KIRTANE & PANDIT

# Union Budget 2023-24 : A Detailed Analysis

## What It Holds for the World's 5th Largest Economy

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# Foreword and Budget at Glance

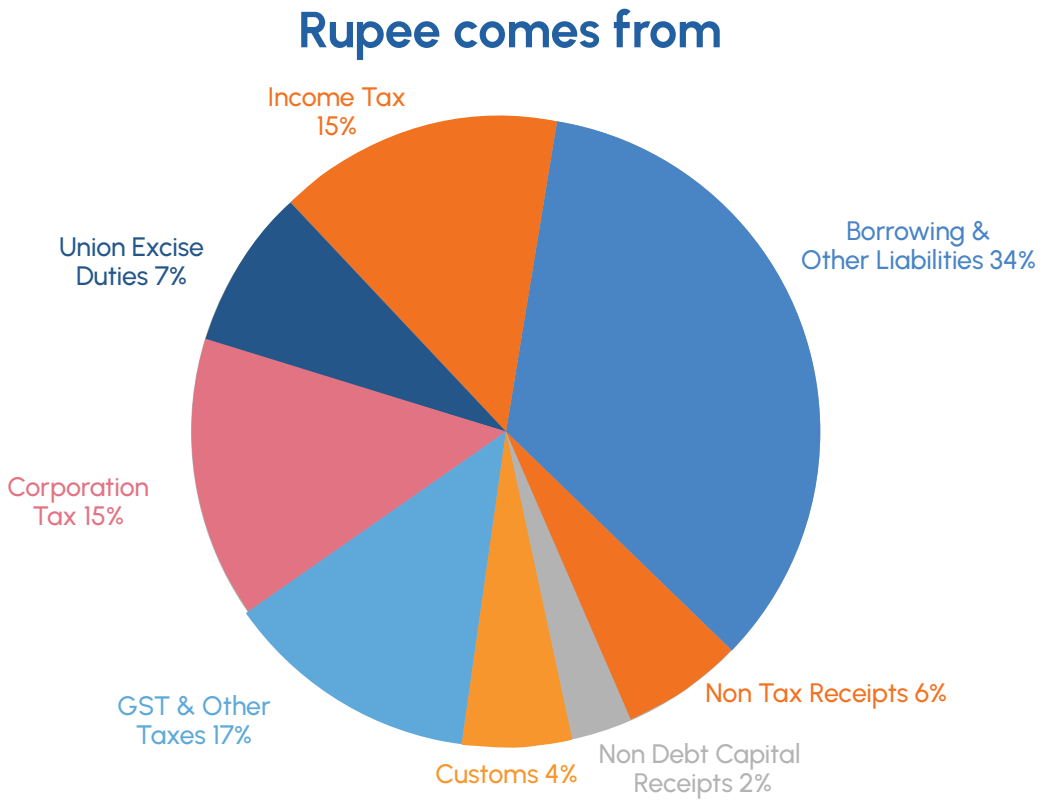
The Modi 2.0 Government announced the Budget 2023-24 on 1 st Feb 2023. This is the last full-fledged budget before May 2024 Loksabha election. This budget is touted as the first Budget of the "Amrit Kaal". The Government expects the next 25 years to define centenarian India as a country focused on areas of:

- economic empowerment of women
- upliftment of its people via the PM VIKAS scheme
- robust tourism led by environment-sensitive green growth which shall be crucial to the betterment of the economy and its interests.

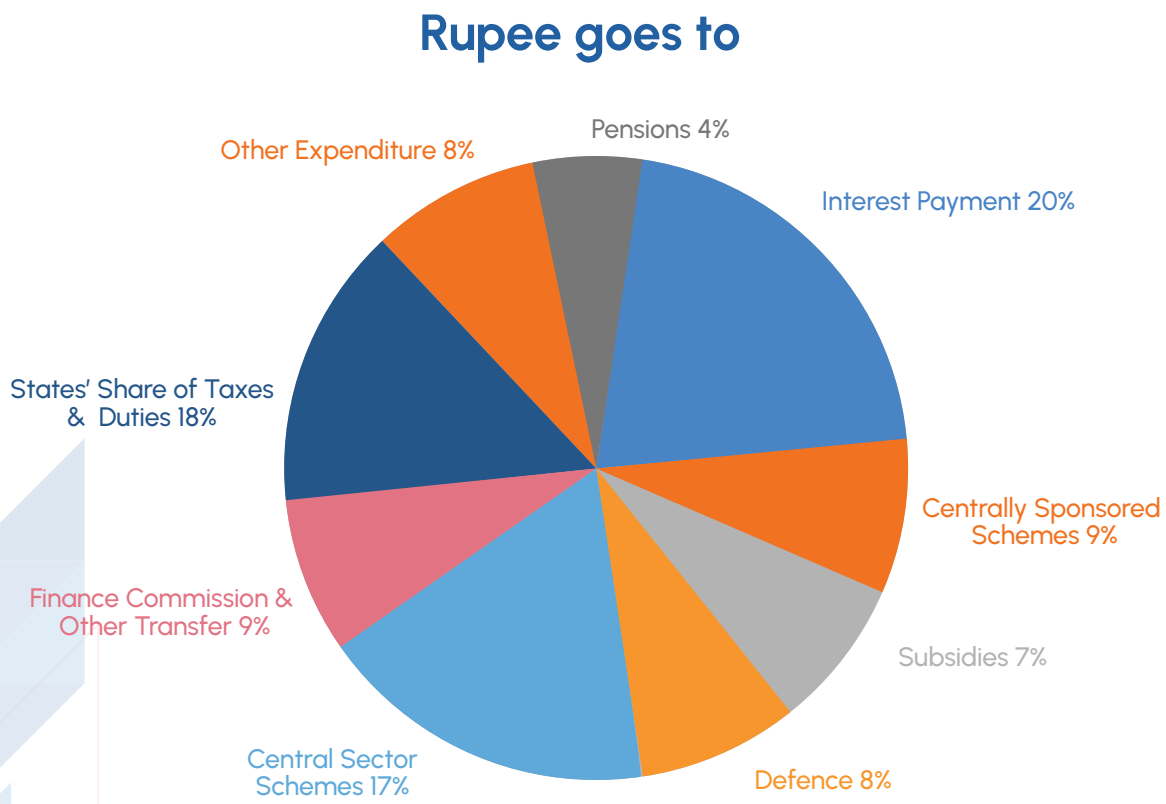
This Amrit Kaal budget is focused on seven priorities or the Saptarishi all of which complement each other and will guide India to the Amrit Kaal.

### The 7 areas of focus under the "Saptrashi"

## Sources of Income for Government for FY 22-23




## Application of the Income of Government for FY 22-23



## Overview of the Budget

- The Economic Survey 2023 offered the cues for transforming India into the brightest spot in the gloomy global economic scenario. The Economic Survey 2023 has pegged a baseline growth of 6.5% and a range of 6.0% to 6.8%. Laying the foundation for a five trillion economy and a key investment destination.
- No change in corporate tax and capital gains tax rates.
- Gross Tax Collection

| Gross Tax Revenue | FY 22-23 (Budget estimates) | FY 22-23 (Revised estimates) | FY 23-24 (Budget estimates) |
|---|---|---|---|
| | INR 27.6 lacs crores | INR 30.43 lacs crores | INR 33.60 lacs crores |

Growth in GoI's gross tax revenues is budgeted to moderate to 10.4% in FY24 (BE) as compared to 12.3% in FY23 (RE).

The government has budgeted an increase of 12% in the net tax revenue and 15% in nontax revenue for FY23–24 as compared to FY22–23 RE. Disinvestment and asset monetization receipts for FY23–24 are estimated at a conservative INR 0.61tn, similar to FY22–23 RE.

## Defence Budget

The defence budget has also seen a hike of 13%, with INR 1.62 lakh crore earmarked for capital expenditure.

## Capital Investment

33% increase in the outlay leading to Rs. 10 Lakhs Crores, will serve as a catalyst for increased consumption and will start a virtuous cycle and trigger a multiplier effect.

### Railways

With an outlay of INR 2.4 lakh crore in FY 24, the highest ever for the sector the railway sector has been provided with a massive impetus.

### Transport

Identification of 100 critical transport infrastructure projects for first and last-mile connectivity for ports, coal, steel, fertilizer, and food grains sectors. Investment of INR 75,000 crore, including INR 15,000 crore from private sources.

### Clean Energy & Green Hydrogen

Clean energy is also a key area of focus for the budget, with an INR 35,000 crore outlay provided for the energy transition. There is also a target to achieve green hydrogen production of 5 MMT by 2030. The National Green Hydrogen Mission, having an outlay of INR 19,700 crore is expected to drive the transformation of the economy to a low carbon intensity one.

### MSME Credit Guarantee Fund

A revamped credit guarantee for MSMEs has also been announced, with a corpus infusion of INR 9,000 crore. This will provide a growth impetus for the MSMEs.

### Rationalization of The Individual Taxation

Tax rates New income tax slabs were also introduced under the new tax regime, which is gradually positioned to become the default one for taxpayers. Increase in basic exemption limit up to INR 3,00,000 under the new tax regime for individuals and certain taxpayers, along with changes in slab rates. Reduction in the highest surcharge rate from 37% to 25% for individuals and certain taxpayers under the new tax regime has been provided.

### Women Empowerment

Women empowerment has also seen focus with the Mahila Samman Bachat Patra –a one-time, two-year small savings scheme of up to INR 2 lakh for women.

## Employment Generation

Pradhan Mantri Kaushal Vikas Yojana 4.0 will be launched to skill the young population within the next three years. The scheme will cover new-age courses for Industry 4.0 like coding, AI, Robotics, Mechatronics, IOT, 3D printing, Drones, and Soft skills.

## Others

- Focus on new-age technologies such as 5G
- Tourism promotion in mission mode
- Technology initiatives to spur skilling and education
- Research and innovation in pharma and healthcare
- Tribal development and welfare
- Ease of doing business
- Exemption on lithium-ion cell machinery to enhance electric vehicle mobility
- Deposit limits raised for senior citizens

Given the above context, we can safely say that the Union Budget 2023 has fulfilled all the major expectations.

# Part-A: Direct Tax proposal

## Individual Taxation and Rates of Tax

**Tax Rates -** There is no change in the Tax Rate, Surcharge, and Cess for other than individual assessee.

### Slab and Rates of Tax

As far as tax slabs are concerned, the Union Budget 2023 has favored the

- Individuals
- HUFs
- Association of Persons (Other than co-operative societies)
- Body of Individuals

Where it seems that the changed tax slabs might prove to be a trump card for them if opted for the same. There has been a change in the slab rates as applicable to the default regime. This change is enlisted in the proposed section 115BAC(1A).

**A) The New Regime being "Default Regime"-** Section 115BAC

The New regime has been made a default regime. Earlier the new regime was required to have been opted. Now, if the assessee intends to go with the Old regime, then the same is required to be opted.

**The slab rates of the "Default Regime" applicable from AY 2024-25 are as follows-**

| Sr No | Total Income-Proposed Slabs | Rate of Tax |
|---|---|---|
| 1 | Up to Rs. 3,00,000/- | NIL |
| 2 | From Rs. 3,00,001 to Rs. 6,00,000 | 5% |
| 3 | From Rs. 6,00,001 to Rs. 9,00,000 | 10% |
| 4 | From Rs. 9,00,001 to Rs. 12,00,000 | 15% |
| 5 | From Rs. 12,00,001 to Rs. 15,00,000 | 20% |
| 6 | Above Rs. 15,00,000/- | 30% |

No deductions will be allowed and no exemptions can be availed under this scheme except for the following-

- Standard deduction as available for salaried employees will be available while computing income under this regime, ie. Proposed section 115BAC(1A) of the ITA, 1961.
- Deduction in respect of family pension u/s 57(iia)
- The amount deposited under the proposed Agniveer Corpus Fund under the proposed sec 80CCH.

**B) Old Regime**

All deduction exemptions would be available, however, there is no change in the slab and tax rates in the old regime. Rebate u/s 87A in the old regime is available only when the Total Income does not exceed Rs. 5 Lacs.

**C) Rebate u/s 87A**

| Existing provision | New / Amended provision |
|---|---|
| Currently, a rebate on income tax payable is provided in the following cases-<br>▸ The assessee is an individual.<br>▸ The assessee is a resident Indian.<br>▸ The total income of the assessee does not exceed Rs. 5,00,000/ | As per new section 115BAC, a resident individual would be eligible to avail rebate till total income does not exceed Rs. 7,00,000. |
| Such rebate was available irrespective of the scheme (old/new) availed by the assessee. | Such resident individual is required to opt for the new tax regime only. |

**D) Surcharge**

Surcharge for the High Net-worth Individual earning income of more than 5 Crores is reduced to 25% from 37%. This reduction is applicable only to the assessee who opts for the new regime of taxation. This would bring the effective tax rate from 42.74 % to 39% for HNI earning more than INR 5 Crores.

For AOP consisting of only companies as its members, and which have opted for the "new regime", its income the income tax payable shall be subject to a maximum surcharge of 15%.

## Our Comments

- A move in the right direction of taxation without exemptions and deductions.
- The new regime will save a maximum of Tax Saving Rs. 52,500 for the assessee.
- Earlier an Income up to Rs. 7 Lacs (with 80C & 80D deduction of Rs. 2 Lacs) the assessee was paying NIL Tax. Now with the new regime, an assessee having a total Income up to Rs. 7 Lacs (without any investment/ deductions) would be paying NIL Taxes. Thus, increased cash-flow of Rs. 2 lacs with the Assessee is plausible, with same NIL tax incidence in the new regime.
- A person having income taxable under the head "Profits and Gains from Business and Profession" can opt out of the "default regime" under proposed sec 115BAC(1A) only once. Other assessees can decide on the regimes on a yearly basis.

### ▶ Section 10(10D): Rationalization of exempt income under life insurance policies:

The bill proposes a new capital gains provision for market-linked debentures, taxing income from insurance policies where the premium is more than INR 5 lacs.

| Existing provision | New / Amended provision |
|---|---|
| Section 10(10D) provides an exemption to the sum received under a life insurance policy including the bonus allocated on such policy. | Receipts from life insurance policies including bonus (other than ULIP) issued on or after April 1, 2023, taxable as income from other sources where the premium paid in any previous year exceeds INR 500,000. |
| Exemption to any sum received under a life insurance policy including bonus allocated on such policy, provided the premium payable for any years during the term of the policy does not exceed ten percent of the actual capital sum assured. | Where a person holds more than one life insurance policy, the exemption will be available only for policies having a premium of less than INR 500,000 in any previous year. |
| Further, in the case of Unit linked insurance policy (ULIP) issued on or after 1 st February 2021; the sum received shall not be exempted if the amount of premium payable for any of the previous years during the term of the policy exceeds Rs. 2,50,000. | If the premium paid is not claimed as a deduction under other provisions of the Act, the same can be reduced from income taxed as above. |
| (sum received on the death of a person shall not be covered). | |

## Our Comments

- This amendment would mainly impact HNIs who were using the Insurance policy as a tool to receive exempt income.
- This will have a huge impact on the insurance sector and on the public at large.
- Income continues to remain exempt in case of the death of an insured person even where the premium exceeds INR 500,000.
- For premiumns paid in past, if no deduction is claimed, then, what is required to be taxed now, is only the top-up amount (i.e. extra amount over and above the contributions made / premiums paid).
- This amendment will be applicable to the policy issued after 1 st April 2023.

### Section 17(2): Rationalization of provisions related to the valuation of residential accommodation provided to employees:

| Existing provision | New / Amended provision |
|---|---|
| The existing rule for valuation of the perquisite of rent-free residential accommodation was as follows. | For computing the value of rent-free or concessional rent accommodation provided by employers to employees, CBDT is to prescribes a new methodology. |
| 15% of the salary if the accommodation is in a city with a population of more than 25 Lacs. | |
| 10% of the salary if the accommodation is in a city having a population of more than 10 lacs and less than 25 Lacs. | |
| 7.5% of the salary if the accommodation is in a city having a population of less than 10 lacs. | |

# Business Income

## Section 43B: Deduction for payment to Micro & Small Enterprises

Micro, Small, and Medium Enterprises (MSMEs) are the growth engine of the Indian economy, contributing ~30% to India's GDP. Hon'ble Finance Minister in its Budget speech has stated as follows.

*Moreover, to support MSMEs in the timely receipt of payments, I propose to allow a deduction for expenditure incurred on payments made to them only when payment is actually made.*

The budget has proposed to make an amendment to section 43B of the Income Tax Act 1961 for allowing the deduction of Payment to Micro & Small enterprises on an actual payment basis. 'Medium Enterprise' as per MSMED Act is not covered under the said clause.

Further, the proviso to section 43B excludes clause (h) which means the extended time up to the 'due date' for filing the ITR specified in section 139(1) for making payment and claiming deduction, would not apply to the payments to MSME parties.

Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days.

## Our Comments

- This could be counterproductive as large companies may want to restrict the number of their MSME vendors.
- Ambiguity for applicability of this amendment on the "Provision" amounts made as of 31st March will creep in largely.
- Increased compliance for the Corporates akin to section 206AB of ITA 1961.
- The amendment shall cast additional responsibility on tax auditors to carefully check the trade creditors as of 31st March for allowability or otherwise in view of stringent provisions of the MSMED Act 2006 read with Income Tax Act.

### Section 72A: Expansion of scope of strategic disinvestment

Provisions of Section 72A do not permit carry-forward and set off losses in cases where 51% or more of the shareholding undergoes a change. However, some exceptions were created in the case of "Strategic Disinvestment" vide Finance Act 2021. The definition of "Strategic Disinvestment" has been amended vide Finance Act 2022. A comparative summary of the said definition is as follows:

| Existing provision | New provision |
|---|---|
| Strategic disinvestment has been defined as a sale of shareholding by<br>▸ the central government or<br>▸ any state government<br><br>In a public sector company which results in a reduction of its shareholding below fifty-one percent along with a transfer of control to the buyer. | Strategic disinvestment has been defined as a sale of shareholding by<br>▸ the central government,<br>▸ the state government or<br>▸ Public Sector Company<br><br>In a public sector company or a company which results in (i) a reduction of its shareholding below fifty-one percent, and (ii) a transfer of control to the buyer. |

### Our Comments

- The new definition will now extend the benefit of carry-forward and set-off of losses to strategic disinvestments carried out by Public Sector companies.

### Section 44AD & 44ADA: Increasing threshold limits for presumptive taxation schemes along with a condition

The act provides for a presumptive scheme of taxation for a certain class of assessees. The applicable turnover limits for availing benefits under the said scheme have been increased subject to a condition that cash receipts do not exceed 5% of total turnover / gross receipts. A comparative summary of the said presumptive tax regime is as under:

| Relevant Section of presumptive taxation | Turnover limits prior to Amendment (No Condition w.r.t. Cash Receipts) | Turnover limits post Amendment | |
|---|---|---|---|
| | | (If Cash Receipts exceed 5%) | (Only if Cash Receipts less than 5%) |
| 44AD as applicable to certain Businesses | Rs. 2 Crores | Rs. 2 Crores | Rs. 3 Crores |
| 44ADA as applicable to certain specified Professionals | Rs. 50 Lakhs | Rs. 50 Lakhs | Rs. 75 Lakhs |

## Our Comments

- Old turnover limits would continue to apply in cases where cash receipts exceed 5% of gross receipts/turnover.
- Rates of presumptive incomes are not disturbed.

### Section 10AA: Additional conditions for a claim of deduction u/s 10AA

Section 10AA provides deduction to a unit established in an SEZ.

Following additional conditions have been introduced so as to enable the claim of deduction u/s 10AA:

- ITR to be filed on or before the due date prescribed u/s 139(1)
- Sale proceeds are received in or brought into, India in convertible foreign exchange, within a period of six months from the end of the relevant Financial Year (or within such further period as the competent authority may allow on this behalf)

Further, a power is granted to the assessing officer to amend the assessment order where the export earning is realized in India after the permitted period.

### Section 10(22B): Removal of exemption of news agency

The exemption granted to income derived by a news agency u/s 10(22B) stands withdrawn w.e.f. AY 2024-25.

### Section 234B r.w.s 139(8A): Clarification regarding advance tax while filing Updated Return

Section 234B interest is applicable on the difference between the assessed tax and advance tax already claimed in the earlier return in case of updated returns.

This amendment will take effect retrospectively from the 1st of April, 2022

# Capital Gains

## Section 54 & 54F: Restriction on Investment in residential property for an availing deduction on capital gains

In a significant move, limit on the exemption for investment in new residential house u/s 54 and 54F, is introduced. Limit / cap is of Rs. 10 crore.

| Existing provision | New Addition/Amended provision |
|---|---|
| Deduction from capital gains on reinvestment in new residential property is currently available to individuals and HUFs (without any monetary limit). | It is proposed to limit the exemption amount that can be claimed under Sections 54 and 54F to Rs. 10 Cr.<br><br>If the cost of a new asset purchased is more than Rs. 10 Cr. , then, the cost of such asset shall be deemed to be Rs. 10 Cr.<br><br>Corresponding amendments have also been proposed in sections 54(2) and 54F (2) to be made to amounts to be deposited under Capital Gains Account Scheme under both sections to INR 10 crores. |

The amendments will take effect from the 1st day of April 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent.

## Our Comments

- This may have an adverse impact on the housing industry.
- Capping the limit of the cost of the residential house to be purchased for capital gains exemption at Rs. 10 crores are steps to tax the affluent sections of society.
- The primary objective of section 54 and section 54F was to eliminate the shortage of housing and to promote housing. However, it was observed that a huge claim deduction was availed by High-net-worth individuals by purchasing expensive houses and claiming deduction which was defeating the objective of the provision.
- The new restrictive provisions are applicable for properties sold from and after 1/4/23. As such, transactions of sale of properties before 31/3/23 are eligible for old regime of unrestricted exemption.

## Section 50AA: Special provision for taxation of capital gains in case of Market Linked Debentures

Market Linked Debenture (MLD) is a type of non-convertible debenture where in the returns are not fixed but linked to the performance of a certain market index/security. These are structured fixed-income products, with typically no periodic pay-outs, except at maturity. These securities are in the nature of derivatives which are normally taxed at applicable rates.

| Existing provision | New Addition/Amended provision |
|---|---|
| Many hybrid securities including MLD which combined the features of debt securities and exchange-traded derivatives, were currently taxed as 10% without indexation u/s 112. | To align the taxation with derivative products, new section 50AA is introduced which proposes to treat capital gains from redemption or transfer of such MLD as Short-Term Capital gains irrespective of its actual period of holding in the hands of the investor, at an applicable slab rate without allowing deduction of Securities Transaction Tax (STT) paid.<br><br>Further, Market Linked Debentures have been defined very widely to include any security by whatever name called which has an underlying principal component in form of debt, and returns are linked to market returns on other underlying securities or indices and include any securities classified or regulated as a market-linked debenture by SEBI. |

## Section 55: Defining the cost of acquisition in case of certain assets for computing capital gains

The provision relates to the cost of acquisition in the case of certain assets like intangible assets or other rights.

| Existing provision | New Addition/Amended provision |
|---|---|
| The existing provisions of section 55 of the Act provide that for computation of capital gains, an assessee shall be allowed a deduction for the cost of acquisition of the asset and also the cost of improvement if any.<br><br>Existing provisions of section 55, do not define the Cost of Acquisition of certain assets like intangible assets or any sort of right for which no consideration has been paid for the acquisition. | Section 55 has been amended to consider the cost of acquisition and cost of improvement of any intangible asset or any other right as 'NIL' if no any cost was incurred for their acquisition. |

## Our Comments

- This amendment is intended to overcome the decision of Hon'ble Supreme Court in the case of CIT v/s B. C SRINIVASA SETTY.128 ITR 294 (SC)
- The existing provisions have led to many legal disputes, and the Courts have held that, for taxability under capital gains, there must be a definite cost of acquisition, and in it's absence (i.e. not ascertainable), the machinery sections of computation of income fail, leading to failure of charge of income itself.
- This legal position resulted in a tax loophole.
- The loophole is plugged, albeit after a long lapse of time.
- A welcome measure, since, charge of tax ought not to fail in principle.
- However, loophole still exists via-a-vis properties (other than intangible properties and rights, etc.). If no cost of acquisition is incurred for such properties, even today, charge fails w.r.t. such properties.

## Conversion of gold to electronic gold receipt and vice versa

Electronic gold receipts are depository gold receipts traded on the stock exchanges. They are held in Demat accounts, just like shares. Under this form, investors buy the gold in dematerialized form and are given gold receipts instead of physical gold.

The trading is being done in **three tranches**

- that include **conversion** from physical gold to Electronic Gold Receipts,
- **trading** of Electronic Gold Receipts and
- again **conversion** of Electronic Gold Receipts back to physical gold.

### Process of conversion

Conversion from EGR to Physical Gold


**Gold Depositor**
Depositor deposites the gold in the vault

**Vault Manager**
On receipt of gold, the Vault Manager will do the validations and create EGR

**Depositories**
EGR is credited in depositors demat account and is available to trade on the exchange

Conversion from EGR to Physical Gold

**Depositories**
Beneficial owner intending to obtain physical gold against the EGR shall place a request to the Depository

**Vault Manager**
The Vault Manager execute the conversion of EGR to physical gold

**Retail Client / Jewellers**
Beneficial owner collects the gold from the vault location gold

| Existing provision | New Addition/Amended provision |
|---|---|
| Earlier it was not clear whether the conversion of Physical gold into Electronic gold receipts and vice versa are taxable transfer or not, and if it is a transfer, then what is the taxability of the same. | The new clause in section 47 provides for exclusion for transactions of conversion of physical form of gold into EGR and vice versa (through a SEBI-registered Vault Manager) from the purview of taxable 'transfer' for the purposes of Capital gains.<br><br>Now with this amendment, conversion of gold into electronic gold receipts, and vice versa, are not to be considered as 'transfer' for the purposes of capital gains.<br><br>Vide amendment in section 2(42A) The original cost of acquisition and period of holding is grandfathered. |

## Our Comments

- This is a welcome move and aims to encourage investment in e-gold rather than physical gold leading to higher Imports.
- Since this appears a clarificatory provision, and hence, it can be contended as retrospective amendment.

# Anti-Abuse Provisions

## Section 9-A gift to non-ordinary resident deeming provision u/s section 9 of ITA 1961

Section 9 of the Act is a deeming provision providing the types of income deemed to accrue or arise in India.

| Existing provision | Amended/New provision |
|---|---|
| Finance (No. 2) Act, 2019 inserted new section 9(1)(viii) wherein Gifts exceeding 50,000 received by the Non-resident from the Resident Indian were made taxable in the hands of such Non-resident in India. | Authorities have come across instances wherein, gifts were made to persons not ordinarily residents (R-NOR) outside India. To plug the said loophole amendment is proposed to include gifts received by such R-NOR. |

## Our Comments

- This is an extention of the scheme introduced and improved from time to time, for taxing (purported) gifts.
- It covers situations where, RNORs were receiving (purported) gifts outside India, yet going scot free.
- However, exemption of gifs between close relatives, etc. continues. and rightly so.

### Section 48: Double deduction for interest claimed under House Property as well as cost of acquisition of a property

At time, intention of the Legislature, is not expressed in clear terms, and loopholes in the language are exploited. One such area is, deduction claimed by the assessees towards interest paid on borrowed capital with which the property had been acquired, constructed, repaired, renewed, or reconstructed. For such interest, deduction used to be claimed out of income chargeable to tax under the head "Income from house property "under section 24(b) of the Income-tax Act (the Act). Such interest amount was also being claimed under section 48 of the Act as part of the cost of acquisition. This was leading to double deduction.

| Existing provision | Amended/New provision |
|---|---|
| Some of the assessees were claiming interest paid on borrowed capital and claimed as deduction under house property as part of the cost of acquisition at the time of sale of such property leading to double deduction. The assessee was also claiming Indexation on such Interest cost. Judiciary in some stray instances have upheld the said double deduction. | This double deduction has been plugged by the Finance Bill 2023 by amending section 48 (ii) of ITA 1961, explaining that, the cost of acquisition or the cost of improvement shall not include the amount of interest claimed under section 24 or Chapter VIA u/s Section 80EE and 80EEA. |

## Our Comments

- The amendment is only w.r.t. double deduction cases.
- As an anlogy, it transpires, if interest is paid on loans take for house construction, etc. and not claimed as a deduction u/s 24, then, such interest will be considered / construed as "cost of improvement". Moreover, as per scheme of Capital Gains taxation, such interest paid on an year-by-year basis will also be eligible for being indexed. Instead of covering a loophole, probably, this amendment will lead a way for tax mitigation, rightly or wrongly. A bonanza provision!

### Section 94B: Thin Capitalization NBFC

Section 94B (vide Finance Act, 2017) of the Act provides restriction on the deduction of interest expense in respect of any debt issued by a non-resident, being an associated enterprise of the borrower.

| Existing provision | New provision |
|---|---|
| Certain Non- Banking Financial Companies [NBFCs] that are engaged in the business of financing are not part of exception u/s 94B (3) of ITA 1961 even though they are undertaking similar functions and are now being subject to similar regulations and compliances in respect of those functions are now being subject to similar regulations and compliances in respect of those functions. | it is proposed to amend sub-section (3) of section 94B of the Act to provide a carve-out to a certain class of NBFCs and to provide that nothing contained in sub-section (1) of section 94B of the Act shall apply to,-<br>▶ An Indian company or a permanent establishment of a foreign company that is engaged in the business of banking or insurance; or<br>▶ such class of non-banking financial companies as may be notified by the Central Government in the Official Gazette on this behalf; |

## Our Comments

- The Notified NBFCs will be spared in line with Banking and Insurance companies, which were earlier falling into the gamut of interest deductibility of Section 94B of the IT Act.
- This was a long-standing demand of the NBFC sector and will help develop a higher level of microfinance setups through investments.

### Share issuance to non-residents and deeming provisions u/s 56(2)(vii)(b) of the act

Section 56(2)(viib) was inserted to prevent the generation and circulation of unaccounted money through share premiums received from resident investors in a closely held company in excess of its fair market value.

| Existing provision | Amended/New provision |
|---|---|
| The existing section was inapplicable for consideration (share application money/ share premium) received from non-resident investors. | Now the share premium received from Non-Residents, in excess of the valuation as per the prescribed Rule / Method/ Authority would be taxed. |

## Our Comments

- Under FEMA, Internationally Accepted Pricing Methodologies are permitted such as
  - comparable company multiple method,
  - comparable transaction multiple method, etc.
- Further, under FEMA, infusion has to be ensured at a price more or equal to such valuation.
- But for I-T purpose, infusion has to be at a price lower than that, or equal to, the value fetched on NAV / DCF method.
- Conflict arises between FEMA and ITA.
- This will lead to massive litigation.
- This provision is totally contrary to Ease of Doing Business and will dampen cross border investments.

### Section 115UA r.w.s 56(2)(xii): Tax avoidance through distribution by business trusts to its unit holders

Section 115UA provides a pass-through status to business trusts in respect of the following streams of income received by the business trust from a special purpose vehicle:

- interest income
- dividend income
- rental income

As per the said scheme, the above income is taxable in the hands of the unit holders.

The finance bill 2023 proposes to also levy tax on any distributions made by the business trust to its unit holders which are shown as **"repayment of debt"** under the head "income from other sources" in hands of the unit holder.

While expanding the tax net on one hand, the Finance bill 2023 also proposes to clarify that, the sum received by a unit holder from a business trust on account of **"redemption of unit or units"** shall be taxable under the head "Capital Gains" after grant deduction of the cost of acquisition.

# Provisions Applicable to Start-Ups

## Carrying forward and setting off of losses extension of the incorporation for exemption

In a significant move, limit on the exemption for investment in new residential house u/s 54 and 54F, is introduced. Limit / cap is of Rs. 10 crore.

| Existing provision | Amended/New provision |
|---|---|
| Section 79 prohibits setting off carried forward losses if there is a change in shareholding.<br><br>Some relaxation has been provided in case of an eligible start-up as referred to in section 80-IAC of the Act.<br><br>Further, there is an additional condition that the loss is allowed to be set off, under this relaxation, only if it has been incurred during the period of seven years from the date of Incorporation. | It is proposed to amend section 79 of ITA 1961 to increase the period of carry forward of losses in case of start-ups to 10 years from the existing 7 years of Incorporation, to align with Section 80-IAC of the ITA,1961. |
| Under the existing provision of section 80IAC to claim 100% exemption of the profits one of the conditions was to have the startup incorporated before 31-Mar-2023. | Proposed to amend section 80IAC of ITA for extension of time limit for incorporation of eligible start-ups by one year to 31 March 2024 which was earlier 31-Mar-2023. |

## Our Comments

- Start-up is the buzz word for the reliefs / concessions / exemptions
- The Budget has promoted entrepreneurship by offering positive tax measures for start-ups. India is the third largest ecosystem in the world for start-ups.
- The move to extend the date for incorporation for eligible start-ups by an additional year for income-tax benefits and to lengthen the period for carry forward of losses to 10 years, will provide a further impetus to business sentiment among our talented youth.

# Provisions Applicable to Cooperative Societies

## The concessional tax regime for the new manufacturing co-operative societies

In past years budget section 115BAD was introduced to grant a 22% concessional tax rate to the Cooperative housing societies.

Now insertion of the new section, 115BAE, provides concessional basic tax rates @ 15% for cooperative societies, so that, a level playing field has been created.

A new manufacturing co-operative society set up on or after 01.04.2023, which commences manufacturing or production on or before 31.03.2024 and does not avail of any specified incentive or deductions, may opt to pay tax at a concessional rate of 15% for the assessment year 2024-25 onwards.

The effective tax rate for a surcharge of 10% and cess of 4% will be 17.16%.

Other conditions stated in section 115BAB will be applicable to such a cooperative society.

## Our Comments

- Commencing the manufacturing activity within one year of incorporation could be a tough task.
- To provide a level playing field between new manufacturing co-operatives and new manufacturing companies.

### Relief to sugar co-operatives from past demand

Section 36(1)(xvii) was inserted from A.Y. 2016-17 to provide that the amount paid for the purchase of sugarcane by the co-operative societies shall be disallowed as a deduction which is equal to or less than the price fixed or approved by the government.

There are pending litigations on the same issue for the years prior to AY 2016-17 and to logically conclude the matter, section 155(19) is inserted.

For years prior to A.Y. 2016-17, if any deduction claimed for expenditure made on the purchase of sugar has been disallowed by the assessing officer, an application may be made to the Assessing Officer, who shall recompute the income considering the provision of section 36(1)(xvii)

A period of 4 years for rectification would be reckoned from the end of the previous year commencing on the 1st day of April 2022.

## Our Comments

- This is a welcome amendment that will eliminate the uncalled for litigation and will release the demand burden on such Cooperative sugar societies.

### Increasing threshold limit for co-operatives to withdraw cash without TDS

Section 194N has been amended to provide that where the person withdrawing money is a cooperative society, the requirement to deduct tax applies only when the withdrawal of amount or aggregate of amount in cash during the year exceeds INR 3 crores.

### Relief u/s 269SS & 269T for accepting / repayment of cash loan/ deposit for primary agricultural co-operatives

Section 269SS has been amended to increase the limit for accepting loans or deposits to INR 2,00,000 for Primary Agricultural Credit Societies ("PACS") and Primary Co-Operative Agricultural and Rural Development Bank ("PCARD") by its members instead of the existing limit of INR 20,000.

# Trusts & Charitable Organizations

## Depositing back of corpus and repayment of loans or borrowings

- Application form corpus or loan or borrowings have already been claimed as application prior to 01.04.2021 and allowing such amount to be an application on redepositing/repayment of borrowing will amount to double deduction.
- Availability of an indefinite period for repayment/redepositing as an application will make the implementation of the provisions quite difficult.
- Conditions that are required to be satisfied in the case of normal application must also be satisfied while making the application from the corpus or loan or borrowing.

Hence, to remove the above defects & difficulties the following amendment are proposed.

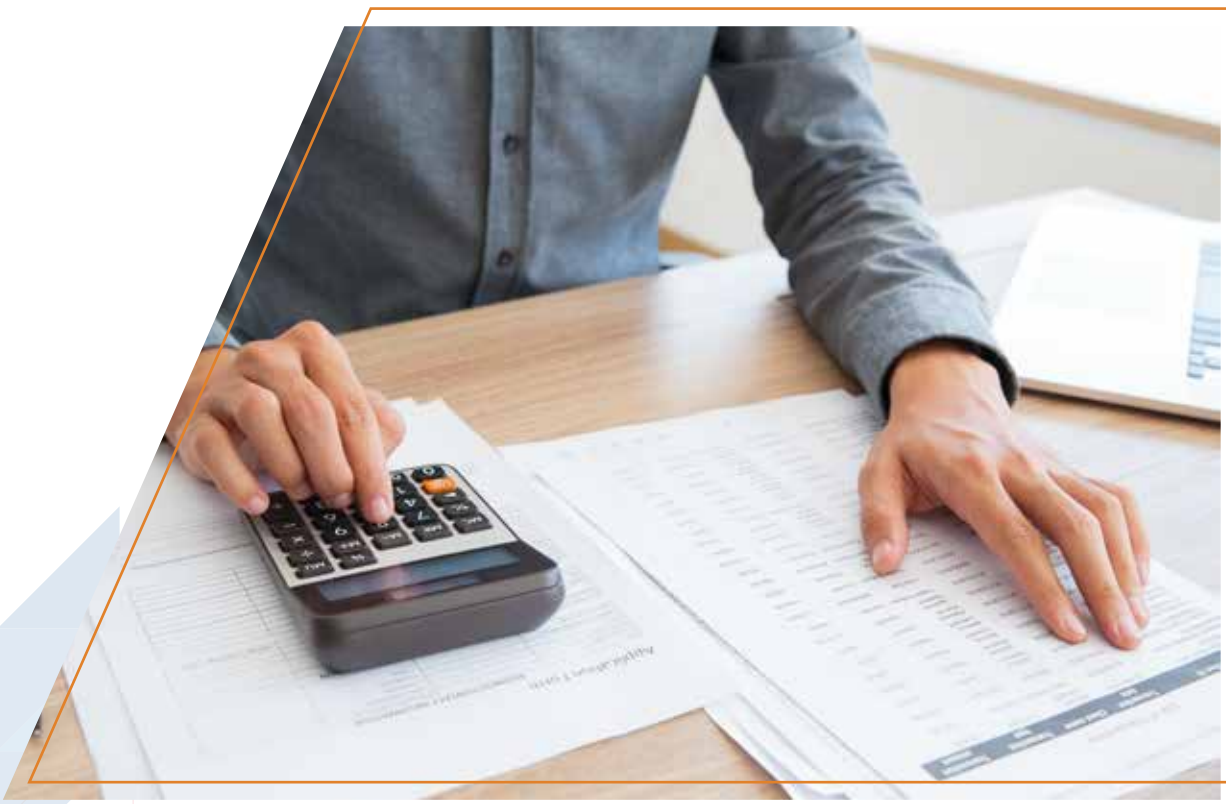
*Amendments are carried out to the following section*

- explanation 2 to third proviso to section 10(23C)
- explanation 4 to section 11(1)

| Existing provision from F.A. 2021 | New/Amended provision |
|---|---|
| Application out of corpus shall not be considered as application. However, such Corpus is rebuilt with corresponding investments as per section 11(5) such amount shall be allowed as application to the extent of such deposit or investment. Applications out of such rebuilt Corpus will not be considered as eligible Applications and so on.<br><br>Similarly, Application from loans and borrowings shall not be considered as application However, when loan or borrowing is repaid, such repayment shall be allowed as application to the extent of such repayment. | To make the proposition complete, even all such Corpus funds, created prior to. 04.2021, and rebuilt now, will also not be eligible for Application.<br><br>To make the proposition complete, for loans availed prior to 1.4.21 and repaid now, will not be eligible Applications.<br><br>Further, 5 years time limit provided for rebuilt of Corpus or repayment of loans.<br><br>Going further, following conditions will have to be met for claiming Application out of Corpus and out of Loans –<br><br>▶ No Corpus donation to another trust.<br><br>▶ TDS to be ensured.<br><br>▶ No Cash payment > Rs. 10,000.<br><br>▶ Carry forward and set off of excess application is not allowed.<br><br>▶ Application only on payment basis.<br><br>▶ No benefit to person referred section 13 (1)<br><br>▶ Application should be in India. |

## Our Comments

- The principle of denial of the double deduction is fair and logical.
- Much awaited amendment to remove the high probability of litigations on these aspects.
- Amendments are expressly applicable from A.Y.2023-24. An issue arises as to what will happen in similar situations occurring in A.Y.2022-23.
- Applications out of corpus prior to 2021, and which are not considered for Application in earlier years, will not be available permanently as an Application. This will be a probable harsh fall-out of an otherwise reasonable proposition.
- 5 years of repayment/redepositing may be a shorter period for many trusts and institutions and against the same is lost permanently.
- Ambiguity regarding the counting of 5 years in case of partial application of corpus/loan funds. There are practical situations where a loan is utilized over 2 or 3 years. Whether 5 years period count is to be tagged from the first year of part Application, the last year of part Application, or, year-by-year of Application in parts; will be a challenging question.



### Treatment of donation to other trusts

It is stated in the Explanatory Memorandum that, certain trusts or institutions are trying to defeat the intention of the legislature by forming multiple trusts and accumulating 15% at each layer, due to which, effective application is reduced significantly to a lesser percentage as compared to 85%.

To remove the said defect, an amendment is proposed.

Amendments are carried out to

- explanation 2 to the third proviso to section 10(23C)
- explanation 4 to section 11(1)

| Existing provision | New/Amended provision |
|---|---|
| Any amount credited or paid to any eligible fund or trust or institution shall be treated as an application for charitable or religious purposes. | Any amount credited or paid to any eligible fund or trust or institution shall be treated as an Application for charitable or religious purposes **only to the extent of eighty-five percent of the such amount credited or paid.** |

## Our Comments

- This is a mischief provision (i.e. to override the layering approach)
- Amendments are applicable from A.Y.2024-25.
- Amendment to plug the loophole, however, discourages genuine donations.
- There is no mechanism to grant full deduction of application, especially in cases, where the receiving Charity applies it entirely. In absence of such corrective methods, the artificial denial of 15% of donations, may lead to harsh consequences and, may lead to serious litigation.

### Omission of redundant provisions related to roll back of exemption

Now the trusts and institutions under the new regime are required to apply for provisional registration before the commencement of their activities on a compulsive basis. As such, it is explained that, there is no need of roll back provisions.

| Existing provision | New/Amended provision |
|---|---|
| 2nd proviso to section 12A(2):<br>Once registration has been granted to the trust or institution under section 12AA or section 12AB of the Act, then, the provisions of sections 11 and 12 of the Act shall apply to any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration if the objects and activities of such trust or institution remain the same for such preceding assessment year. | Deleted as redundant for new registration regime. |
| 3rd proviso to section 12A(2):<br>That no action under section 147 of the Act shall be taken by the Assessing Officer in such cases only for nonregistration of such trust or institution for the said assessment year. | Deleted as redundant for the new registration regime. |
| 4th proviso to section 12A(2):<br>Above provisions shall not apply in case of any trust or institution which was refused registration or the registration granted to it was canceled at any time under section 12AA of the Act or section 12AB of the Act. | Deleted as redundant for the new registration regime. |

## Our Comments

- Amendments are applicable from A.Y. 2023-24.
- Still applies to past year's litigations on the aspect of non-availability of registration.
- Despite the expectation of compulsory registration of charities, in real-life situations, many trusts / NGOs are likely to miss the bus of registration in time. Such charities / NGOs may avail registration at a later stage. Now, denial of roll-back of exemption to such genuine Charities / NGOs appears a harsh provision.

### Alignment of the time limit for furnishing the form for accumulation of income and tax audit report

Form 10 / Form 9A is required to be furnished when the trust or institution accumulates or sets apart its income on or before the due date of return of income.

The trusts and institutions are required to get their accounts audited and the audit report in Form 10B/10BB is required to be furnished at least one month before the due date for furnishing the return of income.

The auditors are required to report the details of Form 10/9A in the audit report. Since the due date for furnishing form 9A/10 is one month before the due date of furnishing the ITR, auditors find it difficult to report.

In order to rationalize the provisions, it is proposed to provide for the filing of Form 10/9A at least two months prior to the due date of ITR.

Amendments are carried out to sections:

- Explanation 3 to the third proviso of section 10(23C)
- Explanation 1 of section 11(1)
- Clause (c) of section 11(2)

| Existing provision | New/Amended provision |
|---|---|
| Furnishing of Form 10/9A is required to be ensured before the due date of furnishing of return of income. | Form 10/9A is required to be ensured at least 2 months prior to the due date of furnishing the return of income. |

## Our Comments

- Amendments are applicable from A.Y.2023-24.
- Let us take a hypothetical example of an NGO under the Companies Act. Now, the last date for filing of return is 31st October. Applying reverse time limits, form 10B will have to be filed before 30th September and form 10 / 9A before 31st August. This mechanism appears extremely complex. Typically, all these compliances i.e. Form 10 and Form 10-B are related to the making of accounts and filing of returns. Instead of merging all the dates, three different dates are required to have adhered now. Indeed, a complex situation may lead to disparities at every stage leading to uncalled-for procedural lapses and leading to litigation.

### Denial of exemption where a return of income is not furnished within time

If the return of income is not furnished by a trust or institution within the time stipulated under section 139 of the Act, exemption under section 10(23)/11/12 of the Act shall not be available to such trust or institution.

Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.

This resulted in unintended consequences of allowing exemption to the trusts where they furnish updated return of income.

Accordingly, it is proposed to clarify that the exemption will be available only if the return of income has been furnished within the time allowed under sub-section (1) or sub-section (4) of section 139 of the Act.

**Amendments are carried out to sections**

- Twentieth proviso to section 10(23C)
- Clause (ba) of section 12A(1)

| Existing provision | New/Amended provision |
|---|---|
| Exemption to the trust or institution under section 10(23C)/11/12 is not available if the return of income has been furnished after the time stipulated in **section 139**. | Exemption to the trust or institution under section 10(23C)/11/12 shall not be available if the return of income has been furnished after the time stipulated in **section 139(1)/(4)**. |

## Our Comments

- Amendments are applicable from A.Y. 2023-24.
- A clarificatory amendment apprehending the exemption in case of trusts filing ITR U.
- Day by day, the requirements of filing the tax return on time, and procedures of claiming exemptions / deductions in such returns; are becoming stiff and stringent.

## Combining provisional and regular registration in some cases

Trusts / institutions under both regimes are facing difficulties.

Trusts or institutions formed or incorporated during the previous year are not able to get the exemption for the year in which they are formed.

Trusts or institutions, where activities have already commenced, are required to apply for two registrations (provisional and regular)

To remove these difficulties, and to allow for final registration/approval directly, the following amendments are proposed.

**Amendments are carried out to sections**

- Clause (iv) to first proviso to section 10(23C)
- Section 12A(1)(ac)(vi)
- Clause (iv) of the first proviso to section 80G(5)

| Existing provision | New/Amended provision |
|---|---|
| New trusts or institutions under section 10(23C) / 12A / 80G are to apply for the provisional registration/approval at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration/approval is sought. | The trusts and institutions under section 10(23C) / 12A / 80G shall be allowed to make an application for provisional approval only before the commencement of activities. |
| Provisionally registered/approved trusts or institutions under section 10(23C) / 12A / 80G will again need to apply for regular registration/approval at least six months prior to the expiry of a period of the provisional registration/approval or within six months of the commencement of activities, whichever is earlier. | The trusts and institutions under section 10(23)(c) / 12A / 80G, which have already commenced their activities, shall make an application for regular approval. |

## Our Comments

- Amendments are applicable from 01/10/2023.
- Relief to assessee as reducing duplicate compliances.

### Specified violations under section 12AB and section 10(23C):

The trusts or institutions were required to furnish the application in Form 10A for re-registration/approval.

The process of granting the provisional approval/registration for the new trusts and re-registration/approval for the trusts already registered is automated and registration is granted in an automated manner without verification.

In some cases, such form furnished is defective, and still, registration has been granted due to automation.

Pr. CIT has the power to cancel the registration only on the specified violation and the above is not covered under such violation.

Now, the present amendment "specified violation" shall also include the case where the application for approval is not complete or it contains false or incorrect information.

**Amendments are carried out to sections**

- Explanation 2 to the fifteenth proviso of section 10 (23C)
- Explanation to section 12AB(4)

## Our Comments

- Applicable from A.Y. 2023-24.
- Rather than the long process of granting provision registration (through CPC) and removing the same (by CIT), at the first stage itself, a thorough examination ought to have been provided for.

### Trusts or institutions not filing the application in certain case

Certain trusts and institutions have not applied for re-registration / regular registration after taking the provisional registration. Now, by not applying for re-registration/approval or registration/approval, the trust gets an easy route to exit without payment of the tax on accreted income as per provisions of section 115TD.

Upon such non-registration, trust/institution, provisions of accretion of income will apply.

The income accretion provisions will be applicable in the year of the expiry of the date of such application to be made.

A principal officer or the trustee shall also be liable to pay the tax on accreted income.

The date of conversion shall also mean the last date for making an application for approval/registration as per respective provisions.

## Our Comments

- Applicable from A.Y. 2023-24
- Welcome amendment to plug the loophole.

# Litigations & Assessment Proceedings

## Section 245D: Extension of time for disposing of pending rectification applications by Interim Board for Settlement

Finance Act 2021 abolished Settlement Commission w.r.e.f. 01/02/2021 and replaced the same with Interim Boards for Settlement (IBS) for dealing with applications pending with the Settlement Commission. However, the IBS was constituted after a lapse of substantial time.

As such, time limits for passing rectification/amendment orders have expired in some cases. Hence, it is proposed to **extend the time limit for rectification/amendment orders to 30/09/2023** in cases where the said time limit has expired on or after 01/02/2021 but before 01/02/2022.

## Section 246: Introduction of new 1st Appellate Authority "Joint / Addl. Commissioner"

The 1st appellate authority i.e. the CIT(A) is presently overburdened due to a huge number of appeals and pendency being carried forward every year.

As such, a new authority for appeals is proposed to be created at the Joint Commissioner / Additional Commissioner Level which will have all powers, responsibilities, and accountability similar to that of CIT(A).

Types of appeals that will be dealt with by the said new Joint Commissioner (Appeal) / Additional Commissioner (Appeal):

- A certain class of cases involving a small amount of disputed demand.
- Other appeals whose assessment orders have been passed by or with the approval of an income tax authority above the rank of Deputy Commissioner.

The above amendment is applicable w.e.f. 1st April 2023

## Our Comments

- At present, more than 5 lac appeals are pending with CIT(A) under the Faceless regime.
- In contrast, pendency before Tribunals (on a national level) is less than 10,000 in number.
- Massive disparity exists at present. Disposal at CIT(A) level is totally paralysed.
- This amendment could help in the quick disposal of appeals pending before CIT(A).
- Detailed procedure is awaited.
- A welcome measure anyway.

### ▶ Section 92CA: Time limit for furnishing TP Report reduced.

A comparative summary of the time permitted for submission of the TP Report during the course of assessment proceedings is as follows:

| Particulars | As per Existing provisions | As per New provisions |
|---|---|---|
| Time within which the TP Report to be submitted from the date of receipt of the notice calling for the same | Within 30 Days | Within 10 Days |
| The additional time period by which the above time can be extended | Additional 30 Days | Additional 10 Days |
| Maximum available time | 60 Days | 20 Days |

### ▶ Section 143 / 144: Increase in time limits for completion of certain assessments

A comparative summary of the time limits for concluding assessment proceedings u/s 143(3) and 144 of the Income Tax Act is as follows:

| Particulars | As per Existing provisions | As per New provisions |
|---|---|---|
| The time limit for completion of Assessment in a case where only **Regular ITR is filed.** | Within **9 Months** from the end of the relevant Assessment Year. | Within **12 Months** from the end of the relevant Assessment Year. |
| The time limit for completion of Assessment in a case where an **Updated ITR is filed.** | Within **9 Months** from the end of the Financial Year when the updated ITR is filed. | Within **12 Months** from the end of the Financial Year when the updated ITR is filed. |

### Section 148: Changes in procedure of re-assessment proceedings

A comparative summary of the time permitted for filing of ITR in response to notice issued u/s 148 during the course of re-assessment proceedings is as follows:

| Particulars | As per Existing provisions | As per New provisions |
|---|---|---|
| The time limit for filing of ITR in response to a notice issued u/s 148 | Within 30 days from the date of receipt of the notice u/s 148 | Within 3 Months from the end of the month in which the notice u/s 148 is issued |

Further, the following would be the consequences in case no ITR is filed within the specified time limit:

- The ITR filed shall not be deemed to be an ITR filed u/s 139.
- The requirement of issuance of notice u/s 143(2) would not be mandatory.

### Section 142 r.w.s 145 Provision introduced to enable AO to avail an Inventory Valuation Report during assessment proceedings

In order to prevent any permeant deferral of taxes by way of undervaluation of inventory by the assessee, a new provision was inserted under section 142 of the Income Tax Act so as to enable an assessing officer to call for Inventory Valuation report from a duly nominated Cost Accountant in the prescribed manner during the course of inquiry during assessment proceedings.

# TDS & TCS Provision

## Section 194LBA r.w.s 197: Lower TDS provision extended to section 194LBA

Section 194LBA is of interest to the Non-Resident unitholder from the Business trust. Section 194LBA has been included in Section 197 making the taxpayer eligible for obtaining Lower or NIL TDS certificate considering the genuine hardship faced the by the taxpayer in case of exempt income received by such taxpayer.

### Our Comments

- There were genuine hardships faced by those taxpayers for whom exemptions under various sections were available due to the deduction of TDS even though their income does not turn out to be taxable.

## Section 193: TDS on payment of interest from listed dematerialized debentures to a resident:

| Existing provision | Amended provision |
|---|---|
| Section 193 requires TDS to be deducted on payment to a resident by way of interest on Securities.<br><br>The existing provision does not require TDS to be deducted where interest is payable on any Securities issued by a company, where such security is held in dematerialized form and are listed on a recognized stock exchange. | The said provision has been omitted and accordingly, interest earned from security held in the dematerialized form will also become taxable.<br><br>This step has been taken to curb the underreporting of interest income by recipients due to the TDS exemption. |

## New Section 194BA for TDS and section 115BBJ for taxability on net winnings from online games

Sections 194BA and 115BBJ proposed to provide for Tax Deduction at Source (TDS) and taxability at the rate of 30% in case of net winnings from online games. Tax is to be deducted only at the time of withdrawal and/or at the end of the financial year.

"Net winning" is not defined and is expected to be prescribed by CBDT.

Winnings from lottery or crossword puzzles or horse races or any other game to be considered on an aggregate basis to test the threshold for TDS applicability

The said TDS section is applicable to any person responsible for paying to any person any income by way of winnings from any online game during the financial year.

The TDS threshold for online gaming has been reduced from Rs. 10,000 to NIL.

For the TDS purpose 'net winnings' from the period starting 1st July 2023 till 31st March 2024 are to be considered. TDS has to be done on the withdrawal of the winning or at the end of the financial year whichever is earlier.

Note:- 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 purposes of removing the difficulty.

## Sec 115BBJ: (Tax on winning from online games)

This section explains the scope of taxability of Tax on winning from online gaming. The said section clarifies the definition of "Computer resource", "Internet" and "Online Game". The net amount will be taxable at the rate of 30%.

## Section 206C(1G) TCS Provisions

Section 206C(1G) provides for TCS on foreign remittance through the Liberalized Remittance Scheme and on the sale of the overseas tour package.

Section 206C which provides for TCS on certain transactions has been amended to increase TCS on certain foreign remittances and on the sale of overseas tour packages.

The increased rate is tabulated as under:

| Sr No | particulars | As per Existing provisions | As per New provisions |
|---|---|---|---|
| 1 | Loan obtained from Financial Institution u/s 80E for educational purposes. | 0.5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakhs. | No change. |
| 2 | For the purpose of education, other than 1 or for the purpose of medical treatment. | 5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakhs. | No change. |
| 3 | Overseas tour package | 5% without any threshold limit. | 20% without any threshold limit. |
| 4 | Any other case | 5% of the amount or the aggregate of the amounts in excess of Rs. 7 lakhs. | 20% without any threshold limit. |

## Our Comments

- Rate of TCS of 20% is totally illogical.
- On first principles, TDS / TCS ought to be restricted in such cases where, the base transaction has a potential of generation of taxable income.
- Further, logic prevails in rates of TDS / TCS and involved activity (e.g. for contractors, TDS is @ 1% whereas, for professional services, TDS is @ 10% and for winning from games, TDS is @ 30% and so on)
- In case of LRS, there is typically no possibility of generating taxable income since, travel outside India
- Then, question arises. This TCS is for what purpose.
- Till date, rate was 5% which is increased to 20%.
- Such rate is beyond comprehension.

**This amendment will take effect from 1st July 2023**

## Alignment of provisions of section 45(5A) with the TDS provisions of section 194-IC

| Existing provision | Amended provision |
|---|---|
| The current provision of Section 45(5A) provides that in computing the capital gains arising out of the Joint Development Agreement the full value of consideration shall be taken as the stamp duty value of his share, as increased by the consideration received in 'cash'. | The words "the consideration received in cash if any,", the words "any consideration received in cash or by a cheque or draft **or by any other mode**" has been substituted in order to include money received through other than cash in the full value of the consideration which is in line with Section 194-IC. |

## Our Comments

- It was seen that taxpayers are interpreting that any amount of consideration that is received in a mode other than cash, i.e., cheque or electronic payment modes would not be included in the consideration for the purpose of computing capital gains. The same has been clarified.

**This amendment will take effect from 1st April 2024 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.**

### Section 271C deals with failure to deduct TDS and section 276B is prosecution for failure to deposit TDS

- Section 194R and Section 194S were introduced in the Budget further Section 194BA is also proposed to be inserted in the Act in the 2023 Budget.
- The provisions for penalty and prosecution do not clearly mandate a penalty or prosecution for a person who does not pay or fails to ensure that tax has been paid in a situation where the benefit or perquisite is passed in kind.
- To enable such penalty and prosecution, it is proposed to amend section 271C and Section 276B and include Section 194R, 194S, and 194BA.

### Tax treaty relief at the time of TDS under section 196A of the Act

| Existing provision | Amended provision |
|---|---|
| The existing provision requires TDS on payment of certain income to a non-resident (not being a company) or to a foreign company @ 20%.<br><br>However, the benefit of DTAA or tax treaty was not extended to this section. | Proviso to sub-section (1) of section 196A to extend the benefit of DTAA (tax treaty).<br><br>The amended provision seeks to provide that the TDS would be at the rate which is lower than the rate of 20% and the rate or rates provided in DTAA or tax treaty. |

## Our Comments

- This amendment will help the taxpayers to avail the benefit of the DTAA / tax treaty which was earlier not available.

### Sec 192A: Payment of accumulated balance due to an employee

Section 192A of the Income Tax Act, 1961 deals with the tax deduction with w.r.t. payment of the accumulated balance due to an employee. it was observed that many low-paid employees do not have PAN and thereby TDS is being deducted at the maximum marginal rate in their cases under Section 192A. Section 192 A has been amended to restrict the TDS deduction to 20 in case of employees who do not submit PAN.

### Our Comments

- Amendment in this section will give relief to employees and TDS will not be deducted at the maximum marginal rate.

### Credit Mismatch in ITR

Many times due to accounting policy assessee is required to disclose income in year 1 and the TDS is deducted and reflected in the year 2 earlier years in their ITR. This results in a TDS mismatch since the corresponding income has already been offered to tax by the assessee in earlier years, however, TDS is only deducted much later when actual payment is being made.

Assessee cannot claim the credit of TDS in the year in which TDS is deducted since income is not offered in that year. Claiming Such TDS is not feasible in the current ITR mechanism.

To resolve this issue, sub-section (20) has been inserted in section 155 of the Act wherein the assessee can make an application in the prescribed form to the AO within two years from the end of the financial year in which such tax was deducted at source. Then AO shall amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year.

### Our Comments

- Much Awaited amendment, since TDS mismatch situations were denied in rectification order u/s 154 of ITA 1961.
- Levy of interest u/s 234B & 234C will be a challenge, since, multiple propositions exist in this regard.

**This amendment will take effect from 1st October 2023.**

### Relief from the special provision for the higher rate of TDS/TCS for non-filers of income-tax returns

| Existing provision | Amended provision |
|---|---|
| The current provisions of Section 206AB and 206CCA encompass that higher TDS and TCS rate applies respectively to a specified person.<br><br>A specified person has been defined as:<br>▶ Non-filer i.e. who has not furnished his return of income of the preceding previous year and<br>▶ Has an aggregate of TDS and TCS of Rs 50,000 or more<br><br>However, a specified person does not include a non-resident who does not have a permanent establishment in India. | A specified person is proposed to exclude:<br>▶ A non-resident who does not have a permanent establishment in India; or<br>▶ A person who is not required to furnish the return of income for the assessment year relevant to the said previous year and is notified by the Central Government in the Official Gazette on this behalf. |

## Our Comments

- There may be certain persons who are not required to furnish the return of income. It is not the intention to include such persons in the category of non-filers and burden them with the shackles of compliance.

**This amendment will take effect from 1st April 2023 and will accordingly apply in relation to the assessment year 2024-25 and subsequent assessment years.**

### Providing clarity on benefits and perquisites in cash

The intention of the legislation while introducing Section 28(iv) was also to include benefit or perquisite whether in cash or in kind.

However, Courts have interpreted that if the benefit or perquisite are in cash, it is not covered within the scope of this clause of section 28 of the Act.

It is clarified that TDS will be applicable to any benefits or perquisites arising from business or profession whether in cash or kind or partly in cash and partly in kind.

| Existing provision | Amended provision |
|---|---|
| The existing provision encompasses to tax the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession u/s 28(iv) | The amended provision clarified that provisions of Section 28(iv) shall apply to cases where the benefit or perquisite provided is in cash or in kind or partly in cash and partly in kind.<br><br>Also, it is proposed to clarify that the provisions of Section 194R shall apply to benefit or perquisite whether in cash or in kind or partly in cash and partly in kind. |

# Other Compliances

### Section 271FAA: Penalty for furnishing inaccurate statements of financial transactions or reportable accounts

To keep a watch on high-value transactions undertaken by the taxpayer, the Income-tax Law has framed the concept of the statement of financial transaction or reportable account.

Section 271FAA (1) has been amended to levy a penalty of INR 5,000 for Inaccuracy in Statement of Financial Transactions (SFT) u/s 285BA on such prescribed reporting financial institution. This covers inaccuracies due to incorrect information provided by account holders.

Further, the section provides that the reporting financial institution shall, in addition to the penalty under sub-section (l), if any, pay a sum of Rs 5000 rupees for **every inaccurate reportable account** u/s 285BA. A penalty imposed on the Reporting Financial Institution can be recovered from the account holders.

### Section 241A r.w.s 245: Set off and withholds of refunds in certain cases

It is proposed to merge the provision of Section 241A & Section 245 of the Income Tax Act,1961. Grant of refund to assessee may be withheld in certain cases after prior approval of PCIT/CIT till completion of assessment proceedings, also Additional interest on such withheld refund will not be available for the period from the date of 143(1) to the completion of assessment/reassessment proceeding.

## Part-B: Indirect Tax Proposal

# Summary of Key Changes in GST as proposed in Union Budget 2023-24

# The Union Budget 2023-24

The Union Budget 2023-24 was presented before Loksabha on 01st February, 2023. The key changes relating to GST are as follows. The below changes will be applicable from the effective date to be notified, unless otherwise mentioned.

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 1 | **Changes in Composition Levy applicability:**<br>Section 10 (2) (d) and Section 10 (2A) (c):<br>"The registered person shall be eligible to opt under sub-section (1), if:<br>(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax under section 52" | Section 10 (2) (d) and Section 10 (2A) (c):<br>"The registered person shall be eligible to opt under sub-section (1), if:<br>(d) he is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax under section 52" | Enabling amendment has been made basis **recommendations made in 48th GST council meeting.**<br>**Composition scheme option** has been provided to a **person making supply of goods through an E-commerce operator** collecting tax under Section 52. |
| 2 | **Reversal of ITC for non-payment to supplier within 180 days:**<br>Second proviso to Section 16 (2) provides that if the recipient fails to pay the total amount payable to the supplier within 180 days of the date of invoice then ITC availed amount shall be added to his output tax liability, along with interest thereon | Second proviso to Section 16 (2) is proposed to be amended to provide that the ITC availed amount shall be paid by the recipient along with interest payable under section 50 | Enabling amendment has been made basis **recommendations made in 48th GST council meeting.**<br>This is **a welcome provision** as this clarifies that **interest** would be payable only in case the ITC **availed has been utilised** by the taxpayer.<br>Question to ponder is whether this would be treated as a **clarificatory amendment applicable from 01st July, 2017 or otherwise.** |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 3 | **Value of exempt supply:**<br>As per Explanation to Section 17 (3), the value of exempt supply would include value in respect of paragraph 5 of Schedule III, i.e., Sale of land and, sale of building under construction | The explanation is proposed to be amended to include the following in value of exempt supply<br>"(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and<br>**(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule"** | Value of supply in respect of **"Supply of warehoused goods to any person before clearance for home consumption"** is proposed to be included in the value of **exempt supply**, thus **restricting ITC** in relation to the same and warranting **reversal under Rule 42 and 43** for the common ITC. |
| 4 | **Widening the scope of Ineligible ITC u/s 17 (5):**<br>Section 17(5) provides for the supply of goods or services for which ITC is ineligible | New clause (fa) is proposed to be inserted: "goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013" | The new clause specifies that **ITC** in relation to **CSR expenditure** will be treated as ineligible. This amendment has **negated favourable AAR in case of M/s. Dwariksesh Sugar Industries Limited** which has allowed ITC in relation to CSR expenditure. |

| Sr No | Existing provision | Existing provision | Comment |
|---|---|---|---|
| 5 | Persons not liable for registration under GST:<br><br>Section 23 provides for the persons who are not required to obtain registration under GST | New section 23 is proposed to substitute the earlier section effective from 01 st July, 2017: "Notwithstanding anything to the contrary contained in sub-section: (1) of section 22 or section 24 -(a) the following persons shall not be liable to registration, namely:<br><br>(i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;<br><br>(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;<br><br>(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as" may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act." | The new Section 23 has inserted opening para: **"notwithstanding anything contrary to Section 22 (1) and Section 24"**<br>It implies that **Section 22 to Section 24** are to be **read in conjunction** with each other and **no section will prevail over other.** All the sections are to be read in **parallel** and are to be interpreted **harmoniously.** |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 6 | Time limit for furnishing of returns:<br>Form GSTR 1, Form GSTR 3B, Form GSTR 9, Form GSTR 6, Form GSTR 7 etc. are filed by the registered taxable persons on a monthly / quarterly | The proposed amendment to Sections 37, 39, 44 and 52 provides that the applicable return / statement cannot be submitted after the expiry of 3 years from the applicable due date for such return / statement | Enabling amendment has been made basis **recommendations** made in **48th GST council meeting.** The amendment provides for the **maximum period** in which the applicable return / statement is to be filed. This is a **restrictive provision** which **does not allow filing of returns / statement** after the specified period. |
| 7 | Interest on delayed refund:<br>Section 56 provides for payment of interest by Government in case delayed refund of tax from 61 st day from the date of receipt of refund application till the date of refund of tax | The proposed amendment states that interest will be calculated for the period of delay beyond 60 days from the date of receipt of refund application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed | **Government shall prescribe rules** for calculation of interest on delayed processing of refund. |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 8 | De-criminalisation of certain offences:<br>Section 132 provides for the offences for which criminal punishment has been prescribed | Amendment is proposed to de-criminalise the following offences:<br>"(g) obstructs or prevents any officer in the discharge of his duties under this Act;<br>(j) tampers with or destroys any material evidence or documents;<br>(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him,that the information supplied by him is true) supplies false information" | This amendment follows the **intention of the Government to de-criminalise** some of the offences. |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 9 | Restrictive Criminal Punishments:<br>Clause III of Section 132 provides for the punishment of imprisonment for a term which may extend to one year and with fine for any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds Rs. 1 crore but does not exceed Rs. 2 crore | The proposed amendment states that **Clause III of Section 132 will only apply to the following offence:**<br>"(b) issues 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 leading to wrongful availment or utilisation of input tax credit or refund of tax" | The **criminal punishment is restricted** to offence under sub-section (b) of Section 132 instead of any other offence. |
| 10 | New section inserted for **sharing of information between taxpayers** upon their consent | New Section 158A is proposed to be inserted to enable sharing of information furnished by taxpayers in their return or application of registration or statement of outward supplies, or the details uploaded by them for generation of E-invoice or E-way bill or any other details on the common portal, with other systems | The **new facility** will enable the taxpayers to **share their data** in order to resolve the differences between matching of invoices as required for availing of ITC. **Previous consent** of taxpayers would be required before sharing of such data. |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 11 | Clause 7 and Clause 8 of Schedule III are made effective from 01 st July, 2017 | Effective date of following clauses under Schedule III has been prescribed as 01 st July, 2017:<br>"7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.<br>8. (a) Supply of warehoused goods to any person before clearance for home consumption;<br>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.<br>Explanation 1 - For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.<br>Explanation 2 - For the purposes of paragraph 8, the expression warehoused goods shall have the same meaning as assigned to it in the Customs Act, 1962" | Retrospective exemption has been proposed to be granted for these transactions.<br>Further, no refund shall be made of all the tax which has been collected, but which would not have been so collected, had such exemption been in force at all material times.<br>This amendment would help in closing open litigations. |

| Sr No | Existing provision | Proposed provision | Comment |
|---|---|---|---|
| 12 | **Change in the definition of Non-taxable online recipient:**<br>Section 2 (16) defines non- taxable online recipient as any Government, local authority, governmental authority, an individual or un-registered person receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable Territory | The definition is proposed to be amended to following:<br>"non-taxable online recipient"means any unregistered person receiving online information and database access or retrieval services located in taxable territory.<br>Explanation: For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017" | Enabling amendment has been made basis **recommendations** made in **48th GST council meeting**.Change in the definition extends the taxability of OIDAR services provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory. Further, it also seeks to clarify that the persons who are required to deduct tax under **section 51 (TDS)** shall be considered as **unregistered persons.** |
| 13 | **Omission of proviso to Section 12 (8) of IGST Act, 2017:**<br>Proviso to Section 12 (8) states that:<br>"Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods" | Proviso is omitted | The **destination of goods would not be factor** for determining the place of supply in case of services by way of transportation of goods to a **registered person.**<br>Enabling amendment has been made basis **recommendations** made in **48th GST council meeting.**<br>This omission has **removed challenges** in availing of **ITC** by registered persons. |

- Over 33 years of professional experience.
- Specializes in Corporate Tax planning, Tax Strategies, FBT, Transfer Pricing.
- Advisor in tax matters to various Indian, multinational and international Companies.
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- Mehul is a partner with Kirtane & Pandit LLP Chartered Accountants has a post-qualification experience of 15 years.
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- Over his career in Direct Tax & Regulatory practice, he has worked across a wide range of industries including Auto Ancillary, Manufacturing, Software & ITES, banking, and Pharma & Packaging, etc.
- He also spearheads the Business valuation and financial due diligence practice of the firm.
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- Also provides unique services in GST Analytics
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# Overview of Kirtane & Pandit LLP

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