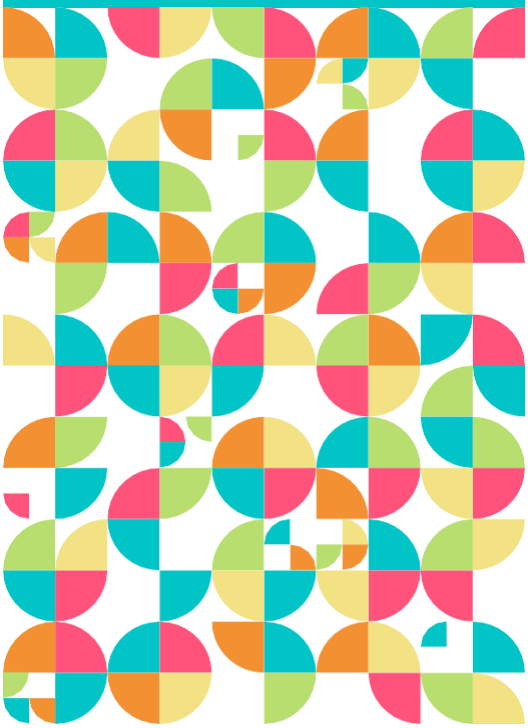
Special Edition of Corporate Update
April 2022

MOHINDER PURI & CO.
CHARTERED ACCOUNTANTS

THE FINANCE ACT, 2022



An Analysis

Contributed by:

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FOREWORD

Dear Reader,

The Indian Economy, affected by the current world events is now projected to have a GDP growth of 7.2% in the F.Y. 2022-23 as forecast by the Reserve Bank of India (IMF forecast at 8.2%). Inflation forecast is upped to 5.7%.

One of the major milestones achieved by the Indian Government in the Financial Year ended March 31, 2022 was a record tax collection of Rs. 27 trillion, a 34% jump. This increase is one of the highest in the last 2-3 decades. Direct tax collections increased by 49% and indirect tax collections by 20% signifying a robust recovery in the economy and better compliance efforts in taxation.

The Government of India last month signed Economic Cooperation and Trade Agreement ('ECTA') with Australia and also similar agreement with UAE signifying the new approach of the Government in entering into Bilateral Free-Trade Agreements. The Government is expected to sign such an agreement with UK and a few other countries as well in the near future.

The Budget proposals on taxes as announced in February 2022 were approved by the Parliament after Government introduced a few changes to the proposals towards the end of last month. We had covered in our Preliminary Budget Report issued in February this year, the salient features of the important Budget proposals and we cover in this Update a detailed analysis of the important direct tax proposals as finally enacted last month for your information.

C.S. Mathur
Partner

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Tax Rates

Amendments in Tax Rates

There is no change in the tax slabs (applicable to individuals) or tax rates. However, certain amendments have been made in the levy of surcharge to rationalize the tax rates, which are as under:

- **Surcharge on Long Term Capital Gains ("LTCG")**

  In the case of individuals, HUFs, AOPs and BOIs, the surcharge on LTCG covered by Section 112A (equity share in a company on which STT is paid at the time of acquisition and transfer or a unit of an equity-oriented fund or a unit of a business trust) is capped at 15% whereas for LTCG arising from transfer of any other asset (not covered by Section 112A) is up to 37% if the total income exceeds Rs 50 million. To bring uniformity, the Finance Act, 2022 has capped the surcharge on LTCG arising from transfer of any type of asset at 15%.

- **Surcharge for Association of Persons ("AOPs")**

  At present, the surcharge applicable for AOPs is up to 37% if the income exceeds Rs 50 million. The Finance Act, 2022 capped the surcharge rate at 15% for AOPs only consisting of members that are companies.

- **Surcharge for Co-operative societies**

  Presently, co-operative societies are liable to a surcharge rate of 12% (other than the societies opting for concessional scheme under Section 115BAD where surcharge is 10%) for any income more than Rs 10 million.

  The Finance Act, 2022 has reduced the rate of surcharge for AY 2023-24 to 7% from 12% where income exceeds Rs 10 million but does not exceed Rs 100 million. For income more than Rs 100 million, the rate of surcharge will continue to be 12%. Also, for co-operative societies opting for 115BAD the rate of surcharge will continue to be 10%.

- **Reduction in rate of Alternate Minimum Tax in case of co-operative society**

  Section 115JC has been amended to reduce minimum tax (AMT) payable by co-operative societies from 18.5% to 15% to provide parity with the company to whom Minimum Alternate Tax rate is 15%.

These amendments shall be effective from AY 2023-24.

Business income

Clarifications on non-allowability of expenditure incurred for any purpose which is an offence or which is prohibited by law

Explanation 1 to Section 37 prohibits deduction in respect of expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law. In the case of pharmaceutical companies, an issue had arisen whether expenditure on freebies or gifts given by pharmaceutical companies to medical practitioners should be denied as deduction under Section 37 considering that the receipt of gifts, etc by medical

practitioners is in violation of the regulation of Indian Medical Council governing the medical practitioners.

The CBDT had issued a circular denying the deduction to pharmaceutical companies in respect of freebies given to medical practitioners, the receipt of which was in violation of the regulations governing the professional. In this regard, some courts have also denied the deduction to the assessees, whereas in some decisions courts have held in favour of the assessees.

Similarly in the case of offences under foreign law or for compounding an offence for violation of foreign law, the assessees were claiming the deduction of such expenses. In respect of such claims, the courts had held in favour of the assessees. In order to clarify the position and intent of the government, Explanation 3 has been added to Section 37 to clarify that the following expenses shall be considered as incurred for the purpose which is an offence or which is prohibited by law:

(*i*) expense for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, **in India or outside India**; or
(*ii*) to provide any benefit or perquisite to a person, the acceptance of which is in violation of any law or rule or regulation or guideline governing the conduct of such person; or
(*iii*) to compound an offence under any law for the time being in force, in **India or outside India**.

This amendment is applicable retrospectively from AY 2022-23.

Clarification on non-allowability of Education Cess

Section 40(a)(ii) denies tax deduction in respect of any rate or tax levied on income from business or profession. Cess is not specifically mentioned along with tax under the aforesaid provision.

The assessees have been claiming deduction on account of cess under Section 40 based on the premise that the deduction for cess is not specifically restricted under such Section. In some High Court decisions as well as Tribunal decisions, the claims of the assessees have been accepted.

To nullify the ratio of these decisions, it has been clarified that the nature of Education Cess as imposed by the Finance Act, 2004 is of 'Additional Surcharge'. Accordingly, Explanation 3 has been inserted in Section 40(a)(ii) to clarify that the term 'tax' shall include any surcharge or cess, by whatever name called, on such tax.

This amendment is applicable retrospectively from AY 2005-06.

Further, Section 155(18) has been introduced to provide that where any deduction in respect of any surcharge or cess has been allowed in the case of an assessee in any year, such claim shall be deemed to be under-reported income under Section 270A(3), and the Assessing Officer shall recompute the total income of the assessee for such year and make necessary amendment. Accordingly, the penalty provisions shall apply on such claim.

However, where the assessee makes an application to the Assessing Officer in the prescribed form and within the prescribed time, requesting for recomputation of the

total income of that year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, such claim shall not be deemed to be under-reported income.

This amendment is applicable from April 01, 2022.

Clarification in respect of applicability of disallowance under Section 14A in the absence of receipt of any exempt income during the year

The provisions of Section 14A deny deduction in respect of the expenditure incurred in relation to exempt income. In this regard, the government had issued a circular clarifying that that the provisions of Section 14A shall apply irrespective of receipt of exempt income during the year. However, in many decisions, courts had taken a view contrary to such circular.

In order to provide certainty on the issue and to clarify the intent of the government, a clarificatory Explanation has been inserted to provide that the provisions of Section 14A shall apply irrespective of accrual or receipt of exempt income during any financial year, if the expenditure has been incurred during the said financial year in relation to exempt income.

The aforesaid amendment shall apply retrospectively from AY 2022-23.

Deduction on payment of interest payable to financial institutions not allowable if interest is converted into debenture or any other instrument to defer the payment

Section 43B inter alia allows deduction on interest payable on loan or borrowing from public financial institutions, NBFCs, scheduled banks or cooperative banks only on actual payment. The deduction is not allowed where the interest is converted into loan or borrowing. Such restriction is now extended to cases where such loan or borrowing is converted into debenture or any other instrument by which the liability to pay interest is deferred to a future date. Accordingly amendments have been made to Explanations 3C, 3CA and 3D.

The aforesaid amendments shall apply from AY 2023-24.

Extension of date of incorporation for eligible start up for exemption

The last date for incorporation of an eligible start up to claim tax holiday under Section 80-IAC has been extended from March 31, 2022 to March 31, 2023.

Extension of the last date for commencement of manufacturing or production, under Section 115BAB, from March 31, 2023 to March 31, 2024

The last date for commencement of manufacturing or production under Section 115BAB, which provides for concessional tax rate of 15%, has been extended to March 31, 2024 from March 31, 2023.

Withdrawal of concessional rate of taxation on dividend from foreign companies

The Finance Act, 2022 has withdrawn the concessional tax rate of 15% provided under Section 115BBD to an Indian company on dividend receivable from foreign companies (wherein the Indian company holds 26% or more in the equity share capital) from AY 2023-24. Accordingly, dividends from such foreign companies will be taxable at applicable normal rates.

New tax regime for Virtual Digital Assets

Taxation on transfer of Virtual Digital Assets

Considering phenomenal increase in the volume of crypto transactions, the Finance Act, 2022 introduced a taxation scheme for the taxation of virtual digital assets (VDA) including both cryptocurrencies and non-fungible tokens.

Section 2(47A) defines VDA as any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically. Non fungible token and any other token of similar nature or any other digital asset as may be notified by the Central Government are also included in VDA.

Section 115BBH has been inserted to provide that any income from transfer of any VDA shall be taxed at the rate of 30%. It has been provided that no deduction of any expenditure or set-off of loss shall be allowed while computing such income except for the cost of acquisition.

Further, loss from transfer of VDA shall not be available for set off against any income (not even against income arising from the transfer of another VDA) and shall also not be allowed to be carried forward.

Furthermore, in order to tax income in the hands of person receiving VDA without consideration or for inadequate consideration, Explanation to Section 56(2)(x) has also been amended.

These amendments shall apply from Assessment Year 2023-24.

Further, Section 194S has been inserted to provide for deduction of tax (TDS) at the rate of 1% on consideration paid/ payable by purchaser to any resident seller in relation to transfer of VDA, subject to certain monetary thresholds. Section 194S also provides that where the payment for such transfer is wholly in kind or partly in kind but the part in cash is not sufficient to meet the TDS liability, the person before making the payment shall ensure that the tax required to be deducted has been paid in respect of such consideration.

It has also been provided in Section 194S that the provisions of Section 206AB (existing provisions of higher TDS rate where payee is non-filer of income tax return) and Section 203A (requirement to obtain tax deduction number) shall not apply in case of certain specified persons.

This amendment will take effect from July 01, 2022.

Faceless assessment and other schemes

Revamping of the faceless assessment scheme

The Finance Act, 2022 has revamped the faceless assessment scheme which was introduced in Section 144B by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with the objective of imparting greater transparency by eliminating

human interface and providing team-based assessment with dynamic jurisdiction. However, the faceless assessment scheme as was introduced had been subject matter of challenge by the assessees, mainly due to non-granting of sufficient opportunity to the assessees to represent in person in the cases when an adverse view was taken in their cases. Due to this reason, the courts cancelled the assessment orders passed by the National Faceless Assessment Centre (NaFAC) in various cases. Keeping in view the above, a new amended scheme has been introduced which provides in particular sufficient opportunity to the assessees. The main highlights of the revamped scheme are as under:

- Where the assessment unit proposes variation prejudicial to assessee, it shall issue a show cause notice to the assessee through NaFAC stating the variations prejudicial to the interest of assessee and calling upon him to submit as to why the proposed variation should not be made.

- Where the request for personal hearing has been received the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony only.

- Sub-section (9) of Section 144B of the Act, which provided that the assessment proceedings shall be void if the procedure mentioned in the Section was not followed, has been deleted to avoid cancellation of assessment order due to procedural lapses.

- The assessment unit after taking into account all relevant material available on record, prepare an income or loss determination proposal (instead of draft order) and send the same to NaFAC. NaFAC may assign the income or loss determination proposal to a review unit, which shall prepare a review report and send it to NaFAC.

- The NaFAC shall forward the review report to the assessment unit which had proposed the income or loss determination proposal, as against different assessment unit as mentioned in the earlier scheme.

- Draft Assessment order shall be prepared only when NaFAC conveys to the Assessment Unit to prepare draft order in accordance with the income or loss determination proposal or after Review Unit's report.

- The Regional Faceless Assessment Centres have been removed under the new scheme.

The aforesaid amendment is applicable from April 01, 2022 and as such, will apply to all assessment proceedings on or after April 01, 2022.

Other Faceless Schemes under the Act

Faceless scheme is a team-based assessment with dynamic jurisdiction. The Central Government has already notified faceless assessment scheme and faceless appeal scheme. Statutory provisions pertaining to Faceless determination of arm's length price, Faceless Dispute Resolution Panel, Faceless appeal to Appellate Tribunal, Faceless procedure of Appellate Tribunal have been provided under the Act. However, procedural schemes for implementing the said provisions are yet to be rolled out.

The present provisions provide that no notification shall be issued after 31st day of March, 2022 for issuing directions in respect of such procedures. The Finance Act has amended Sections 92CA, 144C, 253 and 255 to extend the date for issuing directions under the aforesaid Sections till March 31, 2024.

Measures to promote voluntary compliance and compliance facilitation measures

New provision to enable filing of Updated return

Under the present provisions of the Act, a return of income can be filed latest till 3 months before the end of the relevant assessment year. Further, a return can be revised latest by the aforesaid time period or before the completion of assessment, whichever is earlier. A new sub-section (8A) has been introduced in Section 139 to enable filing of Updated return, whether or not any return has been filed earlier by the assessee, to promote tax compliances, subject to the payment of additional tax as prescribed, depending on the time of filing of the return.

The Updated return under Section 139(8A) can be filed within twenty-four months from the end of the relevant assessment year.

The newly introduced provision contains conditions when Updated return cannot be filed, persons who are not eligible to file Updated return

- **Nature of updated return**

  Updated return cannot be filed, if the updated return:

  a) is a return of a loss; or
  b) has the effect of decreasing the total tax liability determined on the basis of return furnished under sub-section (1) or sub-section (4) or sub-section (5); or
  c) results in refund or increases the refund due on the basis of return furnished under sub-section (1) or sub-section (4) or sub-section (5)

  However, where the return originally filed by the assessee was a loss return, he can file updated return if such updated return is not a return of loss.

  Further, if as a result of furnishing of updated return for any assessment year, the carried forward loss or unabsorbed depreciation or MAT credit is to be reduced for any subsequent year, an updated return shall be furnished for each such subsequent year.

- **Persons who are not eligible to file updated return**

  A person is not eligible to furnish updated return if in his case a search has been initiated; a survey has been conducted; a notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned in the case of any other person belongs to such person or the books of account or documents, seized or requisitioned in the case of any other person contain information related to such person.

- **Circumstances where updated return cannot be filed**

  Further, updated return cannot be filed by the assessee, if:

a) an updated return has been already been furnished i.e. revised updated return cannot be filed; or
b) any proceeding for assessment or reassessment or recomputation or revision of income under this Act is pending or has been completed for the relevant assessment year in his case; or
c) the Assessing 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 the Prohibition of Benami Property Transactions Act, 1988 or the Prevention of Money-laundering Act, 2002 or the 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 of return under this sub-section; or
d) information for the relevant assessment year has been received under an agreement referred to in Section 90 or Section 90A in respect of such person and the same has been communicated to him, prior to the date of furnishing of return under this sub-section; or
e) any prosecution proceedings under the Chapter XXII have already been initiated; or
f) he is such person or belongs to such class of persons, as may be notified by the Board in this regard:

- **Additional Income Tax on Updated return**

A new Section 140B has been inserted to provide that before furnishing the updated return, the assessee shall pay tax payable on the updated return together with interest and fee payable under the Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional income-tax.

The additional income-tax payable (including Surcharge and Cess) under Updated return shall be:

i. 25% of aggregate of tax and interest payable if such return is furnished before completion of the period of twelve months from the end of the relevant assessment year;
ii. 50% of aggregate of tax and interest payable if such return is furnished after the expiry of twelve months from the end of the relevant assessment year but before completion of the period of twenty-four months from the end of the relevant assessment year.

- **Time period for tax assessment**

A new sub-section (1A) has been inserted in Section 153(1) to provide that where updated return is filed, assessment can be completed before the expiry of nine months from the end of the financial year in which updated return was furnished.

These amendments are applicable from April 01, 2022.

Modification of tax demand upon order passed by adjudicating authority under Insolvency and Bankruptcy Code, 2016

A new Section 156A has been inserted to empower assessing officer to modify notice of demand issued under Section 156, where tax, interest, penalty, fine or any other sum covered by such notice of

demand is reduced as a result of an order of the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 passed for restructuring the business organisation.

This amendment is effective from April 01, 2022.

Filing of Modified return in case of merger or demerger

In the case of amalgamation or de-merger or merger of business, the orders of High Court or tribunal or Adjudicating Authority allowing such reorganisation often take effect from an earlier date. By the date of receipt of such orders, the successor and predecessor normally have already filed their respective returns for their respective income.

After receipt of the order recognising such reorganisation, the successor entities are required to modify their tax return, which due to statutory limitation cannot be filed. Therefore, a new Section 170A has been inserted to enable the successor entity to file Modified return for the period between the date from which the order takes effect and the date of issuance of final order of the competent authority. The Modified return can be filed in such form and manner, as may be prescribed, within a period of six months from the end of the month in which the order permitting the reorganisation is issued by the competent authority.

This amendment is effective from April 01, 2022.

Measures to widen tax base

Amendment in the provisions relating to Income escaping assessment

The Finance Act, 2021 introduced new scheme for income escaping assessment. Under the said scheme, the assessing officer can issue a notice to the assessee for assessing any income which escaped assessment, based on the information suggesting that the income chargeable to tax has escaped assessment.

Explanation 1 to Section 148 has been amended to enhance the scope of income escaping assessment by providing that 'the information available with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment' shall include any audit objection, or any information received from a foreign jurisdiction under an agreement or directions contained in a court order, or information received under a scheme notified under Section 135A.

Further, the time limit for issue of notice under Section 148 was up to ten years from the end of the relevant assessment year if the income chargeable to tax was represented in the form of 'asset'. Section 149 has been amended to increase the scope of Income escaping assessment till 10 years to cover the cases where the income chargeable to tax is found represented in the form of:

a. an asset;
b. expenditure in respect of a transaction or in relation to an event or occasion; or
c. an entry or entries in the books of account.

These amendments are applicable from April 01, 2022.

Revisionary power of Commissioner of Income-tax to cover order passed by Transfer Pricing Officer

The provisions of Section 263 of the Act have been amended to cover in its ambit

the order passed by Transfer Pricing Officer (TPO) under Section 92CA. Now, the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner who has jurisdiction over the TPO, if he considers that any order passed by the TPO is erroneous in so far as it is prejudicial to the interests of revenue, may pass an order directing revision of the order of TPO. Consequential changes have also been made in the provisions of Section 153 to provide two months' time to the Assessing Officer to give effect to the order of TPO consequent to the directions in the revision order.

These amendments are applicable from April 01, 2022.

Onus on the assessee and the creditor to explain the nature and source of loan or borrowing

Section 68 empowers the assessing officer to tax any amount found credited in the books of assessee if the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory.

Further, in case the nature of such sum is share application money, share capital or share premium, the person in whose name such credit is recorded in the books of such company is also required to offer an explanation about the nature and source thereof. There is no similar onus of proof on the assessee where the sum credited is in the nature of loan or borrowing.

In order to put similar onus on the assessee to justify the nature and source of sum credited in the form of loan or borrowing, Section 68 has been amended to provide that the loan or borrowing shall be treated as explained only if the nature and source of funds is also explained in the hands of the creditor.

The aforesaid amendment shall apply from AY 2023-24.

No Set off of loss or unabsorbed depreciation in search & survey cases

A new Section 79A has been inserted in the Act to provide that where any undisclosed income is detected consequent to a search under Section 132 or a requisition made under Section 132A or a survey conducted under Section 133A (other than under sub-section (2A) of Section 133A), no set off, against such undisclosed income, of any loss, whether brought forward or otherwise, or unabsorbed depreciation shall be allowed to the assessee under any provision of the Act in computing his total income. The term "undisclosed income" has also been defined under Section 79A.

This amendment is effective retrospectively from AY 2022-23.

Provisions relating to Charitable Trusts and Institutions

Maintenance of books of accounts

The exemption available under Section 11 and Section 12 to charitable trust or institution is subject to various conditions contained in Section 12A of the Act. Section 12A inter alia provides that charitable trust or institution shall get its accounts audited by a Chartered Accountant. However, the Section was silent on the requirement of maintenance of books of account. In order to remove the aforesaid anomaly it has now been provided that the trust or institution shall be allowed exemption under Section 11 and 12 if such institution or trust has maintained books of account and other

documents in such form and manner and at such place as may be prescribed.

This amendment is applicable from April 01, 2023 and shall accordingly apply to AY 2023-24.

Year of taxability of income where income accumulated or set apart is not utilised

The provisions of Section 13(3) have been amended to provide that the income of Charitable trust or institution which was not utilized but was allowed to be accumulated or set apart for the specified period, if remains unutilised till the end of the period allowed for such accumulation, shall be deemed to be the income of such trust or institution of the last financial year of the period for which such income was allowed to be accumulated or set apart but remained unutilized.

This amendment shall be effective from AY 2023-24.

Income to be deemed as applied only when the sum is actually paid

The income of charitable trust or institution is exempted only when 85% of the receipts are applied for charitable purposes. It has now been provided that any sum payable by a trust or institution shall be considered as application of income in the financial year in which such sum is actually paid by it irrespective of the year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it.

It has also been provided that where any sum has been claimed to be applied by the trust or institution in any earlier year, no reduction shall be allowed again in any subsequent year based on payment of the sum in the later year.

This amendment is applicable retrospectively from AY 2021-22.

Voluntary Contributions for the renovation and repair of temples, mosques, gurdwaras, churches etc may be treated as part of corpus

In order to relax the mandatory condition of application of funds by a trust or institution, it has been provided that where the property held under a trust or institution includes any temple, mosque, gurdwara, church or other place notified under Section 80G(2)(b), any sum received by such trust or institution as voluntary contribution for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place may be treated by such trust or institution as forming part of the corpus at its option. Such option shall subject to the condition that the trust or the institution-

a. applies such corpus only for the purpose for which the voluntary contribution was made;
b. does not apply such corpus for making contribution or donation to any person;
c. maintains such corpus as separately identifiable; and
d. invests or deposits such corpus in the forms and modes specified under sub-Section (5) of Section 11.

It has also been provided that in case of violation of any of the above conditions, the sum considered as part of corpus by the trust or institution shall be deemed to be the income of such trust or institution of the year during which the violation takes place.

This amendment is applicable retrospectively from AY 2021-22.

Amendment in the provisions relating to revocation of registration or provisional registration

The existing provisions of Section 12AB empower the Commissioner under certain circumstances to revoke the registration granted to a charitable trust or institution. Such circumstances include where the activities of the trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution or the trust or institution has not complied with the requirement of any other law or the activities are being carried out in a manner that the provisions of Section 11 and 12 do not apply.

The Finance Act has amended the aforesaid provisions to also cover in its scope power to withdraw the registration or even provisional registration granted to a trust or institution in case of specified violations. Such specified violations inter alia include the circumstance when the trust or institution has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained by such institution or trust in respect of the business which is incidental to the attainment of its objectives.

The commissioner may withdraw the registration or provisional registration under the following circumstances by passing an order in writing after affording a reasonable opportunity of being heard to the trust or institution:

a. where the Principal Commissioner or Commissioner has noticed occurrence of one or more specified violations during any year; or
b. where the Principal Commissioner or Commissioner has received a reference from the Assessing Officer under the second proviso to sub-Section (*3*) of Section 143 for any year; or
c. such case has been selected in accordance with the risk management strategy, formulated by the CBDT, for any year.

A copy of the order passed by the commissioner shall be forwarded to the assessment officer also.

This amendment is effective from April 01, 2022.

Computation of the income chargeable to tax in case of denial of exemption to charitable trust or institution

When the exemption is denied to a charitable trust or institution due to non-maintenance of books of account or audit thereof or non-filing of return of income by the due date or where the activities of the trust or institution involve carrying on of any activity in the nature of trade, commerce or business, its income chargeable to tax shall be computed as per Section 13(10) after allowing deduction for the expenditure (other than capital expenditure) incurred in India, for the objects of the trust or institution, subject to fulfilment of the following conditions:

a) such expenditure is not from the corpus standing to the credit of such trust or institution as on the last day of the financial year immediately preceding the year relevant to the assessment year for which the income is being computed;
b) such expenditure is not from any loan or borrowing;
c) claim of depreciation is not in respect of an asset, acquisition of which has been

claimed as application of income in the same or any other year; and

d) such expenditure is not in the form of any contribution or donation to any person.

It has also been provided that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any other provision of this Act.

This amendment shall be effective from AY 2023-24.

Taxation of certain income of trust or institution at special rate

A new Section 115BBI has been introduced to provide that 'specified income' of fund, trust or institution referred to in Section 10(23C) and Section 11 shall be taxed at 30%, without allowing any deduction for any expenditure or allowance or set off of any loss under any provision of the Act.

'Specified income' has been defined to include the income which is not allowed to be accumulated, income applied to the purposes other than charitable purpose, income ceases to remain invested in specified modes, income not utilised for the purpose for which it is so accumulated, income donated to other trust, income applied for the benefit of persons specified under Section 13(3), etc.

This amendment is applicable retrospectively from AY 2022-23.

Alignment of two regimes of exemption as contained in Section 10(23C) and Section 11

In order to bring consistency in the provisions of the two exemption regimes as contained in Section 10(23C) (sub clause (iv), (v), (vi), and (via) applicable to dealing with Income of any fund or institution or trust or any university or other educational institution or any hospital or other medical institution) and Section 11, various amendments have been made. Such amendments include providing mechanism for accumulation of income by entities governed by Section 10(23C); providing specific provision for taxation of income accumulated or set apart but not utilised by the end of such period by Section 10(23C) entities, etc.

Further, tax on accreted income under Section 115TD which is in the nature of Exit tax has also been extended to Section 10(23C) entities from AY 2023-24. Various other provisions in case of both the regimes have been rationalised.

Penalty on utilising income or property of the trust for the benefit of the trustee or any other specified person

The provisions of Section 13(1)(c) restrict passing on of income or property of the trust or institution for the benefit of the trustee or other persons specified under Section 13(3). In order to discourage such misuse of the funds of the trust or institution by specified persons, a new Section 271AAE has been inserted in the Act to provide for penalty on trusts or institution which is equal to amount of income applied by such trust or institution for the benefit of specified person where the violation is noticed for the first time during any previous year and twice the amount of such income where the violation is notice again in any subsequent year. This penalty would also be applicable to the entities covered by Section 10(23C).

This amendment shall be applicable from AY 2023-24.

Changes in TDS provisions

Amendment in Section 194-IA – withholding tax on consideration for transfer of Immovable Property

Section 194-IA requires withholding of tax at 1% of the consideration for transfer of immovable property payable to a resident transferor. The Finance Act, 2022 has amended this Section requiring deduction of tax on higher of the following two amounts:

a. Consideration disclosed for transfer of Immovable property;
b. Stamp duty value of such property.

Further, the requirement of deduction of tax will arise where either of the two values mentioned above exceeds INR 5 million.

The amendment is effective from April 01, 2022.

Changes in the provisions of Section 206AB and 206CCA imposing higher withholding rate due to non-filing of return by the recipient

The Finance Act, 2021 inserted new Sections 206AB and 206CCA which deal with the deduction and collection of tax at source respectively at higher rate (5% or twice the applicable rate, whichever is higher) in the case of a person (being recipient of the sum) who has not filed the return of income for two immediate previous years and the aggregate of tax deducted and tax collected at source in his case is Rs 50,000 in each these two years. Further, this Section is not applicable where the recipient is a non-resident who does not have a permanent establishment in India.

This Section has been amended to provide that the higher rate of TDS shall apply even if the default in not furnishing the return of income has been committed only for the immediate previous year for which the due date for filing of tax return has expired. Thus the period of non-filing of return for one year will result in application of TDS at higher rate under the above Sections.

Furthermore, certain Sections dealing with tax deduction at source were kept as exclusions where the provisions of this Section will not apply. To further reduce the burden of compliance, three more Sections have been added to the list of exclusions i.e., 194-IA (Transfer of immovable property), 194-IB (Payment of rent by Individual and HUF), and 194M (payment of commission, professional fees or contractual amount exceeding Rs 5 million by Individual or HUF).

This amendment is effective from April 01, 2022.

New provision for deduction of tax at source on benefits / perquisites arising from business or profession

In order to widen the tax base, a new Section 194R has been inserted to impose a withholding tax of 10% on the value of the benefits or perquisites provided in cash or kind to a resident in the course of business or profession.

The monetary threshold for applicability of this Section is Rs 20,000 per financial year.

This Section is not applicable to a person being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed Rs 10 million in case of business or Rs 5 million in case of

profession, during the financial year immediately preceding the relevant financial year.

This amendment is effective from July 01, 2022.

Penalties

Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc

Section 272A of the Act provides for penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections etc. The amount of penalty for failures listed under 272A(2) has been increased substantially from one hundred rupees per day to five hundred rupees per day.

This amendment will take effect from April 01, 2022.

Personal Taxation

Exemption to the amount received by an employee from his employer for medical treatment relating to COVID-19 or by an individual from any person for treatment or on account of death due to COVID-19

Section 17 has been amended to exclude from the scope of perquisite the amount paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family in respect of any illness relating to COVID-19 subject to such conditions, as may be notified by the Central Government.

Further, the provisions of Section 56(2)(x) have been amended to exclude the following amounts received by any person from the ambit of 'Income from Other Sources':

a) amount received by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to the conditions to be prescribed by the Central Government;
b) amount received by a member of the family of a deceased person-

   i. from the employer of the deceased person; or
   ii. from any other person or persons to the extent that such sum or aggregate of such sums does not exceed ten lakh rupees,

   where the cause of death of such person is illness related to COVID-19 and the payment is received within twelve months from the date of death of such person, subject to such other conditions to be notified by the Central Government.

   These amendments are applicable retrospectively from AY 2020-21.

Increase in limit of deduction for employer's contribution towards National Pension System (NPS) for state government employees

Section 80CCD(2) has been amended to increase the limit of deduction in respect of contribution made by the State Government to the account of its employee towards NPS, in view of raising of contribution limit to 14% by the State Governments.

This amendment is applicable retrospectively from AY 2020-21.

Measures to reduce litigation and Miscellaneous amendments

Amendment in the definition of books of account

The definition of 'books of account' as contained in Section 2(12A) has been amended to cover in its scope account books or other books maintained in digital form or electronic form. Earlier maintenance of such books in written form or as print-outs only was permitted, which requirement, due to changing business landscapes and evolution of new technologies to enable paper less offices, has been dispensed with.

This amendment is effective from April 01, 2022.

Assessment to be deemed as made in the hands of the successor in the case of succession

Section 170 provides that in the case of succession, the predecessor shall be assessed till the date of succession, whereas successor shall be assessed in respect of income of that year from the date of succession till the end of the relevant year.

In case of reorganisation, succession such as amalgamation, reorganisation is often effective from a preceding date. During the pendency of reorganisation proceedings before courts, income tax assessments are completed on the predecessor entities only. Courts have held such assessments illegal as the predecessor assessee ceases to exist for the relevant year for which the assessment is completed.

In order to clarify that such proceedings are valid under the Act, a new sub-section (2A) has been inserted in Section 170 to provide that the assessment, reassessment or other proceedings made or initiated on the predecessor during the course of 'pendency' of such succession, business reorganization, shall be deemed to have been made or initiated on the successor.

'Pendency' shall be considered from the period commencing from the date of filing of application for such succession of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority, as the case may be, is received by the Principal Commissioner or the Commissioner.

This amendment is effective from April 01, 2022.

New procedure when in an appeal by revenue an identical question of law is pending before jurisdictional High Court or Supreme Court

Under the present provisions of Section 158AA, where the Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is identical with a question of law arising in his case for another assessment year (other case) which is pending in appeal before the Supreme Court against an order of High Court which was in favour of assessee, he may direct the Assessing Officer to make an application to the Appellate Tribunal stating that an appeal on the question of law in the relevant case may be filed when the decision on the question of law becomes final in the other case, subject to the acceptance of the same by the assessee.

The Finance Act, 2022 has introduced a new Section 158AB under which the aforesaid scheme has also been extended to cases where the question of law is pending before the jurisdictional High Court under Section 260A against the order of the Appellate Tribunal which is in favour of such assessee. Accordingly, the provisions of earlier Section 158AA shall not apply from April 01, 2022.

Under the new Section 158AB, a collegium comprising of two or more Chief Commissioners or Commissioners has been empowered to form the opinion that identical question of law is arising –

a. in his case for any other assessment year; or
b. in the case of any other assessee for any assessment year;

The collegium may decide and inform the Commissioner not to file any appeal at this stage to the Appellate Tribunal or to the jurisdictional High Court in the relevant case against the order of the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

The Commissioner shall, on receipt of a communication from the collegium, direct the Assessing Officer to make an application (in the prescribed form) to the Appellate Tribunal or the jurisdictional High Court, as the case may be, subject to the acceptance by the assessee that the question of law in the other case is identical, within a period of 120 days from the date of receipt of the order of the Commissioner (Appeals) or of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case or other assessment year.

Where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, is not in conformity with the final decision on the question of law in the other case, the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order.

This amendment is applicable from April 01, 2022.

New provision to approach assessing officer for refund where deductor denies his liability to deduct tax

Under the present provision of Section 248, where under an agreement or other arrangement, the tax deductible under Section 195 is to be borne by the deductor, and the deductor after payment of such tax claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income. However, there is no provision to approach assessing officer for refund in such a case.

A new Section 239A has been inserted to provide that where the tax under Section 195 is to be borne by the deductor (other than on interest), such person after payment of tax file an application (in the prescribed form) before the Assessing Officer for refund of such tax, within a period of 30 days from the date of payment of such tax.

The assessing officer shall pass the order on the same within 6 months from the end of the month in which the application is received.

The provisions of Section 248 shall not apply from April 01, 2022.
This amendment is applicable from April 01, 2022.

About Us

Mohinder Puri & Co. is a firm of Chartered Accountants established in 1954. Led by eminent and highly experienced partners and complemented by a team of multi-disciplinary professionals, we offer a diverse range of professional services to our clients, besides our core competencies of audit and taxation. With over 68 years of experience, we have been providing advice and support to domestic and international clients in diverse sectors on audit, accounting, taxation and regulatory matters. Built on a strong commitment to client service, the Firm acts as a One-Stop Advisor offering expertise and hands-on support. We pride ourselves on our quality and integrity to drive the growth of our clients.

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