The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

AMRITSAR BRANCH OF NIRC

NEWSLETTER FEBRUARY 2021

UNION BUDGET 2021

Historic Mou

ICAI-KCA

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CONTENTS

One of the Major Sutra (teachings) of Chanakaya Niti is "नैकं चक्रं परिभ्रम्यति।" which means that a chariot cannot be drawn by a single wheel, the ruler cannot rule without a team

From the Desk of the Chairman...

Esteemed Professional Colleagues

जय श्री राम

I hope that this communication finds you in best of health & spirits. Covid-19 has completely changed the world of assumptions we are living in. Life has changed significantly, but it's an opportunity for us to become more learning agile. The faster we accept new things, the better we will be able to deal with resurgent circumstances. It is a time of great hope and opportunity as digital transformations, which were sweeping across all the facets of all Industries, across the globe, have accelerated to deliver unexpected and delightful results. We can begin by implementing digital transformation into our own offices and setting examples in the industry. The time to upskill and upscale is now! Future of our Profession is bright, but it poses its own challenges. We need to add value in ways, we had never imagined in the earlier times.

This Edition of E-Newsletter deals with Budget 2021, Budget is always awaited with great anticipation for the tone that will be setup by the finance minister for coming year. Expectations are always high more so as our honorable Finance Minister promised "with the Budget 2021 like never before" fort the people of India. We do hope that this Budget will lead to sustained economic growth, boost consumption which results in great demand, and making "Aatmanirbhar Bharat".

We evolve through adopting desperate measure in desperate times. The great pandemic, COVID-2019 could not cripple down our high spirits towards our efforts for the profession. I feel proud in announcing that our branch established new landmarks in such tough times, we managed:

- Signing an MOU with Khalsa College for extending the necessary support to deliver guest lectures to students of Khalsa College, now we are in the process of MOU with Hindu College & Guru Nanak Dev University.
- IT enabled new look to ICAI Bhawan, Amritsar
- Constitution of GST/MSME helpdesk as per ICAI Guidelines for resolving queries of stakeholders
- Smooth and peaceful conduct of exams despite of pandemic.
- 2 Days Residential Workshop at Kasauli (H.P.)

Members, you have showered boundless love and blessings with victories to my cap in the last two contested elections. Your endless faith in me is respectable and a work a responsibility. I tried putting in the best of my efforts towards the best interest of the Amritsar branch. My tenure as a Chairman of Amritsar Branch will be over this month and new team will take over the charge. I congratulate in advance and welcome to new team under the leadership and professional acumen of new Chairman. A famous proverb says "Individually we are one drop, together we are an ocean". I extend my warm regards and is grateful to all my team mates and branch members for showering love and affection on me as always.

"I think team first. It allows me to succeed, it allows my team to succeed."

Stay Safe Stay Healthy

February, 2021

With Warm regards.

CA SANJAY ARORA

B.Com., F.C.A., D.I.S.A., (ICAI)

Chairman, 2020-21

Amritsar Branch of NIRC of ICAI

Chairman.

From the Desk of the Secretary...

Respected Members,

Warm Greetings,

"The greatest religion is to be true to your own nature. Have faith in yourselves" - Swami Vivekanand.

We with immense delight present our members another edition of Newsletter for the month of February 2021.

As we know Govt has launched Budget 2021 with new and some amended provisions of Income Tax and GST. The following are other proposed amendments:

- **IT relaxation for senior citizens of 75 years age and above:** It has been proposed to exempt the senior citizens from filing income tax returns if pension income and interest income are their only annual income source.
- **Reduction in time for IT Proceedings:** Except in cases of serious tax evasion, assessment proceedings in the rest of the cases shall be reopened only up to three years, against the earlier time limit of six years.
- **Constitution of 'Dispute Resolution Committee':** Those assessed with a taxable income of up to Rs. 50 lakh (for small and medium taxpayers) and any disputed income of Rs.10 lakh can approach this committee under section 245MA. It will prevent new disputes and settle the issue at the initial stage.
- **National Faceless Income Tax Appellate Tribunal Centre:** Provision is made for faceless proceedings before the Income Tax Appellate Tribunal (ITAT) in a jurisdiction less manner. It will reduce the cost of compliance for taxpayers, and increase transparency in the disposal of appeals.
- **Tax incentives to startups:** The tax holiday for startups has been extended by one more year up to 31st March 2022.
- **Pre-filing of returns to be forefront:** Pre-filling will be allowed for salary, tax payments, TDS, etc. Further, details of capital gains from listed securities, dividend income, etc. will be prefilled.
- **Disallowance of PF contribution:** In case the employee's PF contribution was deducted but not deposited by the employer, it will not be allowed as a deduction for the employer.
- **Section 43CA stands amended:** The stamp duty value can be up to 120% (earlier 110%) of the consideration if the transfer of "residential unit", which means an independent housing unit is made between 12th November 2020 and 30th June 2021.
- **Amendment to Section 44ADA:** Section 44ADA applied to all the assessees being residents in India. Now onwards, it applies only to the resident individual, Hindu Undivided Family (HUF) or a partnership firm, other than LLP.

During the month of January 2021, Amritsar branch organized two CPE Hour programs one of which was Virtaul CPE Meeting on Topic of Strategies to grow Practice post covid, by eminent speker CA K. Raghu Past President ICAI and one Physical seminar was organized at ICAI Bhawan on the GST Topics in which CA Navya Malhotra and CA Aanachal Kapoor deliberated on the GST Topics. Seminar was also telecasted live on Youtube Channel of Amritsar Branch. On 26th Janaury, We also celebrated Republic day by doing flag hosting and distributed blankets to needy people. I with immense pleasure inform you that Youtube channel of Amritsar Branch has crossed 1000 subscibers as every CPE event is being uploaded on the youtube channel for the benefit of the members of Amritsar branch, but also any other Professional can take benefit of our channel.

In this month we will propose to organize a cricket match and other games for the members of Amritsar branch.

Stay Safe and Stay Healthy

February, 2021

With Warm regards.
Sd/-
CA Shashi Pal
Editor in Chief
Secretary, ICAI Amritsar Branch

Secretary

CA JATINDER ARORA

OUR MENTORS

A man of professional wisdom and strong discipline CA Jatinder Arora has contributed to the profession for more than 45 years. A blend of experience,foresight, technical expertise and professional excellence worth emulating, he qualified in the year 1977 and ever since has been in practice. An altruistic hard worker bestowed with exceptional organisational, networking, administrative and leadership skills CA Jatinder Arora has made noteworthy contributions.

He runs his own proprietorship firm "R.N. Jatinder & Co" and a partnership firm "Arora Khanna & Associates" with his senior associate CA Anil Khanna and both his sons CA Puneet Arora and CA Suneet Arora and other partners, having branches in Amritsar and other cities.

His guidance and mentorship has always been a catalyst for his students, juniors and associates working in diverse fields.

CA. JIWAN LAL KHANNA

OUR MENTORS

Jiwan Lal Khanna, is born in Calcutta and brought up in Amritsar, Punjab. Flourished in Amritsar as well as in and around Delhi. Completed Commerce Graduation in the year 1976 from DAV College, Amritsar followed by Article ship with M. L. Aggarwal & Co., Amritsar.

Competed CA in the year 1982. And decided to establish his firm, J.L.Khanna & Co. The organization has flourished in and around Amritsar, ever since its inception in 1982. And has recently been converted into partnership in the year 2010. He is actively engaged as a head partner in the firm and playing a pivotal role in the organization which has grown and established its name with an experience of 39 years. He specializes in the field of direct taxation and has a vast experience in Auditing, bank financing and indirect taxation ranging across various sectors of society.

Every day brings a new opportunity to learn, evolve and grow is the core belief that he follows. Which has motivated him to Complete Course of Information System audit (ISA) in March 2004. He also holds the Certificate of Independent director issued by ICAI and is eager to learn and adapt to the rapidly changing professional environment.

Meticulous Analysis of proposed amendment in provision relating to charitable trust, Provident fund and TDS

CA ROHIT KAPOOR
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INTRODUCTION: This article gives an Insight on the proposed amendments by Finance Bill, 2021 presented on 01.02.2021, where in (Chapter II & III) clause to 2 to 79 of Finance Bill, 2021 dealt with Direct tax provisions. As per Clause 1(2) (a) of Finance Bill, 2021, the provisions of Clauses 2 to 79 shall come into force on the 1st day of April, 2021.

I. Rationalization of provision relating to Charitable Trust:-

Clause of Finance Bill 2021	Existing Provisions	Proposed amendment
Clause 6 of Finance Bill(Section 11 & 10(23C) of Income tax Act, 1961) [Corpusdonation]	1. CorpusDonation:- Up to 31.03.2020:- • Corpus donation received institutions approved u/s 10(23C) (iv), (v), (vi) & (via) wastaxable. • Corpus donation received by institutions registered u/s 12 was exempt as per sec. 11(1) (d). From 01.04.2020-31.03.2021:- (Finance Act 2020):- • Explanation to Third proviso inserted in sec 10(23C):- which exempts the corpus donation receivedby approvedinstitutions/universities/ othereducationalinstitutionscoveredinclause 10(23C)(iv), (v), (vi) & (via). 2. The corpus donation received was not required to be invested in the modes prescribed as per sec. 11(5).	Corpus Donation:- *1.* Income of the funds or trust orinstitution or any university or any educational institution or any hospital or medical institution shall not include income in form of voluntary contribution made with specific direction that they shall form part of corpus of such fund ***"subject to the condition that such voluntary contribution invested or deposited in one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus."*** [such condition is inserted in explanation 1 after third proviso to sec. 10(23C)] *Similarly parallel amendment is made in sec. 11(1) (d)].* ***Conclusion:-*** Therefore, it is mandatory to make investment under section 11(5) for voluntary contribution made with specific direction. **{ Please refer Example 1 below}** **1.1** It is advised that trust maintains separate investments funds as prescribed under section 11(5) for corpus donations. Receipt of corpus donation and its application must be identified. 2.Corpus Donation not to be treated as application but will be treated as applicationsubsequentlyinthe yearinwhichitisinvestedin11(5):- Furthermore, as per explanation 2(i) as inserted in third proviso to sec.
	3. Presently repayment of loan by charitable trust is allowed as application of income and the same was also as per various judgments [242 ITR 703] DIT(E) v. GovinduNaikar Estate and circular No. 100 dated 24.01.1973.	10(23C) by Finance bill 2021 the application out of corpus shall not be considered as application for charitable or religious purposes. However, the amount not treated as application of income shall be treated as application in the P.Y. in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in sub-section (5) of section 11 maintained specifically for such corpus **from the income of that year and to the extent of such deposit or investment.** *{Similarly, explanation 4(i) has been insertedin sec. 11(1).}* **{Please refer Example 2 below}** 3. Repayment of loan to be treated as application:- Moreover, as per explanation 2(ii) as inserted after third proviso to sec. 10(23C) by Finance bill 2021, that application made out of loan funds shall not be treated as application in the year of borrowing/ incurrence of expenditure. The same will be treated as application only in the year in which such loan is repaid by the charitable trust.{Similarly, explanation 4(ii) has been inserted in sec. 11(1).}{Please refer Example 3 below}

	3.1 It was noticed that certain tax payers were claiming dual applications. Once at the time purchase of fixed assets and other at the time of repayment of loan. Such practice has been plugged by Finance Bill 2021 4.The assesses were entitled to carry forward excess deficit incurred during the year and the same were adjusted against the receipts of subsequent year and the same view was approved by judgments of SC i.e. CIT (E) v. Subros Educational Society [2018] 96 taxmann.com 652.	4.**Set off or excess allowance of P.Y.:-** Moreover, as per explanation 2 inserted after 21st proviso to sec. 10(23C) that for the computation of income required to be applied or accumulated during the previous year shall be made without set off or deduction or allowance of any excess application, of any of the year preceding the previous year.{***Similarly, explanation 5 has been inserted in sec. 11(1)}.***Therefore, the earlier judgments of SC i.e. CIT (E) v. Subros Educational Society[2018] 96 taxmann.com 652(SC), DIT v. Raghuvanshi Charitable trust[2011] 197 Taxman 170 (Delhi), ITO (E) v. Dr. Bhai Mohan Singh Foundation [1985] 12 ITD 495 (Delhi)now are not relevant as the deficit of the last year is not allowed as application w.e.f. 01.04.2021. **{ Please refer Example 1 below}**
Clause 5 of Finance Bill 2021[Section 10(23C(iiiad&iiiae))	**1.** Sub-clauses (iiiad) of clause (23C) of the section 10 provides for the exemption for the income received by any university or other educational institution existing solely for educational purposes and not for purposes of profit **if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or** {Similarly10(23C)(iiiae)provides for the exemption for the income received by any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.} 2. The prescribed limit for these two sub - clauses was Rs 1 Crore as per Rule 2BC of the Income -tax Rule. 3. The word used in the section was receipts from such institution. Therefore, if the society has two separate schools: - School No. 1 and School No. 2. They were taking exemption u/s 10(23C) per school. The same has been accepted by some of the Tribunals.	**Exemption to educational or medical institutions having annual receipt of up to Rs. 5 crores** 1. The said limit is proposed to be increased to Rs. 5 crores. 2. Earlier if a society has two schools, then limit of Rs. 1 crore was institution wise. As per proposed amendment, section 10(23C) is reproduced as under: - 10(23C)(iiiad) *"Any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual ~~receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed~~ receipts of the* ***person*** *from such university or universities or educational institution or educational institutions do not exceed five crore rupees";* or {***Similar amendment is proposed in sec. 10(23C)(iiiae)*** **Conclusion: -** a) From the above, it can be visualized that the word used in the bill is person and whereas the word used in the earlier section was receiptsfrom such institution. Therefore, if the society has two separate schools: - School No. 1 and School No. 2. They were taking exemption u/s 10(23C) per school. But now this has been plugged and the limit has been extended to Rs. 5 Crore and as per the wording of the sections, words now used are receipts for the person. Therefore, such benefit will not be available.As such the limit as envisaged in sec. 10(23C) (iiiad) or (iiiae) is Rs. 5 Crore quo assessee and not quo institution.

Example1: - Corpus Donation treatment (Refer to point No. 1)		
Particulars	**Up to 31.03.2021**	**F.Y. 2021-22**
General Contribution	400	400
Corpus donation	150	150
Total Funds	550	550
Less:- Exemption corpus u/ s 11(1)(d)	150	0
Less:- Normal Application	500(400 general and 100 from corpus)	400(100 applied out of corpus, so no exemption)
Total Exemption	650	400
Surplus/ Deficit	(100) Deficit to be carried forward as per Subro Education Society judgment.	150 (the deficit of earlier year i.e. Rs. 100 shall not be allowed to be set off) (As per point no 4 of proposed amendments as discussed above.

Example 2: - Corpus Donation not to be treated as application but will be treated as application subsequently (Refer to point No. 2)		
Particulars	**F.Y. 2021-22**	**F.Y. 2022-23**
General Contribution	400	400
Corpus donation	150	0
Total Funds	550	400
Amount invested in 11(5)	0	150
Less:- Normal Applicationi.e Rs 400 out of Normal and Rs 150 out of corpus	550	250
Total Exemption	400 (refer Point No 1 above)	400 (i.e 250 as per section 11(1)(a) and Rs 150 as per amendment in section 11(1)(d))

Example 3:- Repayment of loan (Refer to point No. 3)

Particulars	**Finance Bill 2021**
Voluntarily Contribution	510
Fixed Asset Purchased	700
Loan availed	200
Repayment of loan	10
Total application	510 (i.e 500 For fixed assets purchased and Rs 10 for Repayment of loan

II. Taxability of Interest on various funds where income is exempt

Clause of Finance Bill 2021	Topic	Existing Provisions	Proposed amendment
Clause 5 of Finance Bill 2021 (Section 10(11) of Income Tax Act, 1961	Interest on various funds where income is exempt	Sec. 10 :- In computing the total income of a previous year of any person, any income falling within any of the following clauses . . . . . . (11) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies [or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette]; 10 (12) the accumulated balance due and becoming payable to an employee participating in a recognized provident fund, to the extent provided in rule 8 of Part A of the Fourth Schedule ;	Sec. 10 :- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included— (11) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies [or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette]; . . . . . . ***the income by way of interest accrued during the previous year in the account of a person to the extent it relates to the amount or the aggregate of amounts of contribution made by that person exceeding two lakh and fifty thousand rupees in any previous year in that fund, on or after the 1st day of April, 2021 and computed in such manner as may be prescribed;";{Similar amendment is made in sec. 10(12)}*** ***{Please refer Example 4}***

1.From the above it is clear that taxability will be there only for those employees who are contributing Rs 2.50 lacs or more during a financial year in their provident fund account.

2. The provident fund balance will include employer contribution and employee contribution.

3.However, the employer contribution is exempt up to 12% of salary as prescribed in the section. However, there is ceiling in limit amounting to Rs. 750000/- imposed by Finance Act 2020. The same is as per Sec. 17(2)(vii) of Income Tax Act, 1961 inserted by Finance Act 2020 w.e.f. 01.04.2021. Therefore, if the employer contributes more than 750000, it will be taxable in the hands of employee.

4.Similarly Employee's contribution, which is mandatory 12% of salary as prescribed in the section. But there is no cap on such limit for employee contribution and as such employee used to deposit much more than the ceiling limit of 12%. Such practice was adopted as whole amount of interest is tax free which was otherwise taxable if invested in other deposits.

5.In order to discourage employees who are enjoying tax free interest on their PF proviso has been inserted in section 10(11) and 10(12), so that taxability of interest on PF becomes at par with interest from other investments.

I. **Example4:-Taxability of Interest on various funds where income is exempt**

Employee	Contribution in FY 2021-22 (Rs in Lacs)			Interest earned in FY 2021-22 (Say 8%) (Rs in Lacs)		
	Employer	Employee	Total	Employer	Employee	Total
A	2.00	2.00	4.00	0.16	0.16	0.32
B	2.00	3.00	5.00	0.16	0.24	0.40
C	2.00	6.00	8.00	0.16	0.48	0.64
D	2.00	2.40	4.40	0.16	0.192	0.352

1. Point for taxability of interest on PF if annual contribution made by employee is in excess of Rs 2.50 lacs. In the above case of Mr. A & D, nothing will be taxable on account of interest on PF as the annual contribution is less than Rs. 250000.
2. In case of Mr. B & C interest on PF will be taxable since his annual contribution is in excess of Rs 2.50 lacs (i.e Rs 3 Lacs). Therefore the total interest to be taxable in the case of Mr. B & C will be Rs. 4000 (8% on Rs. 50000 i.e. 300000-250000) and Rs. 28000 (i.e. 8% on 350000(600000-250000))

III. TDS & TCS Provisions:

Proposed amendment	Remarks
Clause 48 of Finance Bill 2021 **(New section 194Q inserted) Deduction of tax at source on payment of certain sum for purchase of goods** (1) Any person, being a buyer who is responsible for paying any **sum to any resident** (hereafter in this section referred to as the seller) **for purchase of any goods of the value** or **aggregate of such value** exceeding **fifty lakh rupees in any previous year**, shall, **at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode**, **whichever is earlier,** deduct an amount equal to 0.1 per cent. Of such sum exceeding fifty lakh rupees as income-tax. Explanation.—For the purposes of this sub-section, **"buyer"** means a person whose **total sales, gross receipts or turnover from the business** carried on by him **exceed ten Crore rupees during the financial year immediately preceding the financial year** in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.	(1) Purchase transaction hitherto were outside the ambit of tax deduction at source mechanism. However, the said scope has been expanded by earlier introducing section 206(1H), now imposing additional burden on the buyer to deduct TDS for purchase of goods. (2) It is proposed to insert new provision, viz., section 194Q to provide for deduction of tax at source by any buyer who is responsible for paying any sum to resident seller for purchase of any goods of the aggregate value exceeding Rs. 50 Lakhs in any previous year, at the time of credit or payment, whichever is earlier, at an amount equal to 0.1% of sum exceeding RS. 50 lakhs. (3) "Buyer" for this section means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 Crores during the financial year immediately preceding the financial year in which the purchase of goods is carried out. (4) By the virtue of proviso to section 206(1H), if the transaction is subject to TDS, then such transaction will be outside the ambit of TCS. The same has been mentioned in section 194Q.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly. (2) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty. (3) Every guideline issued by the Board under sub -section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income tax authorities and the person liable to deduct tax. (4) The provisions of this section shall not apply to a transaction on which — (a) tax is deductible under any of the provisions of this Act; and **(b) Tax is collectible under the provisions of section 206C other than a transaction to which sub-section (1H) of section**	4.1) As per sec. 194Q(5), the TDS provisions under sec. 194Q will not be applied, if TDS is deducted under any other section and TCS is collected under any other section other than sec. 206C(1H). Meaning thereby 194Q will prevail over sec. 206(1H). (5) Sec. 194Q is only applicable for payment for purchase of goods and not for services and that too from resident seller. (6) As per provisions of sec. 206AA keeping in view sec. 194Q, if a person is not having PAN number, then TDS rate will be @5% (7) Furthermore, provisions of sec. 40(a) (ia) will also applicable, if assessee fails to deduct TDS on such purchases, then 30% of such purchases will be disallowed.
Cause 51 of Finance Bill 2021 (New section 206AB) **Special provision for deduction of tax at source for non-filers of income-tax return.** (1) **Notwithstanding anything contained in any other provisions of this Act**, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than sections 192, 192A, 194B, 194BB, 194LBC or 194N on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as Deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely: — (i) at twice the rate specified in the relevant provision of the Act; or (ii) at twice the rate or rates in force; or (iii) At the rate of five per cent. (2) If the provisions of section 206AA is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.	(1) It is proposed to insert two new sections (i.e., 206AB and 206CCA) in the Act as special provisions providing for higher rate for TDS / TCS (i.e. twice the rate under the Act or 5%, whichever is higher) for the non-filers (specified persons). (2) Specified person means a person who has not filed ITRs for both of the two assessment years relevant to the two financial years which are immediately before the previous year in which tax is required to be deducted or collected within the time prescribed under section 139(1) and the aggregate TDS/ TCS in his/ her is Rs.50, 000 or more. (3) If the assessee do not have PAN then the rate higher of the (a) rate prescribed under section 206AA and (b) rate prescribed under section 206AB will be applicable. (4) The proposed amendment increases the compliance burden on the assessee in as much as that the deduct or / collector is now required to obtain or verify the income tax returns filed by the payee even in

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted, for which the time limit of filing return of income under sub-section (1) of section 139 has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a nonresident who does not have a permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.'

the cases where ITRs would not have been filed due to other reasons.

(5) Let us understand same with the help of example. if we have to check this provision for 1st July 2021, then he has to check for F.Y. 2018-19 and 2019-20, because the return due date for both the previous year must have been expired by 01.07.2021. Furthermore, there is one more condition which needs to be satisfied that consolidated TDS exceed 50000 for both the years took together or individually.

(6) Earlier there were two sections, one was sec. 206AA and 206CC. The same were applicable for non-furnishing of PAN in case of TDS and there were three limits:-

(A) The rate as per Act.(Rate in Income tax Act)

(B)Rate in force. (I.e. Rate applicable during the year. Like in COVID time TDS rates were reduced by 25 %.)

(C) 20%

Whichever is higher

(7) However, the two sections as introduced by Finance Bill 2020, i.e. sec. 206AB and sec.206CCA. Sec. 206AB are in respect of rate of TDS on non-filers of income tax returns and sec. 206CCA is special provision for collection of tax for non-filers. Therefore, in a case, a person has no PAN and also not filed income tax return, then in that case comparison of sec. 206AA/206CC and sec. 206AB/206CCA. By comparing both the case whichever is higher shall prevail. The same is as per section 206AB (2).

Clause 52 of Finance Bill 2021: Section 206CCA Special Provision for collection of Tax at source for non-filers of income-tax return ***The new section for TCS, i.e. section 206CCA has been inserted by Finance Bill, 2021 and the provisions are same as in case of TDS as referred in sec. 206AB***

FAQ's

Que 1:- If the assessee has paid advance for payment of purchases in April 2021. Whether the provisions of Sec. 194Q will be applicable?

Answer :- From visualization of section 194Q, TDS is required to be deducted at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier. Hence it is applicable on advances as well. But as section 194Q is applicable w.e.f. 01.07.2021, therefore it is not applicable on advance for payment of purchase in April, 2021.

Que 2 :- At what amount we have to deduct TDS? Whether it will include GST amount or not?

Answer :- For this we have to refer circular No. 23/2017 which clearly states that GST amount shall not be included for deduction of TDS. The clarification is still awaited from CBDT.

Que 3 :- From which date the threshold limit of Rs. 50 lakhs will be computed?

Answer :- In this respect, CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.

Applying the same principle as provided in the circular, it should be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

Que 4:- Whether limit of turnover of 10 Crore includes turnover of only goods or it includes services also?

Answer :- Turnover of Rs. 10 Crore includes both the turnover of goods or services andboth.

Que 5 :- Whether the provision of section 194Q will prevail over section 206C (1H)?

Answer :- As per the provision of sec. 194Q (5), it is clearly written that section 194Q will prevail over sec. 206(1H).

Que 6 :- When tax shall be deducted under section 194Q?

Answer :- The tax shall be deducted subject to following conditions :-

(a) Purchase should be from resident seller;

(b) Purchase of goods for a value or aggregate of value exceeding Rs. 50 lakhs in any previous year; and

(c) Buyer should not fall in the exclusions as mentioned in sec. 194Q (5).

The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision except Section 206C (1H). Thus, if a transaction is subject to TCS under Section 206C (1H), the buyer shall have the first obligation to deduct the tax. If he does so, the seller will not have any obligation to collect the tax under Section 206C (1H).

Que 7:- Is a buyer importing goods from outside India required to deduct TDS under sec. 194Q?

Answer: - Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision. In the case of import, the seller is a non-resident. Therefore, buyer will not have any obligation to deduct tax under this provision. However provision relating to equalization levy and sec. 195 will be applicable.

Que 8:- Whether a transaction in securities through stock exchanges shall be subject to TDS under this provision?

Answer :- In respect of sec. 206C (1H) the CBDT vide Circular No. 17 of 2020, clarified that provisions of Section 206C (1H) shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporations located in International Financial Service Centre (IFSC).

Applying the same clarification on sec. 194Q, it can be assumed that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

Que 9 :- What shall be consequences of non-filing of TDS return?

Answer :- The provisions of sec. 234E & 271H will be applicable in case of non-filing of TDS return. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues. However, the amount of fee shall not exceed the total amount deductible or collectable, as the case may be. Section 271H will be applicable if a person fails to file the TDS return or does not file it by the due dates. In case of inaccurate particulars are furnished in TDS return, then also penalty u/s 271H will be applicable. The minimum amount of penalty for failure to furnish TDS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 1,00,000.

Detailed Analysis of proposed Amendments by Finance Bill, 2021 in GST Acts

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(With Practical Coverage and Reasoning)
(As on 08-02-2021)

INTRODUCTION: This article gives an Insight on the proposed amendments by Finance Bill, 2021 presented on 01.02.2021, where in (Chapter IV) clause 99 to 114 of Finance Bill, 2021 dealt with GST provisions (CGST, IGST). As per Clause 1(2) (b) of Finance Bill, 2021, the provisions of Clauses 99 to 114 shall come into force on such date as the Central Government may, by notification in Official Gazette, appoint.

Clause of FB,2021	CGST Section to be Amended	Old Provision	New Provision	Analysis
99	7 (Scope of Supply)	7) (1) For the purposes of this Act, ... includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) Import.....	7) (1) For the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration. Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;". (b) Import.....	IMPACT • The said retrospective amendment is proposed to safeguard levy of the tax on the amount collected by clubs, associations, society or any such bodies from its members or constituents. •Non applicability of Doctrine of Mutuality. REASON To put end to litigation arising out of various Judicial pronouncements •Calcutta Club Ltd. [2019]110 taxmann.com 47 SC •The doctrine of mutuality continues to be applicable to incorporated and unincorporated members club after the 46th Amendment adding article 366(29-A) to the Constitution of India. •The Young Men's India Association[1970] 1 SCC 462] (Supra) and other judgments which applied this doctrine continue to hold the field even after 46th Amendment. • Sub- clause (f) of article 366(29-A) has no application to members clubs. Article 366(29-A) :- (46th Amendment) tax on the sale or purchase of goods includes:- (a)... (e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; •Rotary Club [2019] 110 taxmann.com 182 (AAR-Maharashtra)P- GST : Only membership fee recovered by club from their members, spent towards incurring various administrative expenses will be exempted from

				GST. • **[2020] 117 taxmann.com 746 (AAR - MAHARASHTRA) Apsara Co- operative Housing Society Ltd.** GST : Activities of a co -operative housing society, such as obtaining conveyance from builder, managing, maintaining and administering property of society, raising funds for achieving objects of society, undertaking and providing social, cultural or recrea tional activities, can be considered as rendering of 'supply' of services to its members under section 7 Litigation put to end, Government proposed a retrospective amendment by way of insertion of this sub clause (aa) to ensure the levy of tax on the amounts collected from the members towards the supply of goods/services. **CRITICAL ANALYSIS : -** Two Deeming Fictions • the person and its members or constituents shall be **deemed to be two separate persons** • **supply of activities or transactions** inter se shall be deemed to take place from one such person to another **Points to Ponder** • Validity of Retrospective amendment, in light of Test of Justice and fairness. Another round of Litigation. Additional burden on taxpayer being retrospective. • Definition of Distinct person not amended to overcome the concept of Doctrine of Mutuality, deeming fictions applied. • Ill drafting of the language of the proposed amendment.(e.g Supply of activities or transactions ?)
113	**Amendme n t i n schedule II**	(7) The following shall be treated as supply of goods, namely:- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	~~(7) The following shall be treated as supply of goods, namely:-~~ ~~Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.~~	• Issue of Consideration in light of Indian Contract Act, being passed from one perso n to another.
100	**16 (Eligibility and conditions for takin g input tax credit.)**	Section 16 (1)..... (2) Notwithstanding anything contained in this section, no person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,- - (a)he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;	Section 16 (1)..... (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,- - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed; **(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner ..... 37:".**	**IMPACT** • Rule 36(4) (inserted vide N.N. 49/2019 -CT) provided statutory backing to the most disputed CGST Rules. • This provision would give force to entries appearing in GSTR 2A/ 2B as a valid proof of supply. **REASONS** • To put end to litigation, regarding Legal sanctity of Rule 36(4) which was challenged being ultra vires the Act in various Writ Petitions. • To overcome in a way to pre-GST legal jurisprudence that supports the view that as l ong as the purchasing d ealer has taken all the steps req uired for being eligib le for ITC, he could not be expected to k eep track of whether the selling dealer has in fact deposited the tax c ollect ed with the governm ent or has lawfully adjusted it a gainst his out put tax liability . • To overcome Fake Invo icing issues, wh en read in conjunction with other Amendments pertaining Suspension of GSTN in case of mismatch of ITC in r eturns as per GST R 2A/2B an d blocking on non filing of GSTR 1. **CRITICAL ANALYS IS** • The proposed amend ment although giving f orce to Rule 36(4), but somewhere challenging the leverage of Additional 5% as provided by the Rule. • Asking the impossible: - The above provision leads to controls the action of supplier by the recipient, thereby overruling the past

				decisions like Arise India .Ltd (Delhi HC), Kay Kay Industries, where it was held to be unreasonable. • The amendment being prospective in nature, the validity of Rule 36(4) prior to its insertion is highly disputed
101	**35 (Accounts and other records.)**	Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed. [1][Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed forauditing the accounts of local authorities under any law for the time being in force.]	~~(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.~~ [1][~~Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force~~.]	➢ Section 35 and 44 has been amended to **remove the Mandatory requirement of GST audit by professionals**. ➢ The requirement for audited reconciliation has been **replaced by a self-certified reconciliation statement** reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically. ➢ Thus, every person required to file annual return would be required to file a self-certified reconciliation of his as well. **Shift of responsibility from auditor to taxpayer**. ➢ This proposition although is a loss of opportunity for the professionals, but on the other side of the coin, it is **lesser responsibility on the part of professional** and more on the part of taxpayers. This may further **lead to loss of revenue to the government** and **more tax burden at the time of assessment to the taxpayers**. Need to **compare tax cost vs. compliance cost.** ➢ This proposed amendment is **not applicable for F.Y. 2019-20**.
102	**44 (ANNUAL RETURN)**	(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year. [4][Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein: Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.] (2) Every registered person who is	**Every registered person**, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person **shall furnish an annual return which may include a self certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year,** with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed: Provided that the Commissioner may, on the recommendations of the Council, by notification, **exempt any class of registered persons from filing annual return under this section:** Provided further that **nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whosebooksof account are subject to audit by the Comptroller and Auditor**	

		required to get his accounts audited in accordance with the provisions of sub -section (5) of section 35 shall furnish, electronically, the annual return under sub -section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be pre scribed. [6][*Explanation* .- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the [7][31st January, 2020] and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.]	**General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.".**	
103	**50 (Interest on delayed payment of tax.)**	Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]	**"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is fur nished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.".**	**IMPACT** • Retrospective amendment made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017. • Right to claim refund arises, wherever the interest has been paid on gross GST liability . **REASON** • The said amendment was proposed to be ret rospective in one of GST Council Meeting dated 14.03.2020 and later on the said proviso not being brought retrospectively , it was assured that no recovery would be made from the tax payers for the preceding periods. **CRITICAL ANALYSIS** This provision does not give relief on the following amounts: - • On Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger. • Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through IT C. As the words in poviso says, Payable and declared in the return for the said period. eg. A taxpayer paid short tax of Rs. 50000 in December, 2020. The same was paid using the carried forward ITC in the month of January, 2021. The interest on tax of Rs. 50,000/ - for the period of delay is required to be paid, even if the same is paid by ITC. • Return not filed and tax not paid upto initiation of any proceedings under Section 73/74 in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.

104	**74 (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.**	Explanation to section 74(1): ***Explanation 1.***–For the purposes of section 73 and this section,– (i) the expression "proceedings in respect of the said notice" shall not include proceedings under section 132; (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against **all the persons** liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.	Explanation to section 74(1): ***Explanation 1.-*** For the purposes of section 73 and this section,– (i) the expression "proceedings in respect of the said notice" shall not include proceedings under section 132; (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against **all the persons** liable to pay penalty under sections ***122 and 125*** are deemed to be concluded.	**ANALYSIS** • Delinking of proceedings under section 73, 74 from the proceedings u/s 129(Detention), 130(Confiscation) (prevailing Anomaly removed) • Section 74 of the CGST Act is being amended so as seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax. • The proceedings against other persons u/s 129, 130 wou continue even after conclusion of proceedings u/s 73 or 74. • This means that the conclusion of proceedings for a tax under Section 74 would not bring conclusion to proce under Section 129 / 130 in respect of transactions recor the taxpayer for such tax period and made part of proceeding under section 74.
105	**75 (General provisions relating to determination of tax.)**	75 (12)……..	75 Explanation inserted: **'Explanation.—For the purposes of this sub section, the expression "self assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 3**	**ANALYSIS** • This proposed amendment widens the scope of self ass tax by including tax payable in respect of output supp GSTR 1 but not included in GSTR 3B. • In cases where the liability in GSTR 1 exceeds that fro GSTR-3B, the same would be construed as "Self Ass Tax" GSTR-3B, the same would be construed as "Self Assessed Tax" • Such short payment may give rise to invocation of recoveries u/s 79 by virtue of sec. 75(12) and even attachment of bank accounts through amended provision of Sec. 83. • In case of mismatch between GSTR 1 and 3B, SCN need not to be issued and Opportunity of being heard need not to be provide (Although one may rely upon the judgment of LC infra 116 taxmann.com 205 (Karnataka) and Mahadeo Const Co. [2020] 116 taxmann.com 262.) • This will curb the malpractices whereby liability was more in GSTR 1 rather than GSTR-3B, to avoid tax payments.
106	**Sec. 83 (Provisional attachment to protect revenue in certain cases)**	(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property including bank account belonging to the taxable person in such manner as may be prescribed.	*Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, **he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub section (1A) of section 122, in such manner as may be prescribed.**".*	• Provisional attachment allowed in following chapters:- • **Chapter XII: Assessment (sec. 59- 64) (Audit not covered Sec 65, 66))** • **Chapter XIV: Inspection, search, seizure & Arrest. (Sec 67-72)** • Chapter XV : Demand and recovery (Sec 73-84) • Sec 62:- Assessment of non filers of returns. • Sec. 63:- Assessment of unregistered persons. • Sec. 64:- Summary assessment in certain special cases. • Sec. 67:- Power of inspection, search and seizure. • Sec. 73:- Determination of tax not paid or short pa erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts. • Sec. 74:- Determination of tax not paid or short pa erroneously refunded or input tax credit wrongly ava utilised by reason of fraud or any wilful misstatement o suppression of facts. • Thus, in place of specified sections, entire Chapters have prescribed to enlarge the scope of proceedings under provisional attachment of property can be made. This proposed amendment has impact that **gravity and the reach is further widened** meaning thereby this proposition intend increase the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act. **Eg. Now even a proceeding u/s. 71 (Access to business pr empowers the officer to attach the property/bank accounts because S** **empowers the officer to attach the property/bank accounts because Section 71 falls within Chapter XIV of the CGST Act.**

				Attachment of property of person covered 122(1A) To attach provisionally property including bank account of the taxable person or any person who retains the benefit and at whose order or instance the following transactions undertaken: a. Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice. b. Issuing any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder. c. Taking or utilising input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder. d. Taking or distributing input tax credit in contravention of section 20 (Input service distributor), or the rules made thereunder. From the initiation of the proceeding under the provisions of Assessment, Inspection, Search, Seizure & Arrest and Demand & Recovery till the expiry of one year from the date of the order made thereunder. ➢ *Initiation of any proceeding* It is settled position of law that **property can be attached only when the authority is of the opinion that after closer of proceedings there may be ultimate default of tax payment.** How the revenue officers can determines the tax evasion or quantum of tax evasion or ultimate default of tax payment by the tax payer in the beginning of proceedings are not clear. These provisions are challengeable before the Court.
107	**107 (Appeals to Appellate Authority.)**	Section 107(6):- No appeal shall be filed under sub-section (1), unless the appellant has paid- (a) ..... (b)	Section 107(6):- No appeal shall be filed under sub-section (1), unless the appellant has paid- (a) ..... (b)	• Appeal against order of detention and seizure of goods in transit can now be made only after making pre deposit of 25% of penalty as levied under Section 129(3). • This is in lieu of deposit of 10% of taxamount. • This will lead to blockage of working capital.
		(b)	***shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty- five per cent. of the penalty has been paid by the appellant.".***	
108	**129 [11 Detention, seizure and release of goods and conveyance s in transit]**	Notwithstanding..... 129(1)(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty; 129(1)(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods	Sec. 129(1) Notwithstanding..... 129(1)(a) on payment of the applicable tax **penalty equal to two hundred per cent. of the tax payable on such goods and**, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty; 129(1)(b) on payment of penalty equal to **fifty per cent. of the value of the goods or two hundred per**	➢ **Penalty for release of such detained goods &conveyance.** • **Owner comes forward:-** If goods taxable:- Penalty equal to 200% of tax payable on such goods If goods exempted:- 2% of value of goods or Rs. 25000/- w.e. is Less • **Owner does not comes forward** If goods taxable:- Penalty equal to 50% of value of goods Or 200% o the tax payable on such goods, whichever is higher, If goods exempted:- 5% of value of goods or Rs. 25000/- w.e. Less ***When the goods are taxable and the owner comes forward to pay penalty – then the amount payable would be equal to: Penalty equal to 200% of tax payable on such goods*** Example 1:- if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward, the amount payable would be equal to: Penalty ` 200% of 12,000/- = ` 24,000/-. **When the goods are exempt and the owner comes forward to pay at 2% of**

		such tax and penalty; 129(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances. Sec. 129(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c). **Sec. 129(4) No tax, interest or penalty** shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. Sec. 129(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 1[fourteen days] of such detention or seizure, further proceedings shall be initiated in	**tax payable on such goods, whichever is higher,** and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;"; ~~129(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.~~ Sec. 129(3) The proper officer detaining or seizing goods or conveyance shall issue a notice **within seven days of such detention or seizure**, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice,	**value of goods or ` 25,000/-, whichever is lower.**  Example 2:- , if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-  **When the goods are taxable and the owner does not come forward to pay the tax and penalty– then the amount payable would be equal to:** Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,  The taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to: Penalty ` 50,000/- [i.e. 50% of value of  goods} Or  200% of Rs. 12000=24000  i.e Rs. 50000/-  **When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: Penalty at 5% of value of goods or ` 25,000/-, whichever is lower**. Example: if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.
		accordance with the provisions of section 130:	for payment of penalty under clause (a) or clause (b) of sub- section (1)."; **No tax, interest or penalty** shall be determined under sub- section (3) without giving the person concerned an opportunity of being heard. Where the **person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub- section (3)**, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): ➢ Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:	NOTE: 1) Penalty under section 129 is an **'penalty in action',** that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. **(Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019))** **Critical Analysis: -** Conveyance and goods released, **only penalty** is required to be paid by the concerned person. • Instead of 100% Tax and 100% Penalty payment, now penalty of 200% of tax payable is applicable. • Goods cannot be released **provisionally** upon execution of bond or furnishing of security. • Time limit prescribed (i.e. 7 days) for issue of notice Mov-07 after detention order in MOV-06. • Further time limit for issue of order in MOV-09 restricted to 7 days from service of such notice on MOV-07. • Prior to proposed amendment the time period for payment of tax and penalty was 14 days from the date of seizure of conveyance and goods detained were liable for confiscation. Now, the goods or conveyance detained or seized shall become liable to be sold or disposed off within 15 days from date of receipt of copy of order imposing penalty. Earlier it was confiscation and now it is sale for recovery of penalty. • The transporter can now release the conveyance on payment of

				penalty imposed by the officer or RS. 100000/-whichever is less. This provision will give relief to transporter against whom the detention proceedings were initiated due to default of supplier or receiver.
109	Sec. 130 Confiscation of goods or conveyances and levy of penalty	Sec. 130(1) Notwithstanding anything contained in this Act, if any person- Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period **of seven days may be reduced by the proper officer** Where any fine in lieu of confiscation of goods or conveyance is imposed under sub- section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.	Sec. 130(1) where, if any person- Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer." ~~Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub- section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~	**Analysis:-** The **non-obstante clause is no more there** which means section 130 is now not having any overriding impact. • Section **130 proceedings delinked from Section 129**. Penalty of 100% of tax payable will become applicable. • Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit. • Relief to taxpayer, in case of **fine in lieu of confiscation of goods or conveyance** is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable shall be omitted. • The **above amendment has follows the ruling of Hon'ble Gujrat HC in Synergy Fertichem Pvt. Ltd. Which held that these are two differently operating sections as against Kerala HC judgment in Age Industries which stated 130 cannot be restored with putting 129 in operation** Empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act. The power can be exercised on any person and in respect of any information relating to any matter dealt with in connection with this Act. This is a very wide power and **allows officer to call for any information like**
				call records from telecommunication authority (though guidelines issued in this regard may need to be followed), detail of money transaction from banks in any account, construction records from Municipal bodies, records of transactions from any website, purchase details of its customers from any supplier etc.
110	Sec. 151:- **Power to call for information .**		The Commissioner or an officer authorized by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein."	**Analysis:-** • Empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act. • The power can be exercised on any person and in respect of any information relating to any matter dealt with in connection with this Act. • This is a very wide power and allows officer to call for any information like call records from telecommunication authority (though guidelines issued in this regard may need to be followed), detail of money transaction from banks in any account, construction records from Municipal bodies, records of transactions from any website, purchase details of its customers from any supplier etc.
111	**152 (14 Bar on disclosure of information)** **152(1)**	**Sec. 152(1) No information of any individual return or part thereof with respect** to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of **any proceedings under this Act.**	No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings	**Section 152 has been amended to allow use of such information so collected against a person after affording him an opportunity of being heard. Thus, information collected from different sources may be used to confirm and recover tax after affording reasonable opportunity of being heard to the person against whom such information is beingused.**

		Sec. 152(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.	under this Act ***without giving an opportunity of being heard to the person concerned"*** ~~Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.~~	
114	**16 of IGST Act, 2017 (ZERO RATED SUPPLY)**	. . . . both, namely:— (a) export of goods or services or both; or (b) **supply of goods or services or both** to a Special Economic Zone developer or a Special Economic Zone unit. Sec. 16(3) A registered person making zero rated supply shall be eligible to claim refund under	Sec. 16(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:– – (a) export of goods or services or both; or (b)**supply of goods or services or both *for authorised operations*** to a Special Economic Zone developer or a Special Economic Zone unit. Sec. 16(3) *A registered*	**Analysis:- Rule 96B now provided sanctity by proviso to S. 16(3)** • Scope widened by covering Zero Rated as against only Exports under Rule 96B Proviso says that refund is liable to be recovered with interest if proceeds not received within time limit as provided in FEMA. For SEZ supplies, there is ambiguity as to Time Period This proposed amendment **restricts the enjoyment of benefits of zero rating in case the supplies are made to SEZ developer or SEZ Unit in a way that now post this amendment the benefits will be available only to the supplies to SEZ developer or SEZ Unit which are for authorised operations and not for any other supplies**. Such authorised operations must be as per the SEZ Act, Rules an other relevant notifications.
		either of the following options, namely:— (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.	*making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:* *Provided that the registered person making **zero rated supply of goods** shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section* *50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for **receipt of foreign exchange remittances**, in such manner as may be prescribed.*	

Before amendment	After amendment
All the supplies to SEZ unit/ developer were considered as Zero Rated. At the time of refund, it was ensured whether these are for authorised operations. The said restriction was in Refund Rules, not part of parent Act. Zero Rated supplies (Exports or SEZ) **With payment of tax** was allowed **to all supplies**	Supplies to SEZ unit / developer would be considered as zero rated only if these are for authorised operations, and if not these would be taxable supplies. Such authorised operations must be as per SEZ Act. In case of supplies to SEZ units/ developers:- **only to the notified class of person**. In case of export of goods/ services:- only to notified class of persons and **notified class of goods/ services.**

Reason

- In some cases vendors of exporters claimed the bogus credits and discharged their liability through such credit. Because of these reasons Govt wants to restrict that IGST refund option only to few Organized Sectors.
- **Under with payment of tax method, there was encashment of ITC of capital goods, which will not be available.**
- Now the applications for refunds has to be made by exporters, from time to time.

The exporters were having an option

			Sec. 16(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify— *(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;* *(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.".*	(i) to **export with payment of IGST** and claim refund thereof; or **(ii) to export without payment of Tax under LUT and claim refund thereof.** Section 16 of IGST Act has been amended to limit the option of making export with payment of duty. The option is not made limited to notified class of goods or suppliers. Thus, in all cases refund shall be available to persons of tax paid on inward supplies. Also, this would take away the benefit of claiming refund of tax paid on capital goods by way of using such tax for payment of IGST and claiming refund of such IGST so paid. Further, any person who has received refund but yet not received the payment against the export shall also be required to deposit the refund so received along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the FEMA, for receipt of foreign exchange remittances. Whether the provision shall be used to recover refunds so granted in past shall be seen in coming days.

BUDGET 2021 – A BIG BLOW AT THE CONVENTIONAL RESTRUCTURING

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Introduction

The Finance Minister, Ms. Nirmala Sitharaman presented the Union Budget applicable for the Financial Year ("FY") 2021-22 on February 1, 2021. The Union Budget 2021 comes in the backdrop of unprecedented circumstances aimed at revival of the Indian economy post a global pandemic. While there was no direct support and incentive for the middle class, but there was some relief as the Budget refrained from levying a new COVID cess or surcharge. Also, no change in the tax rates has provided a big relief to the tax payers as their tax outgo did not increase. The Budget seeks to simplify the tax administration, litigation management and ease the compliance of direct tax administration which are all moves in the right direction to help India gain further on ease of doing business.

Amongst providing impetus to the revival and growth of our economy, the Finance Minister has proposed various direct tax amendments in the Finance Bill, 2021 ("the Bill"). However, it's, without a doubt, evident that various direct tax proposals and amendments in the Income-tax Act, 1961 ("the IT Act") brought by the Budget aims at targeting those major ambiguities which had been the epicenter of big corporate deals and restructuring. Three of such crucial direct tax proposals and amendments proposed in the Budget have been analysed below.

1. Wider scope for Slump Sale

Section 50B of the IT Act contains special provision for computation of capital gains in case of slump sale. Section 2(42C) of the IT Act defines slump sale as the transfer of one or more undertakings as a result of sale for lump sum consideration without value being assigned to individual assets and liabilities. This has been interpreted by some courts as 'other means of transfer' listed in Section 2(47) of the IT Act such as exchange, relinquishment, etc., being excluded from the purview of slump sale. Further, the debate on whether slump exchange is covered by the definition of 'slump sale' has come under judicial scrutiny time and again. Relying on various judicial precedents, the slump exchange did not attract provisions of Section 50B of the IT Act. result of sale for lump sum consideration without value being assigned to individual assets and liabilities. This has been interpreted by some courts as 'other means of transfer' listed in Section 2(47) of the IT Act such as exchange, relinquishment, etc., being excluded from the purview of slump sale. Further, the debate on whether slump exchange is covered by the definition of 'slump sale' has come under judicial scrutiny time and again. Relying on various judicial precedents, the slump exchange did not attract provisions of Section 50B of the IT Act.

Having said the above, there has always been a big dispute between the Assessee and the Revenue on the same. The contention of the Assessees who argue against the application of Section 50B is that the transfer constitutes an 'exchange' and not a 'sale' and that, there has to be a 'sale' for a transfer to qualify as 'slump sale'. On the other hand, the Revenue's contention is that even an exchange can qualify as slump sale and hence, slump exchange should be taxable as slump sale.

In order to make the intention clear, it has been proposed in the Budget to amend the scope of the definition of slump sale by amending the provision of Section 2(42C) of the IT Act so that all types of transfer as defined in Section 2(47) of the IT Act are included within its scope. Accordingly, slump exchange, being sale for non-monetary consideration would also be taxable under Section 50B of the IT Act. This clarification has caught hold of various big companies who use slump exchange as a means to transfer the entire undertaking without paying taxes as opposed to 20% tax on long term capital gains in case of slump sale. It is pertinent to note that the aforementioned amendment would be applicable from FY 2020-21 onwards.

2. Dissolution or reconstitution of Partnership Firm/ AOP

Section 45(4) of the IT Act provides that the profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of such firm or association of persons or body of individuals of the previous year in which the said transfer takes place. Further, the fair market value of the said capital asset on the date of such transfer shall be deemed to be the full value of the consideration for the purpose of Section 48 of the IT Act.

Various judicial pronouncements have held that the receipt of sum of money by a partner on dissolution or otherwise is a capital receipt in the hands of partners and hence not chargeable to tax under Section 45(4) of the IT Act. Secondly, there has always been uncertainty regarding the applicability of provisions of Section 45(4) in a situation where the assets are revalued in the books of accounts bringing about corresponding hike in the capital account balance and thereafter, payment being made to a partner or member in excess of his capital contribution. All of these concerns have been put to rest with the Budget.

With the proposed amendment in Section 45(4) of the IT Act, it has been clearly stated that where a partner or member receives any capital asset at the time of dissolution or reconstitution of the partnership or association of persons or body of individuals (hereinafter referred to as “Specified Entity”), which represents the balance in his capital account in the books of accounts of the Specified Entity at the time of its dissolution or reconstitution, then any profits or gains arising from the receipt of such capital asset shall be chargeable to tax as income of the Specified Entity under the head "Capital gains" in the previous year in which such capital asset is received by the partner or member. It is apposite to note that the balance in the capital account of the partner or member shall be calculated without taking into account any increase in the capital account due to revaluation of any asset.

In addition to the above, a new provision has been laid down under Section 45(4A) of the IT Act. It is applicable in a case where the money or other asset received by the partner or member is in excess of the balance in the capital account in the books of accounts of the Specified Entity at the time of its dissolution or reconstitution. The profits or gains arising from the receipt of such money or other asset by the partner or member shall be chargeable to tax as income of the Specified Entity under the head "Capital gains" in the previous year in which such capital asset is received by the partner or member. Further, the value of money or fair market value of the other asset on the date of receipt by the partner or member i.e. Consideration, shall be deducted from the balance in their capital account i.e. Cost of Acquisition, to arrive at the Capital Gains. Similar to the above mentioned provision, the effect of revaluation of assets on the capital account shall be nullified.

The proposed amendment shall impact many small businesses, operating as partnership firms and looking to partner with various parties who bring land or any other capital asset at nominal value and subsequently, reap the monetary benefit of actual

fair market value of the land or other capital asset from the partnership firm without paying any taxes. It is pertinent to note that this amendment would be applicable from FY 2020-21 onwards.

3. Depreciation on Goodwill

As per Section 2(11) of the IT Act, a block of assets means a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed. Further, Section 32(1) of the IT Act provides for deduction on account of depreciation on tangible assets (Building, machinery, plant and furniture) and intangible assets (know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998 which are owned, wholly or partly by the assessee which are used wholly and exclusively for the purpose of business and profession while computing the income under the head 'Profits and gains of business or profession'.

Having said this, the definition under Section 2(11) or Section 32(1) of the IT Act does not specifically mention the goodwill of a business or profession, therefore, the claim of depreciation on goodwill has always been a matter of debate. However, the Hon'ble Supreme Court in the case of Smifs Securities Limited held that the depreciation on purchased goodwill shall be allowable under Section 32 of the IT Act.

Contrary to the above judgment, the tax officials had submitted that the allowance of depreciation as directed by the Hon'ble Supreme Court must have been a cynosure in the eyes of the Income-tax Department. The argument put forward by the tax officials is that it is seen that goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs, goodwill may see appreciation or in the alternative, no depreciation to its value.

Considering the above, the Budget of 2021 has proposed to exclude 'Goodwill of a business or profession' from the definition of 'block of assets' and from the list of assets eligible for depreciation. In addition to this, the rules are intended to be framed to deal with the computation of written down value of the block of assets and the capital gains on subsequent sale of goodwill on which depreciation has been allowed so far as a part of the block. In other words, where the goodwill of a business or profession forms part of the block of assets for prior assessment years and the taxpayer has claimed depreciation, then the written down value of the block of assets and the capital gains shall be determined in the manner yet to be prescribed.

The above mentioned amendment would adversely affect the pricing of future M&A transactions by bringing time value of money into play for amount paid as goodwill by the purchasing entity. It is pertinent to note that the aforementioned amendment would be applicable from FY 2020-21 onwards.