

# **Union Budget 2022**

## **(Income Tax Proposals)**



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FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

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**Ludhiana Branch of NIRC of ICAI**

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# BUDGET 2022

- Presented on 1<sup>st</sup> February 2022
- Brings stability in tax regime with no major change
- Emphasis on Infra development, Digitization
- 83 Amendments in Income Tax

# TAX RATES - SURCHARGE

- Co-operative Societies:
  - Changed from 12% if TI > 1 Cr to:
    - 7% if TI is > 1 Cr but < 10 Cr
    - 12% if TI > 10 Cr
- LTCG – capped to 15% if case of:
  - Dividend, S. 111A & 112A (existing)
  - S. 112 – all LTCG

# TAX RATES

## ■ AMT

- *Co-operative Societies* - Reduced from 18.5% to 15%
- *Units in IFSC* - Reduced from 18.5% to 9%

- Abolishing of s. 115BD - concessional rates of tax on dividend from specified foreign company @15%

# UPDATED RETURN

- New sub-section 139(8A) w.e.f 1<sup>st</sup> April 2022
- Within 24 months from end of relevant AY
- Not allowed if:
  - Updated Return is a return of loss
  - Effects in decrease of tax liability if ITR already filed u/s 139(1)/(4)/(5)
  - Results in refund / increase in refund

# UPDATED RETURN

## ■ Not allowed if:

- Search u/s 132 or requisition u/s 132A
- Survey u/s 133A (except 133A(2A))
- Notice issued in case of other person due to s. 132 / 132A
- An updated return already filed
- Any proceeding for assessment or reassessment or recomputation or revision is pending or completed
- Information for that AY is there u/s 90 / 90A and communicated to him

# UPDATED RETURN

## ■ Not allowed if:

- AO has information about such person to be under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or PBPT, 1988 or the PMLA, 2002 or the Black Money Act, 2015 and the same has been communicated to him, prior to the date of furnishing of updated return
- Any prosecution proceedings under Chapter XXII have been initiated before filing updated return
- *Any other as notified*

# UPDATED RETURN

- Tax to be paid before filing return otherwise would be defective u/s 139(9). To be paid as per section 140B.
- Tax, interest & additional tax to be paid
- If no ITR filed earlier, fee for delay also to be paid
- Additional Income-Tax:
  - *25% of tax & interest if ITR within 12 months*
  - *50% of tax & interest if ITR from 12 to 24 months*
- S. 153 amended - assessment u/s 143 / 144 may be made at any time before expiry of 9 months from end of FY in which such updated return was furnished



# LITIGATION IN IDENTICAL QUESTION

- S. 158AA was already there when, in an appeal by revenue an identical question of law is pending before SC for same assessee.
- S. 158AB to be inserted w.e.f. 1.4.2022:
  - *Identical question of law is pending before SC or HC*
  - *Same assessee or another assessee*
  - *Collegium of 2 or more CC or PC or C to decide and inform – not to file*
  - *After AO takes approval of assessee*

# CLARIFICATIONS

- Expl. 3 added to s. 40 – surcharge and cess are included in tax – change w.e.f. AY 2005-6
- Expl added to S. 14A - provisions of s. 14A shall apply and shall be deemed to have always applied in a case where the exempt income, has not accrued or arisen or has not been received and expenditure has been incurred during the said year in relation to such income not forming part of the TI

# CLARIFICATIONS

- Expl. 3 added to s. 37 – “expenditure for any purpose which is an offence or which is prohibited by law shall include and shall be deemed to have always included expenditure:
  - *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;*
  - *to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, governing the conduct of such person; or*
  - *to compound an offence under any law for the time being in force, in India or outside India.*

# COVID-19 RELIEF

- Press statement on 25<sup>th</sup> June 2021
- Any sum paid by employer of any expenditure actually incurred by employee on his or any member of his family on medical treatment of any illness relating to COVID-19 - not “perquisite”. (w.r.e.f. 1.4.2020).
- Exemption in s. 56(2)(x) for any sum of money received:
  - *by individual, from any person, for any expenditure actually incurred by him on his or his family member for medical treatment of any illness related to COVID-19 subject to certain conditions*
  - *by a member of family of a deceased person where cause of death of such person is illness relating to COVID-19 and payment is, received within 12 months from date of death of such person, subject to certain conditions:*
    - from the employer of deceased person (without limit)
    - Sum received from any other person(s) till Rs.10 L,

# COVID-19 RELIEF - FAMILY

- Same as per Explanation 1 to s. 10(5):
  - *Spouse and children of the individual; and*
  - *Parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.*

# EXTENSIONS

- Commencement of manufacture u/s 115BAB – 31.3.2024
- Section 80IAC for eligible start up if the date of incorporation of such start-up is upto 31.3.2023
- Faceless ITAT / TP - 2024

## S. 43B

- Amendment to Explanation 3C, 3CA and 3D of s. 43B to provide that conversion of interest payable into debenture or any other instrument by which liability to pay is deferred to a future date shall also not be deemed to have been actually paid.
- Hence, deduction u/ 43B shall not be allowed for the amount of such converted interest w.e.f. AY 2023-24

# EXEMPTIONS – NON - RESIDENTS

- **Non-resident from a unit at IFSC allowed:**
  - *Transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit.*
  - *Income by way of royalty or interest on account of lease of Ship paid by such unit if the unit commenced its operations on or before 31.3.2024.*
  - *Income from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an a/c maintained with an Offshore Banking Unit, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.*
- **Exemption withdrawn for non-residents in clauses 8, 8A, 8B & 9 of section 10, for remuneration, fee or income w.e.f. AY 2023-24.**



# DEDUCTIONS

- Benefit u/s 80CCD(2) for investment in NPS extended to SG Employees - limit of deduction increased from 10% to 14% in respect of contribution made by SG w.e.f. AY 2020-21
- S. 80DD - available during lifetime, i.e., upon attaining age of 60 years or more of the individual or member of HUF in whose name subscription to scheme has been made and where payment or deposit has been discontinued.
  - *Provisions of sub-section (3) shall not apply to amount received by dependant, before his death, by way of annuity or lump sum by application of the condition referred to in the proposed amendment*

# VIRTUAL DIGITAL ASSETS (VDA)

- S. 115BBH inserted to charge tax on VDA including crypto currency, NFT etc. w.e.f. AY 2023-24. It provides for:
  - *Income from VDA tax @ 30%.*
  - *Income mean Sale consideration less cost of acquisition.*
  - *No other expense allowed.*
  - *No loss shall be set off against any other income.*
  - *Loss from VDA not be allowed to be carried forward.*
  - *Tax needs to be paid even if no other income is earned*
- “virtual digital asset” is defined u/s 2(47A)
- Gift of VDA taxable in s. 56 (2) (x)

# **VDA – DEFINITION – S. 2(47A)**

- Any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value 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 or any other token of similar nature, by whatever name called
- any other digital asset, as CG may notify

# VIRTUAL DIGITAL ASSETS (VDA)

- S. 194 S inserted for TDS on payment of transfer of virtual digital asset to a resident @ 1% w.e.f. 1.7.2022
- Where consideration for transfer of virtual digital asset is:
  - *wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or*
  - *partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer*
- Person responsible for paying such consideration shall ensure that tax has been paid before releasing consideration for transfer of VDA

# VIRTUAL DIGITAL ASSETS (VDA)

- Provisions of s. 203A [TAN] and 206AB not to apply to a specified person. Specified person means an individual or HUF :
  - *If having business income, then whose total sales, gross receipts or turnover from the business or profession **is less than** Rs. 1 crore or Rs. 50 lacs respectively during the FY immediately preceding the FY in which such VDA is transferred*
  - *Not having PGBP income*

# VIRTUAL DIGITAL ASSETS (VDA)

- No TDS u/s 194 S shall be applicable in case:
  - *Payable by a specified person – less than Rs 50,000 during FY; or*
  - *Payable by any person other than a specified person less than Rs 10,000 during FY*
- If tax deducted u/s 194 S, then no other TDS or TCS
- Where TDS is u/s 194 O as well as s. 194S, then 194S shall prevail.

# TDS

- S. 194-IA amended - TDS @ 1% of sum paid or credited to the resident or **the stamp duty value** of such property, whichever is higher from 1.4.2022
- S. 194R inserted for providing to a resident, any **benefit or perquisite**, whether convertible into money or not, arising from carrying out of a business or profession by such resident, shall, before providing such benefit or perquisite, TDS @ 10% of the value or aggregate of value of such benefit or perquisite exceeding Rs. 20000/- from 1.4.2022
- S. 206AB - 194-IA, 194-IB and 194 M excluded; 2 year reduced to 1 year

# ASSESSMENT / APPEAL

- S. 68 – source of source required for all – loan, borrowing, gift, any sum credited w.e.f. AY 2023-24
- Procedure for Faceless assessment u/s 144B substituted
- S. 170 amended to provide that assessment or other proceedings pending or completed on the predecessor in the event of a business reorganisation - deemed to have been made on successor.
- S. 170A inserted - effect of order of tribunal or court in respect of business reorganization by order of HC, NCLT in IBC for filing of modified return – within 6 months from end of the month in which order passed.



## S. 148/ 148A

- Proviso u/s 148 inserted - no approval required where AO, with prior approval of specified authority, has passed an order u/s 148A(d).
- Information with AO for purposes of. S. 148/148A means:
  - *any audit objection that assessment has not been made in accordance with the provisions of this Act; or*
  - *any information received under an agreement referred to in s. 90 / 90A; or*
  - *any information made available to AO under the scheme notified u/s 135A (e-Verification scheme, 2021 dt. 13.12.2021); or*
  - *any information which requires action in consequence of the order of a Tribunal or a Court*

# S. 148/ 148A / 149

- For search & surveys reopening changed from 3 to 10 AYs
- S. 149 – 10 Yr limit for income escaping tax  $\geq$  Rs. 50 L for:
  - *An asset*
  - *Expenditure in respect of a transaction/event/occasion.*
  - *Entry(ies) in the books of accounts.*
- Asset & Expenditure in aggregate 50 L – Notice to be issued for each such year
- Entry(ies) – not in aggregate in all 10 years.. But specific year only

## S. 148/ 148A / 149

- In case of survey u/s 133A(5) for expenditure on event, function or occasion, AO shall deem to have information u/s 148 – can open upto 10 years if 148A /149 satisfied
- S. 148A not applicable if AO has received any information under the scheme notified u/s 135A (e-Verification scheme, 2021 dt. 13.12.2021)
- S. 148B inserted – prior approval for passing order of Adl CIT/ Adl DIT /JCIT/ Jt. DIT in case of search and survey cases

# TRUSTS & INSTITUTIONS

- Procedures & conditions for exemption u/s 10(23C)(iv) / (v) / (vi) / (via) [1st regime] has been brought at par (rationalised) with exemption u/s 11 /12 [2<sup>nd</sup> regime] by:
  - *ensuring their effective monitoring and implementation;*
  - *bringing consistency in provisions of 2 regimes; and*
  - *providing clarity on taxation in certain circumstances*
- *Books of accounts to be maintained in both regime*
- S. 115TD (Taxation of accreted income) would also apply to any trust u/s 10(23C) as it is applicable to trust u/s 12A

# TRUSTS & INSTITUTIONS

- Reference to PCIT/CIT for cancellation of registration / approval by the AO for specified violations i.e.:
  - *where any income of trust has been applied other than for objects for which it is established;*
  - *trust has income from profits & gains of business which is not incidental to the attainment of its objectives or separate books of a/c are not maintained by it in respect of business; or*
  - *trust has applied any part of its income from property held under a trust for private religious purposes which does not endure for benefit of the public; or*
  - *trust established for charitable purpose has applied any part of its income for the benefit of any particular religious community or caste;*
  - *any activity being carried out by the trust or the institution:*
    - *is not genuine; or*
    - *is not being carried out in accordance with all or any of the conditions subject to which it was registered; or*
  - *trust has not complied with the requirement of any other law and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality*

# TRUSTS & INSTITUTIONS

- Accumulation of income– 85% - now income in 5<sup>th</sup> year.
- 21st proviso in s. 10(23C) inserted to provide that where the income of any trust, has been applied directly or indirectly for the benefit of any person referred to in section 13(3), such income or part of income or property shall be deemed to be the income of such person of the PY in which it is so applied
- Penalty for passing on unreasonable benefits to trustee or specified persons under new s. 271AAE. 100% for violation 1st time and double if violation in any subsequent year
- Filing of ITR for claiming exemption u/s 10(23C) by due date u/s 139(1) made mandatory to avail of exemption u/s 10(23C)

# TRUSTS & INSTITUTIONS

- In case of denial of exemption which violates the conditions prescribed its income chargeable to tax shall be computed after allowing deduction for expenditure (other than capital expenditure) incurred in India, for objects subject to:-
  - *such expenditure is not from corpus standing to the credit of such trust as on last day of FY for which the income is being computed;*
  - *such expenditure is not from any loan or borrowing;*
  - *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 previous year; and*
  - *such expenditure is not in the form of any contribution or donation to any person*



# TRUSTS & INSTITUTIONS

- Amend s. 13(1)(c) / 13(1)(d) to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.
- S. 115BBI inserted providing that where TI of any assessee includes any income by way of any specified income, the income-tax payable shall be:
  - *income-tax @ 30% on aggregate of specified income; and*
  - *income-tax which would have been chargeable had TI of the assessee been reduced by specified income.*
  - *no deduction of any expenditure or allowance or set off of any loss shall be allowed*



# TRUSTS & INSTITUTIONS

- Voluntary Contributions for renovation & repair of temples, mosques, gurudwaras, churches etc notified u/s 80G(2)(b).  
Expl. inserted which provides that such trust may at its option treat voluntary contribution as part of corpus, subject to that such trust shall:
  - *apply such corpus only for purpose for which the voluntary contribution was made*
  - *does not apply such corpus for making contribution or donation to any person;*
  - *maintains such corpus as separately identifiable;*
  - *invests or deposits such corpus in modes u/s 11(5).*

# TRUSTS & INSTITUTIONS

- Clarification that application will be allowed only when its actually paid.
- Section 40(a)(ia) and sections 40A(3) and (3A) made applicable for s. 10(23C)
- 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 the Act

## MISCELLANEOUS

- Notice of demand u/s 156 – can be amended due to NCLT or SC under IBC 2016. S. 156A inserted
- S. 56(2)(viib) specified fund regulated under IFSC Act 2019 also exempted
- S. 239A for filing refund of tax paid u/s 195 which was not payable. S. 248 for appeal withdrawn.

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