the rate of 5% on interest income, and at the rate of 10% on dividend distributed to non-resident unitholders. However, in some cases, a more beneficial tax rate may be available to certain non-resident taxpayers (i.e. as per the relevant tax treaty). Despite this, under the extant tax laws, TDS was required to be applied at the rates provided under Section 194LBA. It is now proposed to amend Section 197 of the IT Act to provide that the sums on which tax is required to be deducted under Section 194LBA of the IT Act shall also be eligible for certificate for deduction at lower or nil rate.

3. Limitation on the benefits claimed by SEZ

The Finance Bill proposes to include an onerous condition for the SEZs claiming benefit under Section 10AA of the IT Act. It provides that the export sale proceeds should be mandatorily brought into India in convertible foreign exchange within 6 months from the end of relevant FY in which sale/ services were rendered. It also provides that said time-limit of 6 months can be increased by RBI. The proposed amendment means that the deductions claimed under Section 10AA of the IT Act on accrual basis would be disallowed and added back to the income of the SEZs if the sale proceeds are not brought into India within 6 months from the end of the FY.

The Finance Bill also proposes that benefits under Section 10AA of the IT Act shall be provided to the eligible SEZs if only the return of income is filed within the due dates.

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Business Taxation

1. Angel tax provisions made applicable to the issuance of unquoted shares to non-resident investors

Section 56(2)(viib) of the IT Act seeks to tax premium payable on issuance of shares of closely held companies, by resident investors. The excessive premium, i.e. premium paid over and above the fair market value ("**FMV**") of such unquoted shares is subject to tax in the hands of the company. This provision has been a matter of concern for closely held private companies since its introduction. These provisions were introduced to prevent circulation of unaccounted money through share premium received from resident shareholders.

Now, the Finance Bill proposes to extend this provision to cover issuance of unquoted shares to non-residents as well. This could be a major issue and may impact the valuations of Indian companies who are raising capital from offshore investors. Luckily, investments by non-residents into eligible start-ups will continue to be outside the purview of angel tax.

2. Clarification on cost of acquisition of intangible assets or any other rights

Section 55 of the IT Act provides the meaning of 'cost of acquisition' and 'cost of improvement' for the purpose of calculation of capital gains. For certain intangible assets like goodwill, trade mark, brand name, right to manufacture, produce, right to carry on business, etc., the cost of self-generated has been specified to be NIL, unless it falls in certain special circumstances like purchase from previous owner wherein the purchase price of previous owner is to be considered as cost.

However, in case of other intangible assets or other rights which are not specifically covered in Section 55 of the IT Act and are acquired without paying any consideration, the cost of acquisition / improvement was not separately defined as NIL.

This had led to litigation in many cases wherein the Courts have taken a view that in the absence of any definition of cost, the capital gains taxable upon transfer of such intangible assets cannot be determined, by placing reliance on the landmark decision of SC in the case of *B.C. Srinivasa Shetty*[1]. It may also be noted that similar views have also been expressed in respect of tenancy rights and development rights[2] by the Courts.

In order to plug this loophole, Section 55(1) and (2) of the IT Act are proposed to be amended wherein the cost of acquisition and cost of improvement of any intangible asset or any other right, shall be construed as NIL.

The transfer of any intangible assets and intangible right will come within the purview of taxation. However, the amendment may even have far reaching implications. For instance,

[1] CIT v. B.C. Srinivasa Shetty [1981] 128 ITR 294/5 Taxman 1(SC).
[2] Commissioner of Income-tax-18 v. Sambhaji Nagar Co-op. Hsg. Society Ltd. [2015] 54 taxmann.com 77 (Bombay); Income-tax Officer v. Kirit Raojibhai Patel [2022] 141 taxmann.com 172 (Mumbai - Trib.).

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taxpayers may not be able to capitalise intangible assets like software, etc., because their cost of acquisition may be claimed as Nil.

3. Increasing rate of TCS for certain remittances

Section 206C(1G) of the IT Act has been proposed to be amended to increase the rate of TCS on overseas tour package and on any other payment under LRS from 5% to 20%. Further, the exemption threshold limit of INR 7 lacs for such LRS payments (except education and medical treatment) are proposed to be removed.

Resultantly, domestic investors who intend to invest in overseas assets or stocks or foreign travellers may be impacted. The tour operators recovering from the pandemic would also find this provision as a handicap. While the TCS shall be available as credit, it may have significant repercussions on the cash flows of the impacted entities.

The aforementioned amendment is proposed to be applicable from July 01, 2023.

4. Gain from market linked debenture is now deemed short term capital gain

Any capital gains arising from transfer or redemption or maturity of a security which has an underlying principal component in the form of debt securities, and whose returns are linked to market returns or any underlying security or indices, are now proposed to be taxed under Section 50AA of the IT Act as deemed short term capital gain at the applicable rates. The gains shall be computed by reducing the cost of acquisition and expenditure wholly and exclusively incurred therein from the full value of consideration received or accruing as a result of transfer or redemption or maturity of such debentures.

Currently, such securities were being offered to tax at 10% without indexation as long-term capital gains and this practice has led to tax avoidance.

Separately, the exemption available under Section 193 of the IT Act from TDS on interest income on listed debentures paid to a resident is now proposed to be removed.

5. Deduction under Section 35D for amortization of preliminary expenditure

The process of claiming deduction on amortization of preliminary expenditure under Section 35D of the IT Act for certain expenses i.e. preparation of feasibility report, preparation of project report, conducting market survey or business-related engineering services, are proposed to be eased. Instead of the present requirement of such expenses to be carried out by a concern approved by the CBDT, it is proposed that the taxpayer shall now be required to furnish a statement containing certain prescribed particulars within prescribed period to the prescribed income-tax authority.

It is expected that the relevant rules and forms shall be introduced in due course of time. Once the details of the same are introduced, it shall be relevant to analyse whether the

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process has been simplified or whether it requires submission of certain additional documents/ information.

6. Increasing threshold limits for presumptive taxation schemes

With a view to increase the availment of benefit to persons in small and medium taxpayers, the threshold schemes for presumptive taxation have been increased as follows:

Sl No	Particulars	Old threshold for turnover/ gross receipts (INR)	Revised threshold for turnover/ gross receipts (INR)
(I)	For small business, where cash receipts are **less** than 5% of total turnover/ gross receipts for the relevant FY	20 Million	30 Million
(ii)	For small business, where cash receipts are **more** than 5% of total turnover/ gross receipts for the relevant FY	20 Million	20 Million
(iii)	For professionals, where cash receipts are **less** than 5% of gross receipts for the relevant FY	5 Million	7.5 Million
(iv)	For professionals, where cash receipts are **more** than 5% of gross receipts for the relevant FY	5 Million	5 Million

Professionals offering their income under the presumptive taxation scheme given under Section 44ADA of the IT Act are now exempted from getting their books of account audited under Section 44AB of the IT Act.

Further, in respect of the further concessional tax rate of 6% (as compared to 8% applicable for small business) of turnover/ gross receipts applicable under Section 44AD of the IT Act and for the provisions of Section 44ADA of the IT Act, in case of receipts by account payee cheque or bank draft, it has been proposed that receipt of a cheque or a bank draft, which is not account payee, shall be deemed to be receipt in cash and shall not be eligible for the reduced rate of 6%.

This is another step towards motivating the businesses to completely move towards undertaking transactions digitally and to discouraging the dealings in cash.

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7. Preventing misuse of presumption tax schemes

The presumptive tax schemes allow for taxation of a non-resident at 10% (i) on receipts from providing services, machinery, etc. used in prospecting, extraction or production of mineral oils under Section 44BB of the IT Act; and; (ii) on receipts from construction, erection, etc. for approved turnkey power projects. Further, the schemes allowed for offering lower incomes to tax provided books of accounts are maintained and audited.

However, it has been noticed that the presumptive scheme is being misused by opting in and out in different years to avail the benefit of both presumptive and non-presumptive schemes. In the year of losses, the actual losses have been claimed and carried forward. However, in the year of profits, the taxes have been computed on presumptive tax scheme after reducing such brought forward losses.

As there is no reason why such losses should be allowed in case of presumptive tax scheme, it has now been proposed that in case of presumptive tax scheme, no set-off of unabsorbed depreciation and brought forward losses shall be allowed in such calculations.

8. NBFCs carved out of thin-capitalization rules

Under the existing thin capitalization rules, taxpayers cannot claim interest payable to a non-resident related parties as expenditure beyond 30% of the EBITDA. The borrowers engaged in the business of banking and insurance were kept outside the scope of Section 94B of the IT Act, given the nature of their businesses.

The Finance Bill now proposes to exclude NBFCs as well from the scope of Section 94B of the IT Act since they are engaged in the business of financing and their functions are similar to borrowers engaged in banking business. The proposal is in alignment with the recommendations made by the OECD in its BEPS report, which had *inter-alia* suggested for exclusion of banking and insurance groups. Henceforth, NBFCs are eligible to claim interest expenditure even if they are more than 30% of EBITDA. The industry was expecting this relief for a very long time and the Finance Bill has finally granted it.

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IV

Start-ups/ E-commerce/ Online Gaming

1. Expansion and extension of tax incentives for start-ups

Section 79 allows carry forward and the setting off of unabsorbed business losses in companies only if at least 51% of shareholding remains unchanged. However, such condition is relaxed if all the shareholders on the last day of the FY in which loss is incurred continue to hold the shares on the last day of the FY in which the loss is set off, in case of eligible startups for a period of seven years from their incorporation.

The Finance Bill proposes to increase this period from 7 years to 10 years from incorporation. The proposed amendment would promote reinvestments by startups and sustainable growth of business.

Another key proposal under the Finance Bill is the extension of date of incorporation for eligible start-ups to claim tax holiday. Section 80-IAC of the IT Act provides for a deduction of an amount equal to 100% of the profits and gains derived from an eligible business of an eligible start-up for three consecutive years out of 10 years, at the option of the assessee. The availability of deduction is only available to eligible start-ups fulfilling certain conditions specified in Explanation (ii) to Section 80-IAC of the IT Act. These conditions *inter-alia* include that the eligible start-up is required to be incorporated on or after April 1, 2016 but before April 1, 2023. The bill proposes to extend the date to April 1, 2024.

Due to the current uncertain economic environment, it appears that this proposal has been provided to incentivise start-ups and expect existing businesses to make investments in start-ups. The proposals are also significant post-pandemic boost for the start-ups.

2. Net winnings from online games brought under taxation

While FA 2022 brought the crypto related transactions under the tax net, it was imperative to extend the taxation net to online gaming to enhance the tax collections by targeting the booming technology-driven entertainment sector. Online gaming has its own peculiar features and there was a possibility of ambiguity in the manner of its taxation.

The Finance Bill proposes to:

a) Introduce Section 115BBJ in the IT Act to tax the net winnings from online games at the special rate of 30%.

b) Introduce Section 194BA in the IT Act (applicable with effect from July 01, 2023) for TDS on net winnings comprised in withdrawal from user account and on remaining net winnings in the user account at the end of each FY. The manner of computation of such net winnings shall be introduced separately.

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The above sections attempt to clear the ambiguity regarding taxation of winnings from online games and has attempted to bring in a simple and clear mechanism. Firstly, the tax shall be payable on the net winnings. Further, since the tax shall be payable at the time of withdrawal or on the net winnings at the end of the FY, no tax shall be levied on the notional winnings.

It is pertinent to note that the threshold of INR 10,000 available for exemption from TDS on lotteries, card games, etc. has not been brought for online gaming sector. Thus, even small winnings shall be subject to TDS thereby increasing compliance burden for the online gaming companies.

However, the term “online game” has been defined vastly to mean a game offered on internet. Similarly, the term “user gaming intermediary” and “user account” have also been widely defined. It is also pertinent to note that the online games hosted by non-residents or foreign companies without having any local presence in India, shall also be required to comply with these provisions, especially when the users of the online game are based in India.

Further, considering the vast varieties of online games and the manner of providing winnings, it may be difficult for the rules for calculation of net winnings to envisage each and every possibility of such calculation. Thus, it would be interesting to see how this compliance burden impacts the online gaming industry in the coming days.

3. Clarity on TDS for lottery winnings, horse racing, etc. & on gambling & betting

a) It has been noticed that the threshold of INR 10,000 available for exemption from TDS under (i) Section 194B of the IT Act for winnings from lottery, crossword puzzle, card games, etc., and (ii) Section 194BB of the IT Act on horse racing, wagering, etc., has been misused by considering the threshold as ‘per transaction’ and by artificially splitting the winnings into multiple transactions.

   To plug this loophole, it has been proposed to amend Section 194B and Section 194BB of the IT Act to clarify that the TDS deduction shall be applicable for aggregate amounts exceeding INR 10,000 during the relevant FY.

b) The income from gambling or betting was taxable at special rate of 30% under Section 115BB of the IT Act along with winnings from lottery, card games, etc. However, the same was not covered in the TDS under Section 194B of the IT Act. Thus, Section 194B of the IT Act has been proposed to be amended to include ‘gambling or betting of any form or nature’ in its ambit.

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Charitable Trusts

The Government in the past few years has been closely scrutinizing the modus operandi of charitable institutions and has introduced various anti-abuse provisions to ensure that the beneficial tax regime applicable to such institution are not abused. Continuing with the same objective, the Finance Bill proposes to further tighten the noose on such charitable institutions. Some of the key proposals are:

i) The Finance Bill proposes that if a charitable institution violates the requirements to apply for registration or re-registration/ approval with the IRA within the specified time limits, it shall be deemed to have been converted into a form not eligible for tax exemptions. Accordingly, such institutions shall be subject to an exit tax on the accreted income (i.e. the total net worth of the trust), as per the provisions of the IT Act.

ii) In order to ensure that such charitable institutions file their tax returns in a timely manner and to prevent charitable institutions from misusing the option to file updated or revised tax returns, the Budget proposes to withdraw the option of filing any updated or revised return currently available to charitable institutions. Finance Bill proposes to amend the IT Act to provide that the tax exemption under the IT Act would be available to charitable institutions only where such institution files its tax return within the specified due date.

iii) Donations from one charitable trust to another would be considered as income applied for charitable purposes in the hands of donor charitable trusts. This Finance Bill, however, proposes to restrict the same by providing that only 85% of the donations by one charitable institution to another charitable institution shall be considered as application of income i.e. remaining 15% would not be considered as application of income in the hands of donor charitable trust. The Memorandum to this Finance Bill provides that charitable trusts are round tripping the donations to meet the application of income threshold and, therefore, it has resorted to restrict deductions to 85% of such donations. In view of this proposal, the charitable trusts would be forced to apply the income on its own instead of donating to other trusts.

iv) Contribution made towards corpus are exempt from tax in the hands of charitable trusts. Accordingly, money spent from corpus by the charitable trust will not be taken into consideration for computing 'application of income' of such charitable trust since the same would amount to double deduction in the hands of charitable trust. However, re-filling back the corpus fund was considered as application of income and was exempt from taxation. Similarly, application from loan or borrowing would not be taken into consideration for computation of application of income of charitable trusts, but repayment of such loans is considered as application if income. Finance Bill imposes a cap of 5 years for re-filling/reinvestment of corpus fund and repayment of loan. This proposal unnecessarily denies the benefit to charitable trust which are legitimately due

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to them. It may be noted that corpus fund and loans are generally utilized for substantial capacity development (viz. construction of buildings, etc.) and, therefore, the same may not always be reinvested or repaid by the charitable trust within 5 years.

v) The charitable trusts are required to file a statement in Form 10 (in case of trusts registered under Section 10(23C)) or Form 9A (in case of trusts registered under Section 12AB) declaring the amounts accumulated for subsequent years. Under the existing provisions, the same shall have to be filed on the date of filing of return of income. The Finance Bill proposes that the same shall have to be filed at least 2 months prior to the date of filing of return of income.

vi) This Finance Bill proposes to withdraw deductions available under Section 80G in respect of donations made to certain institutions like JL Nehru Memorial Fund, Indira Gandhi Memorial Trust or Rajiv Gandhi Foundation.

vii) The SC in the case of *Ahmedabad Urban Development Authority*[3], observed that statutory authorities and boards are usually set up by the Government to provide essential public functions, such as the supply of water or food grain management. Hence, any amount charged for such purposes shall, prima facie, not be taxed under Section 10(46) of the IT Act. However, the said provision provides that the institutions set up by Government would not be eligible for exemption if it is engaged in "commercial activity". This Finance Bill proposes to codify the observation of the SC by introducing clause (46A) to Section 10 of the IT Act exempting all types of income arising to a body or authority or Board or trust or Commission, not being a company, which has been established under a Central or State Act for any of the identified public functions.

[3] Assistant Commissioner of Income Tax (Exemptions) v. Ahmedabad Urban Development Authority [Civil Appeal No. 21762 of 2017].

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VI

Relief to Co-operatives and Micro and Small Enterprises

1. Concessional tax rate for new manufacturing co-operative societies

Section 115BAB of the IT Act was introduced through the Taxation Laws (Amendment) Ordinance, 2019 with the intention to attract investment, create jobs and trigger overall economic growth. The section provides for an option of concessional rate of taxation @ 15% for new domestic manufacturing companies provided that they do not avail of any specified incentives or deductions and fulfil certain other conditions.

In the same direction, the Finance Bill proposes to introduce Section 115BAE to the IT Act providing concessional tax regime for new manufacturing cooperative societies as well. Under the provision, new co-operative societies which commences manufacturing or production before March 31, 2024 and does not avail of any specified incentive or deductions, can opt to pay tax at concessional rate of 15% for tax year 2023-24 onwards.

The objective is to provide level playing field between new manufacturing companies and new manufacturing co-operative societies, while promoting investments and production in the economy.

2. Scope of Section 43B of the IT Act widened to include payments to Micro Small and Medium Enterprises ("MSMEs")

Section 43B of the IT Act, *inter-alia*, provides for certain deductions to be allowed only upon actual payments. Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 ("**MSMED Act**") mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there are no written agreements, the section mandates that the payment shall be made within 15 days.

The Finance Bill proposes to cover the payments made to such enterprises within the ambit of Section 43B, where payments beyond the time limit specified under Section 15 of MSMED Act shall be allowed as deductions only on actual payments. However, deduction on accrual basis shall be allowed only if payment is made within the mandated time period.

The objective behind the proposed amendment is to promote growth of micro and small enterprises in the economy by encouraging timely payments and healthy cash flows for them.

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VII

Assessment and Appellate Proceedings

1. Timeline extended for passing of rectification orders by Interim Board for Settlement ("IBS")

Settlement Commission was abolished with retrospective effect from February 1, 2021 and IBS was constituted by the Central Government as an interim measure for the settlement of applications pending as on January 31, 2021. As per a newly introduced clause (iv) of sub-section (9) of Section 245D of the IT Act vide FA 2021, where the time-limit for rectification of an order or filing a rectification application expired on or after February 1, 2021, the period between February 1, 2021 till the end of the month in which IBS was constituted i.e. August 2021, was excluded for passing of an order of rectification by the IBS and where the time limit of less than 60 days was available, such period was extended to 60 days. In response to the grievances received from various stakeholders, Finance Bill proposes to extend such time limit by providing that where the time limit for rectification of an order or making an application for rectification expires on or after February 1, 2021 but before February 1, 2022, such time-limit shall stand extended to September 30, 2023.

2. Reduction of time limit for furnishing TP report to AO/ CIT(A)

Under Section 92D of the IT Act, every person entering into an international transaction or specified domestic transaction is required to maintain documentation as per Rule 10D of IT Rules i.e. a comprehensive TP report and certain prescribed particulars along with other relevant information. Currently, under Section 92D(3) of the IT Act, the AO or the CIT(A) may require such person to furnish such TP report along-with other relevant information within 30 days from date of receipt of such notice and such timeline may be extended for an additional period of 30 days on an application submitted by the assessee.

The Finance Bill proposes to reduce such original period of 30 days to 10 days keeping in view the fact that such information as requisitioned must be already in possession of the assessee.

3. Income tax authority - Joint Commissioner (Appeals) established to reduce number of pending appeals

The Finance Bill proposes to introduce Joint Commissioner (Appeals) (**"JCIT(A)"**) as an income tax authority under the IT Act owing to the huge pendency of appeals and overburdening of the present CIT(A)s, in order to handle cases involving small amounts of disputed demands. A similar procedure for disposal of appeals as applicable to CIT(A) shall have to be followed. An appeal against the orders passed by the AO (below the rank of JCIT can be filed before the JCIT(A). However, an order passed by or with the approval of an authority above the rank of Deputy Commissioner cannot be filed before the JCIT(A). Existing

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appeals pending before the CIT(A) and any matter connected thereto, now falling within the ambit of the JCIT(A), may get transferred to the JCIT(A).

Further, the Central Government has been duly empowered to propose a scheme for carrying out such proceedings before the JCIT(A) in a faceless manner.

4. Rationalization of provisions for filing appeals before ITAT

a) Powers for levying penalty under Sections 271AAB, 271AAC and 271AAD in cases involving undisclosed income or search under Section 132, or for false entries in the books of accounts are available with the CIT(A), in addition to the AO. In order to clarify that an appeal against such orders passed by the CIT(A) shall be filed before the ITAT, the Finance Bill proposes that an appeal against such order can be filed before the ITAT.

b) Section 263 of IT Act empowers to Principal Chief Commissioner and CCIT to pass revision orders. In the absence of any reference to such orders in Section 253 of IT Act and to address taxpayer grievances in this regard, Finance Bill proposes to provide that an appeal against such revision orders, as also an order under Section 154 of IT Act rectifying such revision orders, shall be filed before the ITAT.

c) Under present sub-section (4) of Section 253 of IT Act, a respondent in an appeal before ITAT may file a memorandum of cross-objections before the ITAT where the appeal is against an order passed by the CIT(A). Whereas an appeal can also be filed before the ITAT against orders passed by PCIT or CIT or Principal Director or Director etc. In order to address grievances in this regard, Finance Bill proposes to amend sub-section (4) of Section 253 of the IT Act to enable filing of memorandum of cross-objections in all classes of cases against which an appeal can be filed before the ITAT, for instance, against orders passed by AO in consequence of directions issued by the Dispute Resolution Panel.

5. Assessment in case of business reorganisation

The FA 2022 introduced a new Section 170A in IT Act which provided that in case of a business reorganisation involving amalgamation or merger or demerger of business, where a ROI has been furnished prior to order of a court or tribunal or adjudicating authority under the Insolvency and Bankruptcy Code, 2016 granting approval to such business ("**Approval Order**"), the successor entity shall file a modified ROI within 6 months from the end of the month in which such Approval Order is issued. In order to provide proper clarity on filing of a modified return as well as requirement of modification of assessment orders by the AO, Finance Bill proposes to substitute Section 170A of IT Act.

The amended Section 170A of IT Act provides that where prior to passing of an Approval Order, if a ROI has already been furnished for the FY, the successor entity shall furnish a modified return within 6 months from the end of the month in which Approval Order is passed. Further, where the assessment proceedings have got completed prior to filing of modified return, the AO shall pass modified assessment orders in accordance with the Approval Order and modified return. Where such assessment proceedings are pending on date of filing of

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modified return, the AO shall pass assessment orders taking into consideration the Approval Order and modified return.

6. Inventory valuation by cost accountants to prevent underpayment of taxes

Presently, in order to undertake an assessment of the income, the AO is authorised to make inquiries which included the power to get the books of accounts audited by an accountant, having regard to the nature and complexity of accounts, volume of transactions, specialised nature of business activity, etc. of the taxpayer, and to furnish the audit report.

In addition, in order to enable proper valuation of inventory and to ensure that there is no underpayment of tax by undervaluation of inventory, Section 142(2A) of the IT Act is now proposed to be amended to enable the AO to direct the assessee to get the inventory valued by a cost accountant and furnish the report of such inventory valuation. Prior approval is required to be obtained by the AO from Principal Chief Commissioner/ CCIT/ PCIT/ CIT, so that the said provision is not abused unnecessarily. The expenses for such valuation shall be borne by the Central Government.

7. Relaxation in timelines for completion of assessment proceedings

The time limit for completion of assessment or reassessment proceedings for AY 2021-22 is 9 months from end of relevant AY. Further, in case where an updated return is filed by an assessee under Section 139(8A) of IT Act, a timeline of 9 months was provided for the completion of assessment or reassessment proceedings from the end of FY in which updated return was filed. Considering the difficulty faced by AOs in concluding the entire process of assessment within such short timeline and the difficulties experienced by the taxpayers in not having sufficient time to explain themselves and furnish evidences, the Finance Bill proposes to extend such timeline from 9 months to 12 months from AY 2022-23 onwards under Section 153(1) of IT Act and in cases where updated return is filed, a similar timeline of 12 months is proposed from end of FY in which such return is filed under Section 153(1A) of IT Act.

Search proceedings are now covered within re-assessment proceedings. However, while the erstwhile search related provisions provided for abatement of pending assessment proceedings on the date of search, etc. so that information obtained during search can be used effectively, similar provisions were not incorporated in reassessment related provisions. Hence, Finance Bill proposes to insert a new sub-section (3A) in Section 153 of IT Act to suggest that the timeline for completion of any assessment or re-assessment proceedings pending on date of search, etc., or where any money, bullion, jewelry or valuable articles seized or requisitioned or books of accounts or documents seized pertain to the assessee, shall be extended by 12 months.

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VIII

Search, Seizure and Penalties

1. Authorized officer may requisition assistance from professionals during search proceedings

Currently, under Section 132 of IT Act which provides for carrying out of search and seizure proceedings, the authorized officer may requisition the services of any police officer or any officer of the Central Government or make a reference to the Valuation Officer where required. Whereas during the recent years it has been felt that the carrying out of a search & seizure operation has become more complex requiring the use of data forensics, advanced technologies etc for decoding data, valuation of vast variety of forms of assets or investments, decryption of information requiring specific domain experts like digital forensic professionals, valuers, archive experts etc. In addition, services of other professionals like locksmiths, carpenters etc are also required in many cases.

Finance Bill proposes to amend Section 132 of IT Act such that the authorised officer may now requisition the services of any person or entity with the approval of the Principal Chief Commissioner/ CCIT/ Principal Director General etc. to assist him with the search. Authorised officer may also requisition any person or entity or any valuer, registered under relevant laws to estimate the fair market value of any property, as required and submit a report within 60 days from the receipt of such reference.

2. Relaxation in time limit for issuance of reassessment notice in search, requisition or survey proceedings conducted after March 15 of any FY

In cases where a search under Section 132 or requisition under Section 132A or survey proceedings under Section 133A was conducted after 15th March of a FY, it was observed that there was very little time available to AO to collate information from the statements recorded or documents seized or impounded, etc. and issue a notice under Section 148 or show cause notice under Section 148A(b) of the Act, especially since a search is conducted by the Investigation Wing whereas the notice is issued by the AO.

Therefore, the Finance Bill proposes to amend Section 149 of IT Act in respect of cases where a search under is initiated Section 132 or the last of the authorization is executed or requisition is made under Section 132A, after March 15 of any FY as follows:

a) a period of 15 days shall be excluded for computing limitation period for issuance of notice under Section 148 of IT Act and the notice so issued shall be deemed to have been issued on March 31 of such FY

b) in cases where the information with the AO emanates from a statement recorded or documents impounded under summons or survey on or before March 31 of a FY in consequence of, a search or authorization executed or requisition made after March 15 of

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such FY, a period of 15 days shall be excluded for computing limitation period for issuance of notice under Section 148 of IT Act and the show cause notice issued under Section 148A(b) shall be deemed to have been issued on March 31 of such FY

Further, the Finance Bill proposes to incorporate a timeline for filing ROI as 3 months from end of month in which a notice for reassessment under Section 148 of the IT Act is issued by the AO, or such further time as may be allowed by the AO, to facilitate the completion of proceedings in a seamless manner.

In addition, the Finance Bill proposes to amend Section 151 of the IT Act to clarify that for determining the specified authority for issuance of notice under Section 148 and 148A of the IT Act on the basis of the time period elapsed from the end of relevant AY, the period excluded as per Section 149 of the IT Act shall be taken into account.

3. Penalty for furnishing incorrect statement of financial transactions under Section 285BA of the IT Act

Section 285BA of the IT Act makes it mandatory for a specified category of persons i.e. a person responsible for registering, or, maintaining books of account or other document containing a record of any specified financial transaction (**"SFT"**) or any reportable account under applicable laws, to furnish a statement in respect of SFT or reportable account to the IRA. Further, Section 271FAA of the IT Act provides for a levy of penalty of INR 5,000 in case of furnishing inaccurate statement in respect of SFT or reportable account. Whereas Rule 114H of the IT Rules lays down the requirement of having a valid self-certification by reportable persons and account holders, however, there were no penal provisions in case of submission of a false self-certification which in turn leads to furnishing of an incorrect statement under Section 285BA of IT Act.

The Finance Bill proposes to amend Section 271FAA of IT Act to provide for levy of a penalty of INR 5,000 for every inaccurate reportable account in case of any inaccuracy in such statement submitted by a prescribed reporting financial institution where such inaccuracy is due to inaccurate information submitted by the account holder. Such penalty may be recovered by the prescribed reporting financial institution from the account holder.

4. Consequences of default in compliance with recently introduced TDS provisions

Section 271C of IT Act provides for levy of penalty equivalent to 100% of tax deductible in case of default in deduction of TDS. Further, Section 276B of IT Act lays down provisions for prosecution in case of failure to pay TDS already deducted by a person to the credit of the government. Whereas, FA 2022 introduced new provisions for deduction of TDS i.e. Section 194R of IT Act for withholding of tax on any benefit or perquisite provided in respect of business or profession of a resident payee and Section 194S of IT Act for withholding of TDS on payment made on transfer of virtual digital asset. Further, the Finance Bill, 2023 proposes to insert a new Section 194BA in IT Act for withholding of TDS on net winnings from online games. It may be noted that owing to the nature of these payments which may be wholly in

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kind or partly in cash and partly in kind, it has been provided in the respective provisions that the person responsible for making the payment shall ensure that required amount of tax has been paid, before releasing the subject consideration.

Therefore, the Finance Bill proposes to amend the aforesaid provisions for penalty and prosecution i.e. Section 271C and 276B of IT Act to extend applicability of such provisions even in cases where a person fails to ensure that the required amount of taxes have been paid under Section 194R, 194S or 194BA of IT Act where the consideration is discharged wholly in kind or partly in kind.

The proposed amendment will be effective from FY 2022-23 onwards with respect to Section 194R and 194S of IT Act and from July 1, 2023 onwards in case of Section 194BA of IT Act.

5. Decriminalisation of liquidator's default in Section 178 compliance

The Finance Bill proposes to amend Section 276A (providing for prosecution of liquidator for non-compliance of Section 178 by providing a sunset clause on the section with effect March 31, 2023. Section 178 requires the liquidator to inform the AO regard his appointment and take permission before parting with company's assets from the AO. After notification, the liquidator is required to set aside the amount equal to notified amount by the AO.

This amendment is in line with the Government's initiative to promote ease of doing business and FM highlighted that she is proposing to decriminalize more than 3000 prosecution provisions under various legislations.

IX

Miscellanous

1. Facilitating tax credit for the income reported in the past

To enable the taxpayer to claim TDS credit mismatch arising on account of income reported in the past by the payee but TDS deducted in the subsequent years by the payor, this Finance Bill proposes to insert sub-section (20) in Section 155 of the IT Act. As per the proposed provision, the taxpayer is required to make an application in the prescribed form to the AO within 2 years from the end of FY in which such taxes were withheld. The rectification proceedings related provisions are amended to ensure that the taxpayer can claim tax credit in the year in which such income has been accrued.

This is a welcome move to the industry at large since many a times the customer/payor would not deduct TDS at the time of accrual of income to the payee, but rather deduct it at the time of actual payments. If the payments are delayed by more than a year, then it results in TDS credit mismatch for the payee. The proposals made under this Finance Bill provide a mechanism for the taxpayers to claim TDS credit for the relevant year.

2. Clarification provided on appeal related provisions in The Prohibition of Benami Property Transactions Act, 1988 ("PBPT Act")

Under Section 46 of PBPT Act, an appeal against an order of the adjudicating authority may be filed before the Appellate Tribunal within 45 days from the date of impugned order. However, the Initiating Officer (**"IO"**) as per the PBPT Act usually faces difficulty in filing such appeal within the stipulated timeline due to customary delays in receipt of such orders. Therefore, the Finance Bill proposes to amend Section 46 of the PBPT Act to provide that such timeline shall operate from the date of receipt of order by the IO.

Further, under Section 2(18) of PBPT Act, "High Court" refers to the HC within whose jurisdiction the aggrieved party ordinarily resides or carries on its work. Further, where the aggrieved party is the government itself, the HC within whose jurisdiction the respondent, or any of the multiple respondents reside, or carry out work shall be the HC having jurisdiction. Due to lack of clarity on jurisdiction in case of non-residents which do not fall under the jurisdiction of any HC, the Finance Bill proposes to amend Section 2(18) of the PBPT Act to provide that in case the aggrieved party does not reside or carry out work in the jurisdiction of any HC, the HC would be determined as per the location of the office of the IO.

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SECTION B:

ANALYSIS OF THE PROPOSED CHANGES IN INDIRECT TAXES

Substantive Changes in CGST Act

1. Composition Levy

Section 10(2) of the CGST Act provides for the eligibility conditions to opt for composition levy scheme. It provides that a supplier who has opted for composition scheme cannot make supply of goods or services through an e-commerce operator who liable to collect tax at source.

The Bill proposes to relax such condition in relation to supply of goods. Thus, a composition scheme supplier may supply goods using the platform of an e-commerce operator.

The proposed amendment appears to benefit suppliers and manufacturers who were forced to obtain regular registration instead of opting for composition levy when they intended to sell their product on third party e-commerce platforms. Post this change, such suppliers may supply through e-commerce operators without losing the benefit under the composition scheme.

2. Changes in relation to ITC

Reversal of ITC for non-payment to supplier

Section 16(2) of the CGST Act provides for the conditions which are mandatorily required to be followed for availing of ITC in respect of any goods or services received by a recipient. The said provision in second proviso also includes the condition that where a recipient fails to pay to the supplier the consideration along with GST within a period 180 days from the date of issue of invoice, an amount equal to the ITC shall be added to recipient's output tax liability, along with interest payable thereon.

The Bill proposes that instead of being added to recipient's output tax liability, be paid directly along with interest.

Further, the third proviso to Section 16(2) provided that the recipient could avail ITC on making the payment. It has now been proposed that such payment should be made by the recipient to the supplier for availing the ITC.

The proposed amendments would be in line with methodology commonly adopted by the taxpayers, i.e. payment through Form DRC-03 or reversing the ITC in Form GSTR-3B instead of adding to the output liability. With regard to the payment to the supplier as proposed in the third proviso, it appears that payment made directly to other parties as requested by the supplier or to the tax authorities or to the insolvency professional would not be treated as payment for availing of ITC.

Limitation in availment of ITC

Section 17 of the CGST Act provides that the amount of ITC shall be restricted to credit attributable to taxable supplies when the taxpayer is engaged in rendering taxable and

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exempt supplies. While the exempt supply includes non-taxable supplies, the said provision excludes supplies mentioned in Schedule III which deals with activities or transactions that are treated as neither supply of goods nor services (except sale of land or completed building).

The Bill proposes to amend the explanation to Section 17(3) of the CGST Act to increase the value of exempt supply, including the value of activities or transactions as may be prescribed, in relation to supply of warehoused goods to any person before clearance for home consumption.

The proposed amendment would effectively reduce the amount of available ITC to taxpayers who are engaged in the supply of warehoused goods before clearance for home consumption, including duty free shops, thereby increasing the cost of operations. The proposed amendment attempts to potentially reverse the decision of HC in case of *Sandeep Patil v. UOI*[4] and *CIAL Duty Free & Retail Services Limited v. Assistant Commissioner*[5],wherein it was held that duty free shops could avail ITC of GST paid on input services and can later claim refund.

Restriction in availing of ITC

Section 17(5) of the CGST Act lists down the supply of goods or services for which a taxpayer cannot avail ITC.

The Bill proposes to expand the list by restricting credit of GST paid on goods and/or services procured towards carrying of activities pertaining to corporate social responsibility (**"CSR"**) obligation as mandated under Section 135 of the CA, 2013.

The proposed amendment would increase the cost of operation of the taxpayers as they may not be able to adjust the GST paid on procurement towards their outward supplies.

3. Compliance related changes

No requirement of compulsory registration for the taxpayers engaged only in supply of exempted products

Section 23 of the CGST Act provides for the persons who are not mandatorily required to obtain a registration under the GST regime.

The Bill proposes to amend the language of Section 23 of the CGST Act to provide an overriding effect over requirement of compulsory registration under Section 24 of the CGST Act or on meeting threshold under Section 22 of the CGST Act. The Bill also proposes to bring the aforesaid change with retrospective effect i.e. with effect from July 1, 2017.

The proposed change would be beneficial for the taxpayers engaged only in the supply of exempted goods or/ and services. Thus, such person would no more be required to obtain GST registration even when it receives supplies exigible to GST under reverse charge or undertakes any inter-state taxable supply or through an e-commerce operator.

[4] Sandeep Patil v. Union of India, 2019 (31) GSTL 398.
[5] CIAL Duty Free & Retail Services Limited v. The Assistant Commissioner, Central Tax And Central Excise, Aluva Division, [2021] 84 G S.T.R. 135 (Ker).

Bar on filing details of outward supply or file return or statement post 3 years from the due date of filing

The Bill proposes to amend Section 37 *(Furnishing details of outward supply)*, Section 39 *(Furnishing of returns)*, Section 44 *(Annual return)* and Section 52 *(Collection of tax at source by an e-commerce operator)* of the CGST Act.

The Bill proposes to provide a limit to declare details of outward supplies or furnishing of returns or annual returns for a taxpayer and statement of outward supplies effected through an e-commerce operator, within a period of 3 years from the due date of furnishing such details. The same would not be allowed to be furnished later except when same is extended by way of notification.

The proposed amendment appears to enforce the taxpayer to timely comply with the GST legislation. However, in case where a person fails to file return and the GST registration is suspended or cancelled and there is an ongoing litigation, the period of 3 years may lapse thus, potentially causing loss of ITC as return could not be filed.

Change in manner of computation of interest amount for delayed refund

Section 56 of the CGST Act provides for interest to be paid to an applicant for delayed refunds. The period for computation of refund is the period immediately after the expiry of 60 days from the date of receipt of an application till the date of refund.

The Bill proposes that a manner of computation of period of delay may be prescribed. The said change may include condition to exclude period of delay on account of certain reason such as delay in responding to deficiency of notice or delay in processing of application thus, reducing the amount of interest.

4. Penalty introduced upon E-commerce operator

Section 122 of the CGST Act provides for penalty for various offences. The Bill proposes to include a penalty provision for specific offences committed by an e-commerce operator such as allowing un-registered supplier (other than person exempted from registration), or allow inter-state supply of goods or services by a non-eligible person or failure to declare the correct details of outward supply of goods effected through it by a person exempted from registration. The provision proposes penalty of INR 10,000 or equal to tax involved (if made by a registered person), whichever is higher.

The proposed amendment seems to make the e-commerce operator accountable to ensure that supplier registered on its platform are GST registered.

5. Decriminalization and lowering of compounding amount

Section 132 of the CGST Act provides for punishment for certain offences. The Bill proposes to de-criminalize the following offences committed by any person who:

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a) obstructs or prevents any officer in the discharge of his duties;

b) tampers with or destroys any material evidence or documents; and

c) fails to supply any information which he is required to supply or supplies false information.

The Bill proposes to increase the minimum threshold of tax amount for launching prosecution from INR 10 million to INR 20 million, except for the offence of issuance of invoices without supply of goods and/or services.

Further, Section 138 of CGST Act which deals with compounding of offences has been amended to allow compounding of offences for a repeat offender and for person accused under CGST Act and under any other law. However, such compounding would not be applicable to invoices issued without supply of goods or services.

It also proposes to reduce the compounding amount to 25% -100% of tax amount from earlier 50%- 150% of tax amount.

The proposed amendment appears to be in line with previous amendment in the CA, 2013 and for safeguarding the interest of MSME and genuine taxpayers and seeks to decriminalize trivial offences.

6. Retrospective amendment pertaining to non-taxable supply

Schedule III of the CGST Act was amended w.e.f. February 01, 2019, to include following activities or transactions which are neither considered as supply of goods nor services:

a) supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

b) Supply of warehoused goods to any person before clearance for home consumption;

c) High-sea sales

The Bill proposes to retrospectively deem such transactions as non-taxable with effect from July 1, 2017.

However, no refund shall be granted for tax collected on such transactions for period from July 01, 2017 to February 01, 2019.

It is beneficial for the tax payers to treat such activities as non-taxable for prior period as well. However, the taxpayers who have already discharged GST would be in adverse position due to unavailability of the refunds.

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XI

Substantive Changes in IGST Act

1. Changes related to online information and database access or retrieval services ("OIDAR")

The Bill proposes to amend the definition of OIDAR, provided under Section 2(17) of the IGST Act, by omitting the condition of essentially automated and involving minimal human intervention in OIDAR services.

The Bill proposes to amend the definition of 'non-taxable online recipient' provided under Section 2 (16) of the IGST Act, to cover unregistered persons including persons which are solely registered to comply with TDS like the Government departments, local authorities or other Governmental agencies.

The proposed amendment seems to widen the scope of OIDAR services, as it proposes to remove the condition of essentially automated and limited human intervention, thus expanding the services that may be treated as OIDAR. Further, OIDAR suppliers will now be liable to GST even when the services are used for business or commerce by unregistered persons.

2. Changes in place of supply of services

Proviso to Section 12(8) of the IGST Act provides that the place of supply in case of transportation of goods to a place outside India where both the supplier and the recipient are in India shall be the place of destination of such goods. The same is proposed to be omitted by the Bill.

Thus, the Bill proposes that the place of supply of services would be location of the recipient in India, where the person is registered. In case of a person other than the registered person, the location where such goods are handed over for transportation would be the place of supply.

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XII

Substantive Changes in Customs Act

1. Non-applicability of sunset clause

Section 25 of the Customs Act provides for power to grant exemptions of customs duty leviable. Sub-section 4A of Section 25 of the Customs Act provides for the condition that the exemption granted under Section 25 of the Customs Act unless specified otherwise, the exemption will be valid up to March 31st falling 2 years after such exemption is granted as introduced *vide* FA, 2021.

The Bill proposes to amend the automatic expiry of exemption in following scenarios:

a) multilateral or bilateral trade agreements;

b) obligations under international agreements, treaties, conventions;

c) UN agencies, diplomats, international organizations;

d) privileges of constitutional authorities;

e) schemes under Foreign Trade Policy or other Central Government schemes having a validity of more than two years;

f) re-imports, temporary imports, goods imported as gifts or personal baggage;

g) IGST related.

The proposed amendment seems to provide relaxation of sunset provision i.e., expiry of exemption, which caused uncertainty with commitment made under trade agreements or other Government schemes.

2. Changes pertaining to Settlement Procedure

The Bill proposes to amend Section 127C of the Customs Act to provide timeline for passing the settlement order within 9 months of filing the settlement applications (extendable for 3 months). If the same is not passed within the prescribed timeline, it would lead to abatement of settlement proceedings and the adjudicating authority will dispose the said application in the manner as if no settlement application was ever made.

While the aforesaid amendment proposes to give clarity on timeline, it may prejudice applicants where the delay was not attributable to the applicants. In past, certain courts have allowed applicants to file a fresh application where they were not at fault. Thus, it may lead to a rise in fresh litigation where the time period expires.

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XIII

Changes in Customs Tariff Act, 1975

1. General Rules for Interpretation ("GRI")

Bill proposes to amend the paragraph 1 of the General Explanatory Notes to GRI to bring consistency in classification that where the description of an article or group of articles is preceded by "----", then the said article or group of articles shall also be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "---". It is in-line with previous ruling in *GAIL (India) Ltd.*[6] wherein same was held to prevent the description to become futile.

The list of abbreviations has also been proposed to be substituted with a new list to align with Harmonized System Nomenclature 2022 Edition (**"Hs22"**). This amendment is proposed to come into effect from May 01, 2023.

2. Changes pertaining to Trade Remedial Investigations

The Bill proposes to amend the provision pertaining to countervailing duty on subsidized articles under Section 9 (6) of the CT Act and antidumping duty under Section 9A(7) of the CT Act to retrospectively clarify, with effect from January 01, 1995, that the Central Government does not make determination of dumping, injury, or causal link dumped articles. It may also be interpreted that on mere consideration of review and not actual review, the Government can extend the period of levy of duty for a period of another five years.

The Bill proposes to amend Section 9C to provide that appeal will lie only against the order of DGTR's for determination of dumping, injury, and causal link and not against the Ministry of Finance for levying or non-levying of the said duty. This change will have far reaching implication as several cases are pending before the CESTAT challenging the failure to impose the said duty by Ministry of Finance even after the DGTR has recommending the same. Thus, the domestic industry would only have the recourse to reapply before DGTR and not challenge before the CESTAT if no action is taken by the Ministry of Finance.

6 GAIL (India) Ltd. v. Commissioner of Central Ex. & S.T., Vadodara-II (2019 (24) G.S.T.L. 626 (Tri. - Ahmd.)

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XIV

Changes in Rates of Customs Duty on Various Goods

1. Rescinding of concessional entries

The Bill has rescinded various entries in concessional notifications which are no longer relevant or have become redundant or for promoting 'Make in India' initiative. After a comprehensive evaluation of customs duty exemptions, more than 140 exemptions are proposed to be gradually phased out.

2. Project Import

The Bill proposes to amend Chapter 98 (including the sub-classifications of the First Schedule of Customs Tarrif Act, 1975) to exclude solar power project/plant from the entry of project imports. This will be effective from the date the Finance Bill, 2023 receives the assent.

The above proposed amendment seems to align the First Schedule with Notification No. 54/2022-Customs dated October 19, 2022 which withdrew the benefits to solar power projects/plants by amending the Project Import Regulations, 1986.

3. Rate changes

a) The First Schedule to the CT Act has been amended to revise the BCD rates on various goods. It has been proposed that tariff for multiples items as stated in rate notification would be shifted to the First Schedule of CT Act. The changes in the tariff schedule shall commence from May 01, 2023. Therefore, during the interim period the rate shall continue to operate through existing notifications.

b) Further, certain rate changes have been made effective from the date of the Bill or the date of notifications i.e., February 02, 2023, as the case may be, unless specially mentioned in the table. Item wise changes in rates of duty have been tabularized as below:

Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
	Gems and Jewellery			
1.	Imitation Jewelry	22% or INR 400 Kg, whichever is higher	25% or INR 600 Kg, whichever is higher	↑
2.	'seeds' for use in manufacture of rough lab grown diamond	5%	NIL[7]	↓
3.	Silver Dore[8]	6.10%	10%	↑
4.	Silver Bar[9]	7.5%	10%	↑

7 Effective till February 1, 2025.
8 AIDC rate has also increased from 2.5% to 4.35% and SWS has decreased from 0.61% to Nil.
9 AIDC rate has also increased from 2.5% to 5% and SWS has decreased from 0.75% to Nil.

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Sr. No.	Description	Pre-Budget rate	Post-Budget rate	Change
	Electronic goods and parts thereof			
5.	Lens of camera module of mobile phone	2.5%	Nil	↓
6.	Open cells of TV panels	5%	2.5%	↓
7.	Heat coils for use in manufacture of electric kitchen chimney	20%	15%	↓
8.	Electric kitchen chimney	7.5	15%	↑
	Chemicals and Petrochemicals			
9.	Crude glycerin for use in manufacture of Epichlorohydrin	7.5%	2.5%	↓
10.	Denatured ethyl alcohol	5%	Nil	↓
11	Styrene	2%	2.5%	↓
12.	Compounded rubber	10%	25% or INR 30 per kg., whichever is lower	
13.	Vinyl Chloride monomer	2%	2.5%	↑
14.	Naptha	1%	2.5%	↑
15.	Acid grade fluorspar containing by weight more than 97% of calcium fluoride	5%	2.5%	
	Automobiles			
16.	Vehicle (including electric vehicles) in Semi-Knocked Down (SKD)	30%	35%	↑
17.	Vehicles in Completely-Built Unit (CBU) form	60%	70%	↑
18.	Automobile parts/ components, sub-systems and tyres specified in List 36, when imported by notified testing agencies for the purpose of testing and/ or certification, subject to conditions	As applicable	Nil	↓
19.	Specific capital goods/ machinery for manufacture of Lithium- ion cell for use in battery of electrically operated vehicle (EVs) and in mobile handsets	As applicable	Nil	↓

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XV

Changes in Central Sales Tax Act, 1956

Section 19 of the CST Act provides for Central Sales Tax Appellate Authority (**"CSTAA"**) as an authority to settle disputes pertaining to inter-state sale. The Bill proposes to replace CSTAA with CESTAT to have jurisdiction over any disputes relating to inter-state sale of goods. Further the Bill proposes to transfer all pending cases with CSTAA and Advance Ruling Authority to the CESTAT.

The proposed amendment seems to be a move in the direction of providing one appellate authority to deal in cases falling under the indirect tax legislations and to provide clarity for disposal of pending appeals on account of non-functional CSTAA.

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XVI

Changes in Excise Duty

1. Exemption of excise duty on blended CNG

The CBIC vide Notification No. 05/2023-Central Excise dated February 1, 2023, effective from February 2, 2023 has exempted excise duty on blended CNG from so much of the amount as is equal to the GST paid on Bio Gas/Compressed Bio Gas (**"CBG"**) contained in the blended CNG. However, it is subject to the fulfilment of the following conditions:

a) Maintenance of detailed records regarding the quantum of Biogas or CBG blended with CNG, along with the value thereof, at the registered premises;

b) Submission of reconciliation statement, certified by the statutory auditor by 10th of the month following every quarter;

c) Payment of short-paid duty of excise along with applicable interest after such reconciliation.

This change would reduce the cost of blended CNG thus promoting the manufacturing of the green gases.

2. Cigarette related rate change

The Bill amends the specific rates of National Calamity Contingent Duty (**"NCCD"**) levied as duty of excise on specified cigarettes. The said amendment will come into effect on February 2, 2023. The rates are as follows:

Tariff Item	Description of goods	From (Rs per 1000 sticks)	To (Rs per 1000 sticks)
2402 20 10	Other than filter cigarettes, of length not exceeding 65 millimetres	200	230
2402 20 20	Other than filter cigarettes, of length exceeding 65 millimetres but not exceeding 70 millimetres	250	290
2402 20 30	Filter cigarettes of length not exceeding 65 millimetres	440	510
2402 20 40	Filter cigarettes of length exceeding 65 millimetres but not exceeding 70 millimetres	440	510
2402 20 50	Filter cigarettes of length exceeding 70 millimetres but not exceeding 75 millimetres	545	630
2402 20 90	Other cigarettes	735	850

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Glossary

ABBREVIATION	MEANING
AO	Learned Assessing Officer
AY	Assessment Year
BCD	Basic Customs Duty
BEPS	Base Erosion and Profit Shifting
Bill/ Finance Bill	Finance Bill, 2022
CA, 2013	Companies Act, 2013
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CCIT	Learned Chief Commissioner of Income Tax
CEA	Central Excise Act, 1944
CENVAT	Central Value Added Tax
CESTAT	Hon'ble Customs, Excise and Service Tax Appellate Tribunal
CGST Act	Central GST Act, 2017
CIT	Learned Commissioner of Income Tax
CIT(A)	Learned Commissioner of Income Tax (Appeal)
CT Act	Customs Tariff Act, 1975
Customs Act	The Customs Act, 1962
FA	Finance Act
FY	Financial Year
FM	Finance Minister
GST	The Goods and Service Tax
HC	Hon'ble High Court
HUF	Hindu Undivided Family
IFSC	International Financial Services Centre

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Glossary

ABBREVIATION	MEANING
IGST Act	Integrated GST Act, 2017
INR	Indian Rupees
InvIT	Infrastructure Investment Trust
IRA	Indian Revenue Authorities
ITC	Input Tax Credit
IT Act	Income Tax Act, 1961
IT Rules	Income Tax Rules, 1962
ITAT	Hon’ble Income Tax Appellate Tribunal
NBFC	Non-Banking Financial Companies
OECD	Organisation for Economic Co-operation and Development
PAN	Permanent Account Number
PCIT	Learned Principal Commissioner of Income Tax
PE	Permanent Establishment
REIT	Real Estate Investment Trust
RBI	Reserve Bank of India
SEZ	Special Economic Zone
SC	Hon’ble Supreme Court
TDS	Tax Deduction at Source
TCS	Tax Collection at Source
UOI	Union of India
UTGST	Union Territory Goods and Services Tax
UTGST Act	Union Territory Goods and Services Act, 2017
VAT	Value Added Tax

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