

SDU

FINANCE ACT, 2022

TAX UPDATE

PREFACE

Finance Bill, 2022 received the assent of the Honourable President on March 30, 2022 and is now an Act.

With the COVID wave receding and the economy upbeat, the Union Budget Speech had set a reasonably positive tone with the theme focused certainty and digitisation. The fine print of the Finance Act sends a message that the Government is moving aggressively to broaden the tax net by focussing on transaction level compliances whether by introduction of provisions requiring deduction of income-tax at source or the conditions for claiming input tax credits under GST. Similarly, the income-tax provisions on e-assessments and re-assessments appear to throw up situations to dilute the tax certainty objective of the Government.

The much-hyped provision relating to taxation of crypto-currencies & NFTs (virtual digital assets) raise more ambiguities than provide certainty. It is surprising that the legislature has looked at this sector merely with the lens of a speculative asset class and not the emergence of a new world which India could lead from the front.

Summary of key amendments introduced in the Finance Act, 2022 is penned in this communique.

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DIRECT TAX

CORPORATE TAXES

There are no changes proposed in corporate tax rates by the Finance Act 2022. The tax rate for corporates whose turnover is less than INR 400 crores in FY 2020-21 is 25%. In all other cases, the rate is 30%.

Tax computed as above shall be increased by surcharge as below:

Income	Surcharge
Exceeds Rs. 1 crore but less than Rs. 10 crore	7%
Above Rs. 10 crore	12%

Special tax rates applicable in case of domestic companies are as follows:

Domestic Company	Tax Rate
Where opted for Section 115BA	25%
Where opted for Section 115BAA	22%
Where opted for Section 115BAB	15%

The rate of surcharge in case of a company opting for taxability under Section 115BAA or Section 115BAB shall be flat 10% irrespective of amount of total income.

¹ For the taxpayers being individuals (aged less than 60 years) and HUF.

The time limit to commence manufacturing to avail the benefit of concessional tax under Section 115BAB is extended to 31st March 2024.

PERSONAL TAX RATES

The tax rates for individuals are also unchanged as follows:

Income ¹	Current Tax rate
Up to INR 2,50,000 ²	Nil
INR 2,50,001 to INR 5,00,000	5%
INR 5,00,001 to 10,00,000	20%
Above 10,00,000	30%

Tax computed as above shall be increased by surcharge as below:

Income	Current surcharge
Exceeds Rs. 50 lakhs but less than Rs. 1 crore	10%
Exceeds Rs. 1 crore but less than Rs. 2 crore	15%
Exceeds Rs. 2 crore but less than Rs. 5 crore	25%
Exceeds Rs. 5 crore	37%

² This slab is increased to INR 3,00,000 for individuals aged between 60-80 and up to INR 5,00,000 for individuals above 80 years

AMENDMENTS BRINGING NEW INCOMES UNDER AMBIT OF INCOME-TAX

❑ Taxation of Virtual Digital Assets ('VDAs')

Finance Act 2022 has provided for taxing income being generated from VDAs. A VDA is defined to mean any information or code or number or token (excluding Indian currency & foreign currency), which is generated through cryptographic means or otherwise and provides a digital representation of value which is transferable, has inherent value, or functions as a store of value or a unit of account and can be transferred, stored, or traded electronically. Non-fungible tokens are also included in the definition of VDAs.

Effective 1 April 2022, any income arising from transfer of any VDA is liable to tax at the rate of 30%. Only the cost of acquisition of the VDA would be allowed to be deducted (viz., no other expenditure would be allowed as a deduction) while computing the income arising from transfer of VDAs. Further,

- Any loss arising on such transfers are not eligible for set-off against any income (including income from transfer of VDAs) and is not eligible to be carried forward to subsequent years.
- This tax rate would apply if income generated from the VDAs is by holding them as business assets or capital assets.

❑ Provisions of bonus stripping and dividend stripping applicable to securities and units

The existing provisions of the Income-tax Act, 1961 ('ITA') provide for anti-avoidance measures to deal with bonus and dividend stripping with respect to shares and units of mutual funds.

However, the provisions do not apply to securities, units of Infrastructure Investment Trust, Real Estate Investment Trust or Alternative Investment Funds. To curb bonus and dividend stripping using those units, Finance Act 2022 has brought units of the above-mentioned business trusts into the ambit of the bonus and dividend stripping provisions. This provision applies with effect from 1 April 2023.

❑ Withdrawal of concessional rate of tax on dividend received from foreign companies

The ITA provided for a concessional rate of tax of 15% on dividend received by an Indian company from a foreign company in which such Indian company holds 26% or more in the equity share capital of the company. No expenditure was allowable on such dividends.

Finance Act 2022 has withdrawn this section with effect from 1 April 2022 corresponding to AY 2023-24 such that the normal tax rates apply to these dividends.

❑ **Reduction in alternate minimum tax rate for co-operative societies**

Effective 1 April 2023, the rate of alternate minimum tax for co-operative societies is reduced to 15% from 18.5%. The reduction in the rate is to bring the rate at par with companies.

AMENDMENTS PERTAINING TO TAX DEDUCTION AT SOURCE ('TDS')

❑ **TDS on sale of immovable property at stamp-duty value**

The ITA required a buyer of an immovable property (other than agricultural land) to deduct TDS at 1% on the consideration paid to the seller if the consideration was more than Rs. 50 lakhs. On the other hand, the ITA already had provisions to consider the stamp-duty value of such immovable property as the full value of consideration.

To align and provide for TDS on the stamp-duty value, effective 1 April 2022, vide the Finance Act 2022, the ITA now provides that in case of transfer of an immovable property (other than agricultural land), TDS should be deducted on the consideration paid or the stamp duty value, whichever is higher (subject to the Rs. 50 lakhs threshold).

❑ **TDS on benefits or perquisites ('Perquisite')**

Finance Act 2022 has amended the ITA to require a person responsible for providing a Perquisite to an Indian resident taxpayer to ensure that tax has been deducted at the rate of 10% of the value of the Perquisite *before* providing such Perquisite. TDS applies where:

- The value of Perquisites exceeds Rs. 20,000/- during the FY; and
- For Individual and HUF providing the Perquisites, the total sales, gross receipts or turnover must exceed Rs. 1 crore (in case of business) or Rs. 50 lakhs (in case of profession), during the FY immediately preceding the FY in which such Perquisite is provided.

If the Perquisite is not in the form of cash, or the cash component is less than the amount required to be deducted, the person responsible for providing the Perquisite must ensure that tax has been paid in respect of the Perquisite prior to releasing the Perquisite. This amendment is effective from 1 July 2022.

❑ **TDS on payment on transfer of VDAs**

In addition to bringing the income arising from transfer of VDAs to the tax net, Finance Act 2022 has amended the ITA to require TDS on payment on transfer of VDAs. The TDS rate is 1% to be made at the time of payment or credit, whichever is earlier; if the consideration is payable a 'specified person' in excess of Rs. 50,000/- in a FY. For others, the threshold is reduced to Rs. 10,000/- in a FY.

A 'specified person' is defined to mean an individual or a HUF, whose total sales, gross receipts or turnover does not exceed Rs. 1 crore (in case of business) or Rs. 50 lakh (in case of profession), during the FY immediately preceding the FY in which such VDA is transferred or an individual or a HUF that does not have any income under the head 'profits and gains of business or profession'.

AMENDMENTS PERTAINING TO TAXATION OF NON-PROFIT INSTITUTIONS

❑ Change in approving authority

Under the ITA, income of specified charitable / religious institutions, universities, and hospitals ('specified institutions') are exempt if the same is approved by the Prescribed Authority. Effective 01 April 2022, the Prescribed Authority would be the jurisdictional Principal Commissioner or Commissioner of Income-tax.

❑ Receipt of voluntary contribution for specific purpose

Effective 01 April 2021, any voluntary contributions received by trust or institution established wholly for public religious or public religious and charitable purposes, for undertaking renovation or repair of any temple, mosque, gurudwara, church or any other place, (which is held as trust property), **may at the option** of the trust or institution be treated as corpus and hence exempt. This is subject to satisfaction of following conditions:

- Such corpus is applied for the purpose for which the it was received;
- Such corpus is not applied for making contribution or donation to any person;
- Such corpus is separately identifiable; and
- Such corpus is invested / deposited in the specified forms and modes.

Where the above conditions are violated, the voluntary contribution will be taxed as income in the year in which the conditions are violated. The above provisions would apply to both charitable and educational institutions and specified institutions.

❑ Accumulation/ set apart of unspent or unutilised income

Presently per the ITA, where 85% of the income is not applied during the year, the unspent income can be accumulated or set apart and is exempt subject to satisfaction of following conditions:

- A statement providing the purpose of accumulation and period (not exceeding 5 years) is furnished to the Assessing Officer in Form 10 on or before the due date specified for filing the return of income;
- The amount so accumulated or set apart is deposited or invested in specified modes.

If the accumulated or set apart income cannot be applied for the purpose for which it was accumulated / set apart due to circumstances beyond the taxpayer's control, the taxpayer may apply to the tax officer to allow the application of such income for a purpose which conforms to the objects of the trust/ institution.

The accumulated or set apart income is taxed as income in the year in which the income:

- Is not applied wholly and exclusively for the objects of the fund/ institution; or
- Ceases to be accumulated or set apart; or

- Ceases to remain invested/ deposited in specified modes; or
- Is not utilised for the purpose for which it was accumulated or set aside; or
- remains unutilised during the period for which it was accumulated or set apart; or
- Is paid to any other trust/institution duly registered under the applicable income-tax provisions.

Where the income deposited/ invested in specified modes cannot be applied for the purpose for which it was accumulated/ set apart, the tax officer is permitted to, on an application made to him, allow the income to be applied for some other purpose, which conforms to the objects of the trust/ institution. This application should mention the other purpose for which such income would be applied. However, making payment to any other specified registered trust/institution is not permitted for availing the exemption.

□ **Audit and maintenance of books of account and other documents**

Under the ITA, if the total income of charitable and educational institutions and specified institutions exceeds the maximum amount chargeable to tax, it was required to get its accounts audited. Effective 01 April 2023, such charitable and educational institutions and specified institutions would also be required to keep and maintain books of accounts and other documents as prescribed.

□ **Cancellation of approval granted to specified institutions**

The Principal Commissioner or Commissioner have now been given wide powers to cancel the approval or provisional approval given to specified institutions if:

- Specified violations as follows are noticed by the Principal Commissioner or Commissioner: or
- Where any income has not been applied for the objects for which it is established; or
- Such persons have income from business which is not incidental to the attainment of its objectives or separate books of account are not maintained in respect of the business which is incidental to the attainment of its objectives; or
- The activities carried on are not genuine or not being carried out in accordance with the conditions for which the approval was granted;
- There is failure to comply with the requirement of any other law or order, direction or decree which provides that such non-compliance has occurred and which is not disputed further.
- A reference is received by the Principal Commissioner or Commissioner from the Assessing Officer; or
- the case is selected by the risk management strategy formulated by the Board.

The Principal Commissioner or Commissioner would then:

- Call for documents or information or make necessary inquiry to satisfy himself about the occurrence of any specified violation;

- Pass an order in writing cancelling the approval of such person on or before the specified date, after providing a reasonable opportunity of being heard;
- Pass an order in writing refusing to cancel the approval on or before the specified date;
- Forward a copy of the order cancelling or refusing to cancel such approval to the taxpayer and the tax officer.

□ **Simultaneous benefit for specified institutions under multiple provisions now restricted**

Finance Act, 2022 provides that if a specified institution is also notified to claim relief under specific provisions (namely section 10(46)), such institution would be required to claim relief only under the said specific provision.

□ **Conditions for claiming income-tax exemption by specified institutions**

Effective 01 April 2023, the specified institutions are permitted to claim the tax exemption only if they file the return of income within the specified due date.

Further, effective 01 April 2023, if any income or property of specified institutions is applied for the benefit of specified persons (such as trustees, their relatives etc.), such income or property will be taxable for specified institution in the year of application.

□ **Application of income on payment basis**

Effective 01 April 2023, to determine the eligible sum of application of income for claiming tax exemption of charitable institutions and specified institutions, only those sums which have actually been paid by the taxpayer irrespective of the year in which the liability to pay arises will be considered. However, if any sum has been claimed as applicable in any previous year, the same will not be allowed as application in the subsequent years.

□ **Taxability of deemed income**

Effective 01 April 2023, if charitable institutions or specified institutions if they forfeit the specified conditions, in computing their taxable income, the following expenditure shall not be allowed as a deduction:

- Capital expenditure;
- Expenditure incurred from the corpus outstanding as on the first day of the previous year;
- Expenditure from any loan or borrowing;
- Depreciation claimed in respect of assets the cost of which has been claimed as application of income;
- Expenditure in the form of donation or contribution.
- Expenditure disallowable under section 40a(ia) and 40A(3) and 40A(3A).

Further, no deduction of any expenditure or allowance or set off of any loss shall be allowed under any other provision of this Act.

❑ **Tax rate for certain incomes of specified institutions and charitable institutions on forfeiture of exemption conditions**

Finance Act, 2022 provides that the following incomes would be taxed in the hands of specified institutions at the rate of 30%.

- Income accumulated or set apart in excess of 15% where such accumulation is not allowed under the ITA; or
- Deemed income on account of specific provisions or violation of any of the specified conditions for exemptions provided for these specified institutions;
- Income taxable on account of the non-application of income for charitable purposes outside India.

In computing the specified income, no deduction of any expenditure or any allowance or set off of loss would be allowed.

❑ **'Exit tax' on educational institutions**

Hitherto, 'exit tax' was, in the absence of specific provisions, not applicable to specified institutions but only to charitable organisations. Effective 1 April 2023, the Finance Act 2022 has amended the ITA to include these institutions or any hospital or other medical institutions under the purview of the 'exit tax'. With this, exit tax applies to these organisations:

- When the organisation is converted into a non-charitable / non-religious organisation; or

- When the organisation is merged with a non-charitable / non-religious organisation or a charitable organisation with dissimilar objects; or
- At the time of dissolution of the organisation, it does not transfer the assets to another charitable / religious organisation.

Consequent amendments have been made to the provisions to enable computation of the amount that would be subject to the exit tax.

AMENDMENTS PERTAINING TO COMPLIANCES

❑ **Filing of updated return**

Per the ITA, a taxpayer is required to furnish the tax return within specified due dates. The provisions of the ITA also permit filing of belated return and also revise the return filed for any omissions or wrong statement. The timelines for filing of tax returns (original, belated and revised) for FY 2021-22 is summarised below:

Particulars	Due date
Original return of income	
Company (audit and non-audit case)	31.10.2022
Assessee other than Company – liable for audit under this Act or any other law for time being in force	31.10.2022
An assessee who is required to furnish a Transfer Pricing report in Form 3CEB	30.11.2022
For any assessee other than the above	31.07.2022

Particulars	Due date
Belated return	Earlier of the below - 31.12.2022; or - completion of assessment
Revised return	Earlier of the below - 31.12.2022; or - completion of assessment

Considering that the additional timeline for filing a revised / belated return may not be adequate, vide Finance Act, 2022, taxpayers are now permitted to file a return of income called an 'updated return'. An updated return can be filed within 24 months from the end of the assessment year to which it relates to.

An updated return would not be permitted if it:

- is a loss return; or
- has the effect of decreasing the total tax liability determined based on the original / belated / revised return furnished; or
- results in refund or increases the refund due on the original / belated / revised return furnished.

Further, a person shall not be eligible to furnish an updated return for those years where,

- A search has been initiated or survey has been conducted or books/documents are requisitioned under the provisions of the Act.
- An updated return has already been furnished for the said year;

- Any proceeding for assessment or reassessment or recomputation or revision of income under the Act is pending or has been completed for the relevant assessment year;
- The Officer has information in respect of such person for the relevant assessment year in his possession under the
 - Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or
 - Prohibition of Benami Property Transactions Act, 1988 or
 - Prevention of Money Laundering Act, 2002 or
 - Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
 and the same has been communicated to him, prior to the date of furnishing the updated return;
- Information for the relevant assessment year has been received under the agreements entered into by various countries in respect of such person and the same has been communicated to him, prior to the date of furnishing of updated return;
- Any prosecution proceedings have been initiated for the relevant year, prior to the date of furnishing of updated return; or
- Such other persons as may be notified by the Board.

The tax payable at the time of filing updated return shall be computed as under:

Criteria	Additional Tax
Updated return furnished before 12 months from end of the relevant assessment year	25% of the tax and interest payable
Updated return is furnished after 12 months from end of the relevant AY but before 24 months from the end of the relevant AY	50% of the tax and interest payable

AMENDMENTS PERTAINING TO LITIGATION MANAGEMENT

□ Revised scheme for faceless assessments and re-assessments

The ITA was amended in 2021 to provide for an elaborate scheme for "Faceless Assessment" and the procedure to be followed. Finance Act 2022 has purportedly rationalised these provisions for assessments initiated on or after 01 April 2022 as follows:

- Income escaping assessment is explicitly included in the faceless regime;
- Regional Faceless Assessment Centre has been abolished;
- The assessment unit ('AU') is permitted to seek technical assistance from the technical unit in matters relating to arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter;
- Issuing a show cause notice is now mandatory where the variation is prejudicial to the interest of the taxpayer;
- AU is now required to prepare an 'income or loss determination proposal' and thereafter, a draft assessment order would be prepared in accordance thereto.
- It is now mandatory for tax authority of relevant unit, through NFAC, to allow such request for 'personal hearing so as to make their oral submissions or present the case before the income-tax authority of the relevant unit'. Requirement of prior approval for personal hearing through video conferencing/video telephony is done away with;

- Reference can be made to conducting a special audit of the books of account having regard to the nature and complexity of transaction, volume of accounts, doubt about correctness of accounts etc.
- The earlier provisions provided that the assessment proceedings shall be void if the above procedure was not followed. This provision is now omitted.

□ Rationalizing the scope of Income escaping assessment

Finance Act 2021 amended the existing scheme of 're-assessment'. Finance Act 2022 has 'rationalized' these provisions further by permitting re-assessment proceedings after 3 years but prior to 10 years from the end of the relevant AY. This is permitted where the tax officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented:

- in the form of an asset; or
- expenditure in respect of a transaction or in relation to an event or occasion; or
- an entry or entries in the books of account,

which has escaped assessment amounts to or likely to amount to Rs. 50 lakh or more. The above amendment shall be effective from 1 April 2022 i.e., for notices to be issued on or after the said date.

❑ **Time limit for completion of assessment proceedings**

The time limit for completing assessment proceedings have been amended as follows by the Finance Act 2022:

AY	Due date	Remarks
2019-20	31.03.2021	12 months from end of the relevant AY
2020-21	30.09.2022	18 months from end of the relevant AY

Assessment in case of an updated return filed

AY	Due date	Remarks
2023-24 (return furnished)	31.12.2024	9 months from end of the FY in which the return is furnished

The above provisions are introduced effective 01 April 2022.

Assessment initiated in relation to search proceedings

AY	Due date
2021-22	30.09.2022

❑ **Limitation on appeals to be preferred by the Revenue**

Finance Act 2022 has provided for constitution of a collegium to intimate the Commissioner or Principal Commissioner to not file any appeal before the Appellate Tribunal or the High Court in specified scenarios. The scenarios visualised presently is when any question of law arising in the case of a taxpayer is identical with a question of law already raised in taxpayer’s own case or in the case of any other taxpayer, which is pending before the jurisdictional High Court or the Supreme Court against orders in favour of the taxpayer / other taxpayer.

Per the provisions, the Commissioner would, upon receiving an intimation from the collegium, direct the tax officer to make an application within 120 days in the High Court / Appellate Tribunal stating that an appeal may be filed only after the finalisation of the Other Case. The taxpayer would be required to confirm that the facts of the case are similar to the Other Case.

The collegium for the purpose of this section would comprise of 2 or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the CBDT.

❑ **Clarity on consequences for continued failure to deduct / collect or payment of tax**

Acknowledging that computation of interest on continuing default for deduction / collection of tax or payment of tax has been a subject matter of frequent litigation, Finance Act 2022 has amended the ITA to provide that the interest for defaults under these sections should be paid in accordance with the order issued by the tax officer.

❑ **Additional time for making transfer pricing assessment proceedings faceless**

The Central Government has introduced Faceless Assessment Scheme to eliminate person to person interface between the tax department and taxpayers. The faceless procedures are being introduced in a phased manner.

Presently the said scheme has not been implemented for transfer pricing scrutiny proceedings. To enable the Government with additional time to develop the information technology structure, Finance Act 2022 has amended the applicable provisions to extend the date for issuing directions for transfer pricing assessments to 31 March 2024.

❑ **Extension of time of issuing directions for the scheme governing the Faceless Appeal to Appellate Tribunal**

With the prevailing of trend of rendering faceless all official interaction under the Act, even the provisions pertaining to the Income-tax Appellate Tribunal were amended to render the ITAT faceless. For this, a scheme was to be specified on or before 31 March 2023. Acknowledging that the faceless ITAT scheme would require more modifications, the date for issuing directions for the faceless ITAT Tribunal is now extended to 31 March 2024.

❑ **Refund of TDS now permitted per specified procedure**

The ITA presently does not contain explicit provisions permitting refund of TDS. Effective 1st April 2022, provisions have been introduced to enable a person who has undertaken TDS and borne the tax liability, when no TDS was required, to claim a refund. The procedure for claiming refund and the timelines for the order to be passed by the tax officer and yet to be notified and are awaited.

❑ **Amendment to enable giving effect to orders of the Dispute Resolution Committee**

Vide Finance Act, 2021, to reduce disputes and provide certainty to small and medium tax payers, a new scheme was introduced for preventing new disputes and settling issues at the initial stage. For this purpose, a Dispute Resolution Committee ('DRC') would be constituted. The extant provisions did not contain an enabling provision for the tax officer to pass an order giving effect to the order or directions of the DRC. Effective 1 April 2022, an amendment has been made to enable the tax officer to pass an order giving effect to the resolution of dispute by the DRC.

❑ **Application of higher rate of TDS and TCS to apply in certain restricted cases**

Finance Act, 2021 introduced special provisions for deduction and collection of tax at source at higher rates (twice the rate in force or 5%, whichever is higher) where return of income has not been filed by the deductee for a specified period. These provisions were introduced with an intent to widen and deepen the tax-base and to nudge taxpayers to furnish their return of income.

Effective 1 April 2022, the following amendments are made:

- The aforesaid provisions are not applicable in relation to transactions on which tax is to be deducted under sections 192, 192A, 194B, 194BB, 194LBC or 194N of the Act.

- The existing provisions *inter alia* defined the specified person to mean a person who has not furnished return of income for 2 preceding previous years. To further ensure that all the persons in whose case significant amount of tax has been deducted do furnish their return of income, it is proposed to reduce the requirements of 2 years requirement to 1 year.

❑ Revision of TPO's order

Hitherto, the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner had the power to revise any order passed by the tax officer which was erroneous in so far as it was prejudicial to the interests of the revenue. However, it was unclear as to who is the authority to revise the order of the TPO.

Effective 1 April 2022, the Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner has been empowered to revise any order passed by the TPO. 2 months' time has now been given to the tax officer to give effect to the order of TPO consequent to the directions in the revision order.

AMENDMENTS PERTAINING TO SUCCESSION AND BUSINESS REORGANIZATION

❑ Facilitating strategic disinvestment of public sector companies

The ITA presently restricts carry forward and set-off of brought forward losses of closely-held companies when there is a change in voting power in excess of 51%, subject to certain conditions.

With effect from 1 April 2022, to facilitate strategic disinvestment of public companies, it is provided that the 51% voting power threshold shall not apply to an 'erstwhile public company'. However, the ultimate holding company of such erstwhile public company, immediately after the strategic disinvestment, should continue to hold, directly or indirectly, at least 51% of the voting power in such erstwhile public company. If this condition is not met, the losses would not be allowed to carried forward and set-off from such year of non-compliance.

❑ Reduction of Goodwill from block of assets to be considered as 'transfer'

Effective AY 2021-22, goodwill of a business or profession was not considered as a depreciable asset. As such, no depreciation could be claimed on goodwill. However, where goodwill is purchased by a taxpayer, the purchase price of the goodwill could be claimed as a cost while computing capital gains on the transfer thereof. Where depreciation is claimed against such goodwill, this would be reduced from the purchase price of the goodwill.

In this backdrop, effective from 1 April 2021 it is proposed to consequentially clarify that for computing capital gains, reduction of the amount of business / professional goodwill from block of asset shall be deemed to be 'transfer'.

❑ Set-off of losses in search cases

Presently, the ITA does not disallow set-off of losses or unabsorbed depreciation against undisclosed income detected in search and seizure, survey or requisition proceedings. Acknowledging that such set-off has resulted in short levy of taxes, Finance Act 2022 has amended applicable provisions to disallow set-off of current year and brought forward losses and unabsorbed depreciation against undisclosed income (consequent to search, requisition, survey).

❑ Validity of Income-tax proceedings on predecessor entities

The Finance Act 2022 has provided that the income tax proceedings and assessments carried on or completed on the predecessor entity *during the pendency* of the court proceedings would be valid and such assessment or other proceedings will be deemed to have been made on the successor.

❑ Modified return for entities undergoing business reorganization

The Finance Act 2022 has enabled entities going through business reorganizations for filing of modified returns for the period between the date when the order is effective from and the date of issuance of final order of the competent authority.

❑ Clarification in scope of 'slump sale'

Vide Finance Act, 2021, the scope of 'slump sale' of an undertaking as a whole was widened to include slump sale achieved by 'any means' and not merely by way of 'sale'. However, the provision continued to provide that the lump sum consideration is identified without values being assigned to the individual assets and liabilities in 'such sales'. Finance Act 2022 has rationalised this provision by providing that the lump sum consideration is to be identified without values being assigned to the individual assets and liabilities in such 'transfer'.

CURBING EXEMPTIONS AND DEDUCTIONS

❑ Restriction on deduction on donation made to research association, university, college or other institution if statement of donation not filed by donee

Effective 1 April 2021, Section 35(1A) of the Act was inserted which mandated the research association, university, college or other institution referred therein to file the statement of donations as received from the donors so as to enable the donors to claim tax relief. However, pursuant to a drafting error, the law was enacted to provide that the research association, university, college or other institution would not be allowed the deduction (as against the donor). Finance Act, 2022 addresses this error.

❑ **Restriction on deduction for expenses incurred for offence / prohibition / violation / compounding under any law**

The ITA provides that expenditure incurred by a taxpayer for any purpose which is an offence or is prohibited by law shall not be allowed as deductible expenditure. This provision has witnessed plethora of litigation.

Finance Act 2022 has now amended the ITA to specifically provide that the following expenditure would not be allowed as a deduction in computing taxable income:

- Expense for any purpose which is an offence or prohibited by any law for the time being in force, in India or outside India; or
- Any benefit or perquisite the acceptance of which is in violation of any law or rule or regulation or guidelines governing the conduct of such person; or
- Expenditure to compound an offence under any law for the time being in force, in India or outside India.

❑ **Surcharge and cess paid on Income-tax are not deductible expenditure**

Noting that certain taxpayers are claiming deduction on account of 'Cess' or 'Surcharge' claiming that the same does not constitute 'income-tax' (which is disallowed in computing taxable income), Finance Act 2022 has specifically provided that these items constitute 'tax' and hence not allowable expenditure.

❑ **Clarification regarding deduction on payment of interest only on actual payment**

Noting that certain taxpayers were claiming deduction of interest on conversion of interest liability on an existing loan basis that such conversion is a constructive discharge of interest liability, the Finance Act 2022 has amended the ITA. Therefore, with effect from 01 April 2023, it is provided that conversion of interest payable to specified institutions into debenture or any other instrument by which liability to pay is deferred to a future date, shall not be deemed to have been actually paid implying no deduction shall be allowed.

PENALTIES AND PROSECUTIONS

❑ **CIT(A) empowered to levy penalty for certain offences:**

Hitherto, the power to levy penalty for actions pertaining to undisclosed income, unexplained credits or expenditures, or deliberate falsification or omission in books of accounts vested solely in the AO. Effective 1 April 2022, in order to improve deterrence against non-compliance among tax payers, the Commissioner (Appeals) has also been given concomitant powers along with AO to levy such penalties.

❑ **Increase of penalty amount for certain offences:**

Hitherto, the amount of penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. was Rs. 100 per day during which the failure continues. This penalty had not been increased since its introduction in 1999.

This penalty provision was introduced to ensure compliance with various obligations by penalising non-compliance and acting as a deterrent. However, the penalty of one hundred rupees had been commented upon by the CAG in their report as being too low and does not have an adequate deterrence value. Therefore, the amount has now been increased to Rs. 500 per day.

❑ **Prosecution on failure to pay TCS**

Hitherto, prosecution could be initiated against any person for failure to pay TDS to the credit of Central Government. However, there was no such provision for prosecution of a person failing to pay TCS.

Therefore, effective 1 April 2022, the prosecution provisions have been extended to failure to pay TCS as well. Such person is punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 7 years and with fine.

❑ **Penalty for passing on unreasonable benefits to trustee or specified persons**

To discourage misuse of the funds of the trust or institution by specified persons, penal provisions have been introduced. Per these provisions, effective AY 2023-24, if during any proceeding under the Act, it is found that any income of a charitable trust or institution has enured or been applied directly or indirectly for the benefit of a related person, penalty may be levied as follows:

- a sum equal to the income applied, directly or indirectly, by such person, for the benefit of any related person (as defined) where the violation is noticed for the first time during any previous year; and
- a sum equal to 200% of the income applied, where violation is noticed again in any subsequent previous year.

This provision is in addition to any other penalty is leviable under any of the other provisions.

❑ **Prosecution for failure of furnishing return of income**

Effective 1 April 2022, a person shall not be proceeded against for failure of furnishing return of income if the person has furnished an updated return within the due date.

OTHER AMENDMENTS

❑ **Cash credits: Onus of proof for loans and borrowings**

Under the ITA, unexplained cash credits are liable to tax, even if they are capital in nature. Credits are unexplained, inter alia, when the identity, genuineness, and creditworthiness of the source of the cash credit, i.e., the creditor, is not explained to the satisfaction of the tax authorities. Numerous courts had held that in this context, it is not required to prove the source of the source of the cash credit.

It is now amended effective 1 April 2023, that a credit in the books of a taxpayer shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, i.e., it is a Venture Capital Fund, Venture Capital Company registered with SEBI.

□ **Definition of 'books or books of account' expanded**

Presently, the ITA contemplates 'books or books of account' to include ledgers, day-books, cash books, account-books and other books, whether kept in the written form or as print-outs of data stored in a floppy, disc or any other electro-magnetic data storage device.

In light of advancement in electronic book-keeping technology, it is now provided that books of account would include those kept in electronic form or in digital form as well. This provision is effective 1st April 2022.

□ **Amendment to Section 179: Correction to the title of the Section**

The Section 179 contains provisions enabling income-tax authorities to recover taxes due from a private company, from its directors, under certain situations where the tax cannot be recovered from the company itself. The title of the Section referred to 'companies in liquidation', whereas the provisions were not limited only to companies in liquidation. The title is now rectified by the Finance Act 2022.

□ **Amendment to provisions in relation to International Financial Services Centre**

• *Transfer of offshore derivative instruments or over the counter derivatives*

The ITA exempts income arising or accruing or received by a non-resident on transfer of non-deliverable forward contracts, entered with offshore banking unit of specified IFSCs. Effective 01 April 2023, the exemption is extended to income from transfer of offshore derivative instruments or over-the-counter derivative.

• *Income on leasing of aircraft and ships*

The ITA exempts royalty and interest income arising to a non-resident paid by a unit of IFSC on lease of aircraft. Effective 01 April 2023, the above exemption benefit is extended to royalty and interest income from lease of a ship.

• *Income from portfolio securities or financial products issued by IFSC*

Effective 01 April 2023, income received by a non-resident from portfolio of securities or financial products or funds issued by an Offshore Banking Unit in any IFSC would be exempt. The exemption is available only to the extent the income accrues or arises outside India and is not deemed to accrue or arise in India.

❑ **Withdrawal of exemptions for non-resident individuals in certain (now redundant) scenarios**

On account of evolution of business practices, it was seen that some exemptions provided towards certain remuneration, fee and other income of a non-resident individual are redundant. These are now withdrawn with effect from 01.04.2023.

❑ **Extending the exemption benefit on change in status from non-resident to resident**

The ITA exempts certain incomes accruing/ arising/ received by a specified fund to the extent such income is attributable to the units held by non-residents (other than PE of a non-resident in India) or attributable to investment division of offshore banking unit.

Effective 01.04.2023, the above exemption will be available to the specified fund where the unit holder(s) who were non-residents when the units were issued and subsequently become Indian tax residents under the ITA. This is subject to the condition that the unitholder(s) should not hold more than 5% of the total units issued by the specified fund.

❑ **'Gift tax' provisions not to apply if consideration is received from specified fund**

Under the ITA, consideration received by a company on issue of shares in excess of the fair market value is not taxed in the hands of the company if the same is received from a fund regulated under SEBI

(Alternative Investment Fund) Regulations, 2012. The definition of specified fund is now amended to include a fund a Category I or Category II AIF which is regulated under the International Financial Services Centres Authority Act, 2019.

❑ **Exemption of Covid related receipts**

Effective 01 April 2020, any sum of money received by an individual from any person towards any expenditure actually incurred on his or any member of his family, for any illness related to COVID-19 is not taxable.

❑ **Taxation of benefits extended by non-profit institutions to 'related' persons**

The ITA is now amended to tax any property (other than movable property) received without consideration or inadequate consideration, by specified persons from specified institutions.

❑ **Incentives to National Pension System (NPS) subscribers for state government employees**

Presently, any contribution by the Central Government and other employers to an NPS account is allowed as a deduction in the hands of the taxpayer provided such contribution does not exceed 14% of his salary - in case of contribution by Central Government, and 10% of his salary in case of other employers, including State Governments.

Effective 1 April 2020, Finance Act 2022 has now extended the 14% benefit to State Government employees as well.

❑ **Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability**

The ITA presently provides for deduction to resident individuals and HUFs of expenditure towards medical treatment of a disabled dependent or amounts paid by LIC or other insurers with respect to a scheme for the maintenance of a disabled dependent.

The section also provided that the deduction would be allowed if the annuity payment is made to the benefit of the dependent, if the principal individual of HUF member pre-deceases the disabled dependant. Further, wherein the dependent predeceases the individual / HUF, the amount deposited in the annuity scheme is taxable for the individual / HUF in the previous year in which such amount is received.

To address genuine hardships being faced by taxpayers, Finance Act 2022 has amended the provisions to permit the deduction to be allowed during the lifetime of the individual / member of the HUF in whose name the scheme has been maintained. Further, annuity payment received by the dependent, before his death, would not be treated as income in the hands of the taxpayer. These amendments will take effect from 1 April 2023.

❑ **Extension of date of incorporation for eligible start-ups for exemption**

ITA provides tax relief to eligible start-ups, subject to conditions, up to 100% of the profits and gains for 3 consecutive assessment years out of 10 years from the date of incorporation. For this purpose, one of the conditions was that such start-up be incorporated on or after 1 April 2016 but before 1 April 2022.

Noting that due to the COVID-19 pandemic, start-ups have faced delays in setting-up business and obtain registrations, Finance Act 2022 has extended the period of incorporation up to 31 March 2023. This amendment will come into effect from 1 April 2022 onwards.

❑ **Extension of last date for commencement of manufacturing / production under section 115BAB**

The existing section 115BAB provides for concessional rate of tax at 15% for new domestic manufacturing companies subject to not availing of various deductions and satisfaction of certain conditions. One of such conditions is that such manufacturing / production company be set-up on or after 1 October 2019 and should commence manufacturing / production on or before 31 March 2023.

However, due to the COVID-19 pandemic, companies have experienced delays in setting-up and commencing manufacturing activities. With a view to provide relief to such companies, Finance Act 2022 has extended the date of commencement of manufacturing from 31 March 2023 to 31 March 2024. This amendment will be effective from 1 April 2022.

❑ **CBDT empowered to issue such orders etc. in relation to fee for a default in filing the ITR**

Presently, the Central Board of Direct Taxes ('CBDT') is empowered to issue orders, instructions, and directions to its sub-ordinate income-tax authorities in matters relating to certain sections (such as filing of ITRs etc.). This power is now expanded to enable the CBDT to issue such orders etc. even in relation to fee for a default in filing the ITR.

□ Requiring reporting by persons engaged in specified activities

Hitherto, producers of cinematographic films are obliged to furnish a statement containing particulars of all payments over Rs. 50,000/- in the aggregate made by them or due from them to each person engaged by them.

Effective 1 April 2022, the scope has been widened to include persons engaged in event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the Central Government may notify.

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GOODS AND SERVICES TAX

INPUT TAX CREDIT

□ Input Tax Credit - Additional conditions prescribed for availing ITC by the recipient.

Additional conditions have been prescribed to avail input tax credit (for brevity, 'ITC') on inward supplies effected by the recipient. Following are the conditions on which ITC is eligible:

a) **Existing conditions:**

- Possession of Tax Invoice / debit note / any other documents;
- Receipt of Goods / Services;
- Taxes on supply has been paid to the Government by the supplier of goods;
- Filing of GST Returns (Form GSTR-3B)

b) **Additional restrictions (As per Finance Act, 2022):** The details of outward supplies furnished by the registered person will be made available to the recipient of supplies (auto generated statement). The auto generated statement shall consist of the following details in respect of which input tax credit cannot be availed by the recipient:

- The supplies furnished by newly registered suppliers for limited period (period to be prescribed).
- Supplier has defaulted in payment of taxes and continued the same for a prescribed period.
- Where supplier's output tax payable as per GSTR-1 exceeds output taxes paid in GSTR-3B.

- Where ITC availed by supplier exceeds ITC as per Form GSTR-2B and the difference exceeds a prescribed limit;
- Where Output tax is not discharged by the supplier in the prescribed manner through electronic cash ledger.

❑ Extension of due date to avail Input Tax Credit of invoices / debit notes relating to previous financial year.

The input tax credit relating to previous financial year required to be availed by the recipient of goods not later than the **30th November** of next financial year.

Basically, the Input tax credit on invoices / debit note relating to previous financial year may be claimed in the month of October return of the next financial year, since October return will be the last return filed before 30th November of next financial year.

[Illustration: 'A' has invoice relating to financial year 2021-22 i.e., February 2022 and the last date to avail ITC on such invoice in return (Form GSTR-3B) would be October 2022 return. Effectively October 2022 monthly return to be filed on or before 30th November 2022].

If recipient of supply delays in filing of October 2022 return and files the same on or after 01st December 2022, then such input tax credit may not be considered as eligible input tax credit.

❑ Availment of ITC on self-assessment basis

Credit of eligible input tax shall be availed by a registered person in his electronic credit ledger on a '**self-assessed basis**' in the returns filed by such person. Hitherto, credit of eligible input tax was available to a registered person on a '**provisional basis**'.

❑ Cancellation of GST Registration on account of non-filing of returns

The provisions relating to cancellation of registration on account of non-filing of returns by the composition taxpayer and other than composition taxpayer has been amended. The Proper Officer may cancel the registration:

- a) **For Composition Taxpayer:** If he has not furnished ***the return for a financial year beyond three months from the due date of furnishing the said return;***
- b) **For Other than Composition Taxpayer (Regular Taxpayer):** If he has not furnished his returns for such ***continuous tax period as may be prescribed***. The non-compliance of number of tax period yet to be prescribed for the purpose of cancellation of registration. Hitherto, GST laws prescribed that the taxpayer not filed returns for a continuous period of six months, then the proper officer had power to cancel the registration.

- **Due date for declaration of credit note for previous year has been extended till 30th November of the subsequent Financial Year.**

The time limit for issuance of credit notes in respect of supply made in a financial year is earlier of the following:

- a) Credit notes must be declared in the return not later than **the thirtieth day of November** following the end of financial year in which such supply was made; OR
- b) The date of furnishing the annual return.

GST RETURNS

- **Procedural aspects-Furnishing details of outward supplies in Form GSTR-1**

The procedural aspects in relation to filing of the details of outward supplies, made by a taxpayer, in Form GSTR-1 has been amended as under:

- a) **Extended time to rectify errors / omission:** A registered person is now entitled to rectify error or omission in the details furnished in Form GSTR-1 at the earliest of the following dates:
 - 30th November of the following financial year (*hitherto, it was the date of furnishing return u/s 39 of the CGST Act, 2017 for the month of September following the end of the financial year*); or
 - Date of furnishing of annual return for the relevant financial year.
- b) **Sequential filing of returns- A pre-requisite for filing Form GSTR-1:** A registered person shall not be allowed to furnish the details of outward for a tax period if the details of outward supplies for any of the previous tax periods has not been furnished

Illustration: To furnish the details of outward supplies in Form GSTR-1 for the tax period May 2022, return for the tax period until April 2022 must mandatorily be filed.

- c) **Matching provisions have been done away with:** The requirement of acceptance / rejection of invoices furnished and communicated to the recipient, through GSTN portal, has been done away with.

- **Furnishing of GST Returns**

The provisions relating to furnishing of returns has been amended with the following:

- a) **Reduction of time limit to file Form GSTR-5:** Non-Resident taxable person are now required to file their return in Form GSTR-5 at the earliest of the following dates:
 - Within 13th of the following month (*hitherto it was 20th of the following month*); or
 - Within 7 days after the last day of the period of registration.
- b) **Options for payment of taxes to QRMP taxpayers:** Every Quarterly Return Filing and Monthly Payment of Taxes (QRMP) taxpayer can opt to pay taxes, as under, within such time as may be prescribed by the Government, based on:
 - Self-assessment- after considering inward and outward supplies, input tax credit availed and such other particulars during the month; OR
 - An amount determined in such manner as may be prescribed.

- c) **Sequential filing of returns- A pre-requisite for filing returns u/s 39 for a tax period:** In order to file returns u/s 39 for current tax period, the existing condition of filing of returns u/s 39 of earlier tax periods shall continue. In addition to the above, the details of outward supplies in Form GSTR-1 must be filed for the current tax period also.

REFUND OF TAX

- **Time limit to claim refund by UN organisation, consulates, Embassy etc., extended from 6 months to 2 years**

The time limit to claim refund of tax paid on inward supplies of goods or services or both the Specialised agency of the UN organisation or any Multilateral Financial institution & organisations notified under the UN (privileges and Immunities) Act, 1947, consulates or embassy of foreign countries has been extended till **2 years** from the last day of the quarter in which such supply was received. **Hitherto**, the time limit to claim refund was prescribed before expiry of 6 months from the last day of the quarter in which purchase of goods or services were made.

- **Relevant date for claiming of refund on supply made to SEZ developers and SEZ units has been prescribed.**

In order to claim refund under GST law, the registered person who are eligible to claim refund, shall require to file refund application before the expiry of 2 years from the **“Relevant Date”**. The term **“Relevant Date”** has been provided in the GST laws for various circumstances to claim refund. However, there was no clarity in respect of supplies made to SEZ developers and SEZ units.

In this regard, now, the **“Relevant Date”** for supplies made to SEZ developer or a SEZ unit has been prescribed wherein the relevant date would be the **“due date for furnishing of return under section 39 in respect of such supplies”**.

OTHER AMENDMENTS

- **Fungibility of electronic cash ledger between GSTIN’s of the same taxpayer**

The facility available for a taxpayer to transfer the balance in the electronic cash ledger between the tax, interest, fee or amount lying under any other head within the same GSTIN, will still continue.

As a welcome move, this facility has been **extended** wherein the balance in the electronic cash ledger can now be transferred **between distinct persons / establishment of distinct persons viz., having different GSTINs under same PAN**. However, such transfer is allowed only if there is no balance outstanding in the electronic liability register of such transferor GSTIN.

Note: The transfer of balances of electronic cash ledger lying under the head ‘CGST’ to ‘SGST’ or vice versa is **not permitted** between different GSTINs under the same PAN.

- **Power to specify threshold limit of input tax credit to be utilised towards output tax liability**

The Government has been empowered to specify the maximum proportion of output tax liability which may be discharged by way of utilising the balance lying in the electronic credit ledger for specific class of registered persons.

As a result, Rule 86B of CGST Rules, 2017, which provides maximum threshold limit of utilisation of input tax credit lying in the electronic credit ledger to the extent of 99% of total output tax liability, has been given legal backing.

□ **Levy of late fee on delay in filing FORM GSTR-8 by an e-commerce operator**

Where a registered person fails to furnish the statement of tax collection at source in Form GSTR-8 within the due date (10th of the following month), a late fee of Rs. 100/- per day shall be levied for the period when such default continues subject to a maximum of Rs. 5,000/-. Hitherto, there was no levy of late fee for delay in filing of the said Form GSTR-8.

RETROSPECTIVE AMENDMENTS

□ **Retrospective change in the rate of interest where input tax credit has been wrongly availed and utilised**

Where a registered person has wrongly availed **and** utilised, the input tax credit, the interest payable on the same has been retrospectively reduced from 24% p.a. to 18% p.a.

Hitherto, the interest was applicable at the rate of 24% p.a. for the input tax credit wrongly availed, irrespective of its utilisation.

CUSTOMS

TAX ADMINISTRATION

□ **Expansion of expression “Proper Officer” under Customs Act, 1962 – To include officers of DRI, Preventive and Audit wing: (Effective Date: 01.02.1963)**

To overrule the effect of ruling pronounced by Hon’ble Apex Court in case of Canon India and upon noticing that, not all proposed administrators of the customs law, have been included within the expression of “Proper Officer”, Board decided to expand the ambit of said expression and accordingly made necessary amendments to Section 3 of Customs Act, 1962.

The amended list of ‘class of officers of Customs’ expanded to include 32 classes of Officers, additions are:

- Assistant Commissioner of Customs (Audit) and upto Principal Commissioner of Customs (Audit) – **6 Ranks;**
- Assistant Director (Department of Revenue Intelligence) and upto Principal Director General (Department of Revenue Intelligence) – **8 Ranks;**
- Assistant Commissioner of Customs (Preventive) and upto Principal Chief Commissioner of Customs (Preventive) – **8 Ranks;**
- Additional Commissioner of Customs – **1 Rank;**
- Principal Commissioner of Customs (Appeals) – **1 Rank.**

Notes:

1. The said amendment to expression "Proper Officer" is made applicable retrospectively i.e., since inception of law in 1962;
2. The above retrospective amendment, is challenged by way of writ, by one Mr. Rambhaj before Hon'ble High Court of Delhi and writ is admitted on merits;
3. Notification under Sec. 6 of Customs Act, 1962 is must, to entrust functions to specified proper officers.

□ Insertion of new Section, listing necessary actions by officer conducting an inquiry, investigation or audit

- New Section 110AA is inserted in Customs Act, 1962, to affirm the principal that, wherever the original function duly exercised by a proper officer of competent jurisdiction, is subject matter of a subsequent inquiry, investigation or as the case may be audit, then officer of customs conducting such inquiry, investigation or audit, should send a report in writing:
 - (a) To the proper officer having jurisdiction, in respect of assessment of duty or granting refund or drawback as the case may be; **OR**
 - (b) Further, in cases involving multiple jurisdictions, to such officer of customs to whom such matter is assigned by Board, in exercise of powers under Section 5 of Customs Act, 1962.

Notes:

Upon receipt of report by proper officer from such officer who conducted inquiry, investigation or audit as the case may be, should initiate the process of recovery of duties short paid, not paid or erroneously refunded as the case may be

PROCEDURAL AMENDMENTS

□ Amendments to Advance Ruling Procedures under Customs:

▪ Exclusion from definition of Applicant:

Effective 30.03.2022, terms 'Joint Venture in India' and 'Non-Resident' are excluded from definition of applicant, for limited purpose of making an application, for an advance ruling under Customs Act, 1962.

▪ Withdrawal of application made flexible:

Application for advance ruling can now be withdrawn at any time before ruling is pronounced. Hitherto, applicant had to withdraw the application, within 30 days from date of application.

▪ Validity of advance ruling pronounced:

Advance ruling pronounced will remain valid for period earliest of:
(a) 3 years from date of pronouncement of ruling; or (b) change in law / facts. With this amendment, applicant has to make new application upon expiry of 3 years from date of pronouncement of ruling (despite of no change in law / facts).

Notes:

Advance rulings that are in force as on 30.03.2022 (i.e., date of assent by Hon'ble President of India, on Finance Bill, 2022), period of 3 years to be reckoned from 30.03.2022.

VALUATION PROVISIONS

Additional measure to address undervaluation in case of imported goods

Board has decided to add set of additional obligations on importer of any class of goods, along with checks to be exercised by proper officer in this regard. Further, Board by way of rules will also list down circumstances and manner of exercising such obligations and checks prescribed.

The said obligations and checks will be applicable, where Board has reasons to believe (based on the trend of declared value of such goods or any other relevant criteria as may be prescribed), that importer of goods may not declare value of such goods truthfully or accurately.

PROTECTION OF IMPORTER / EXPORTER DATA

Insertion of new provision to protect Data:

New Section 135AA is inserted in Customs Act, 1962, to protect the data furnished, in relation to value and classification of goods imported into or exported outside India (including identity of such person). Publishing of such information, unless it is required to be so furnished under any law for time being in force, will be punishable with an imprisonment, which may extend upto six months or with a fine which may extend upto Rs. 50,000/- or both.

Exception: Publication of information, by or on behalf of the Central Government or data sourced from any publication made by or on behalf of Central Government for analysis of specific trends.

EFFECTIVE DATES

DIRECT TAX

All direct tax provisions summarized are effective April 01, 2022, unless specifically mentioned otherwise in the notes supra.

GOODS AND SERVICES TAX (GST)

All GST amendments will be effective from a date to be notified by way of a notification.

CUSTOMS

All Customs amendments summarised are effective March 30, 2022 unless specifically mentioned otherwise in the notes supra

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