**POST–BUDGET MEMORANDUM 2024-25: DIRECT TAXES**

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**POST–BUDGET MEMORANDUM 2024-25: DIRECT TAXES**

| **Sr. No.** | **Subject** | **Comments / Recommendations** |
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| **Corporate Taxation** |
|  | Explanation 3 to S.28 – House property letting – clarify systematic composite letting to be assessable as Business income | * **Proposed Amendment**
	+ FB (No. 2) 2024 has proposed to insert Explanation 3 to s.28 w.e.f 1 April 2025 (FY 24-25) to clarify that any income from letting out of a residential house or a part of the house by the owner shall not be chargeable under the head “Profits and gains of business or profession” and shall be chargeable under the head “Income from house property”.
	+ As per EM to FB (No. 2) 2024, the tax authority had observed that some taxpayers were reporting their rental income generated by letting out of the house property, under the head ‘Profits and gains of business or profession’ in place of the head ‘Income from house property’. Accordingly, they are reducing their tax liability substantially by showing house property income under the wrong head of income.
* **Issue**
	+ There is an apprehension that the proposed amendment may be misinterpreted by the field authorities and wrongly applied to following activities :-
		1. Composite letting of property with furnishings and services - like hotels, guest houses, serviced apartments, hostels
		2. Employers providing concessional rent accommodation in employees’ quarters to employees – particularly, in remote areas where the factories are located
	+ Furthermore, in absence of definition of “residential house”, there could be controversies on the characteristics of the property which may qualify as “residential house”. For instance, whether classification as per municipal registration or electricity connection or water connection will be relevant
* **Recommendations**
	+ Hence, it may be clarified that taxpayers carrying on activity of providing residential accommodation as systematic activity are not impacted by this amendment viz. hotels, guest houses, serviced apartments, hostels, etc to avoid any misinterpretation by the field authorities. Such activities should not be considered as letting out of “residential house”. Furthermore, it may also be clarified that this amendment does not apply to employers providing rent-free or concessional rent accommodation in employees’ quarters to employees.
	+ Also, for better clarity, the term “residential house” may be defined in context of user of the property and classification as per municipal laws, etc.
 |
|  | Explanation 3(iv) to s.37(1) – Denial of deduction for expenditure incurred for settlement of proceedings – roll back of amendment | * **Proposed amendment**
	+ It is proposed to insert a fourth clause to Explanation 3 to s.37(1) to provide that any expenditure incurred to settle proceedings initiated in relation to contravention under such law as may be notified by the Central Government in the Official Gazette in this behalf, shall be disallowed in computation of business income.
* **Issue:**
	+ The object of both Exp 1 and 3 is to disallow expenditure incurred for a purpose which is an offence or prohibited by law. Even prior to insertion of Exp 1, courts had clearly distinguished between compensatory nature of expenditure and penal nature of levy. While compensatory expenditure is allowable, penalty or fine for infraction of law is not allowable.
	+ The first three clauses of Exp 3 inserted by Finance Act 2022 embody the principle of distinction between compensatory and penal nature of expenditure. The third clause of Exp 3 disallows expenditure incurred to compound an offence under any law for the time being in force, in India or outside India. This clause is sufficient to disallow expenditure incurred for settlement of any proceedings where contravention of law is involved on part of taxpayer.
	+ In the light of third limb which disallows compounding expenditure, the insertion of proposed fourth limb appears to be legislative overreach which goes beyond the principle of allowing compensatory expenditure and denying penal expenditure.
	+ It can potentially cover cases where taxpayer has settled any proceedings without admitting or denying guilt and such settlement is accepted by the regulator to avoid further litigation which can have uncertain outcome. Usually strict parameters are applied by the regulator to settle the proceedings which is not allowed for serious offences. Settlement is normally allowed where the alleged defaults are technical or venial in nature and not material
	+ The disallowance of settlement expenditure will disincentivise taxpayers from settling proceedings to avoid long drawn litigation. It will foster more litigation to prove the taxpayer’s innocence. This is contrary to the Government’s intent to improve investment climate, provide certainty and ease of doing business. The very fact that the Government has thought it fit to introduce second Vivaad Se Vishwas Scheme for settling direct tax disputes itself shows that litigation is a bane for business as also for Government and it should be curbed at the earliest opportunity.
	+ The amendment will also give rise to new litigation on allowability of settlement under law not notified by the Central Government.
* **Recommendations**
	+ Hence, in the interests of avoiding further litigation, it is recommended that the proposed amendment be withdrawn.
	+ Without prejudice, even if the amendment is to be retained, while notifying the laws to which the disallowance of settlement will apply, it may be clarified that the disallowance will apply only if the counterparty to the settlement is the regulator under the relevant law (like SEBI, RBI, Government, etc) and not for settlement of commercial disputes between private parties and/or with Government (like concession agreements, supplies to Government, etc)
 |
|  | Reduction in tax rate for foreign companies from 40% to 35% - scope for further withdrawal along with introduction of Branch Profits Tax to improve competitiveness and bring parity with domestic companies  | * **Proposed amendment**
	+ In a welcome move, it is proposed to reduce the base tax rate on foreign companies doing business in India through branch, PE, etc from current rate of 40% to 35% (excluding surcharge and cess). As per Budget Speech, this is with a view to attract foreign capital for our country’s development needs.
* **Issue**
	+ The proposed amendment reduces the disparity between domestic companies whose effective tax rate if opted for concessional tax rate u/s. 115BAA is 25.17% and foreign companies for whom highest effective rate will be 38.22% after including surcharge and cess. Nevertheless there is still a gap of 13.05% between the two rates.
	+ It is true that the rate applicable to foreign companies needs to factor the absence of tax revenue from dividends distributed by foreign companies out of such profits which is otherwise available from dividends distributed by Indian companies. Internationally, such gap is met by a Branch Profits Tax which is levied on profits repatriated from the source country.
	+ The general treaty rate for dividends paid by Indian companies to non-residents varies between 5% to 15%, in particular, where the holding by the non-resident shareholder is very substantial. (General treaty rate of 10% - HK: 5%; UK, Japan, Germany, France, Netherlands, Switzerland, China, UAE: 10%; US: 15%)
	+ The levy of Branch Profits Tax on actual profits repatriated from India will address the situation of minimum profits/capital retained in India as per applicable regulatory norms and/or incentivize the foreign companies to retain more capital in India.
* **Recommendation**
	+ The lower tax rate of 25.17% including surcharge and cess (without any specified deductions/exemptions) may also be permitted to Indian branches of foreign companies, including foreign banks. Foreign bank branches are treated on par with Indian banks for nearly all matters and continue to be significant contributors to the Indian economy. Therefore, a consequent parity in corporate tax rates should follow through relevant amendments in Income tax law. Furthermore, the tax parity will allow significant benefits for Indian economy going forward.
	+ To match the taxation on dividend, a tax on profits remitted from India by the Branches of Foreign companies, may be introduced. This tax could be levied at the time of actual remittance of post-tax profits from India. Rate for Branch profit remittance tax may be 10%, representing average rate of tax on dividends for foreign shareholders
 |
| **Capital Gains** |
|  | S.50AA – Effective date of “Specified Mutual Fund” from A.Y. 2026-27 to be modified to A.Y. 2025-26 to avoid adverse impact for listed units of hybrid funds like Exchange Traded Funds | * **Proposed amendment**
	+ The Exp Memo clarifies that the definition of “Specified Mutual Fund” (SMF) in s.50AA inserted w.e.f A.Y. 2024-25 had adversely impacted Exchange Traded Funds (ETFs), Gold Mutual Funds and Gold ETFs. Also, there was ambiguity whether Fund-of-Funds (FoFs) will be considered as SMF. Hence, as per Exp Memo, there is a need to redefine SMF to provide clarity and revision.
	+ Therefore, the FB 2024 proposes to amend the definition of SMF from existing negatively worded definition (fund which invests < 35% in domestic equities) to positively worded definition (fund which invests > 65% in debt and money market instruments).
* **Issue:**
	+ Considering such intent of amendment, the definition ought to have ideally been amended with retrospective effect from A.Y. 2024-25. But it is proposed to be made effective from A.Y. 2026-27. Hence, difficulties will persist for taxpayers for A.Y. 2025-26. The difficulty will particularly apply for taxpayers who invested in listed funds like Exchange Traded Funds on or after 1 April 2023 which are covered by s.50AA. Even if such units are sold after 12 months in current FY 2024-25, they shall be deemed to be short term capital gains as per s.50AA. But if they are sold after 31 March 2025, they shall be considered to be long term capital gains due to change in definition effective from A.Y. 2026-27.
	+ It is true that the definition of SMF refers to annual average of daily closing balance for testing the threshold of investment whether < 35% in equity or > 65% in debt and hence, very clinically, the classification of such fund is known only at the end of the year. We understand that this is the reason for making the amendment effective from next financial year instead of making the amendment in the middle of the year from 23 July 2024.
	+ But, in practice, the fund managers manage the funds in a manner that the classification of the fund as per SEBI Guidelines whether equity oriented (> 65% in equity) or debt oriented (> 65% in debt) or hybrid (equity or debt is between 35% to 65%) is generally maintained throughout the year. This is to provide certainty to the investors on tax treatment. For example, the classification of equity-oriented funds based on annual average of > 65% investment in domestic equities has been in vogue since 2004 initially for the purposes of LTCG exemption u/s. 10(38) and subsequently for the purposes of concessional LTCG rate of 10% u/s. 112A. There has been no litigation on classification of such fund based on annual average of investment. Therefore, changing the definition of SMF from 23 July 2024 is not likely to create any difficulty for taxpayers. Without prejudice, there would be no difficulty if the definition is amended from 1st April such that the amended definition applies for the whole of the year.
* **Recommendations**
	+ Hence, it is recommended that the amendment should be made at least effective from A.Y. 2025-26 if not from A.Y. 2024-25. This will provide relief to investors in listed funds who can avail the benefit of new capital gains regime in A.Y. 2025-26 itself.
 |
|  | Sovereign Wealth Funds may be exempted from applicability of s.50AA | * **Proposed amendment**
	+ Under the proposed new capital gains regime, unlisted debentures are proposed to be covered under s.50AA for deemed short term capital gains treatment regardless of holding period of the debentures. This means even if the bonds are held for more than 24 months, the gains on transfer shall still be treated as short term capital gains
* **Issue**
	+ Such deemed short term capital gains may adversely impact sovereign wealth funds/pension funds eligible to claim exemption u/s. 10(23FE) for debt and equity investment in infrastructure sector. It may be noted that such funds are exempt only on long term capital gains arising from investment made by it in India, whether in the form of debt or share capital or unit. Therefore, if any of the debt instruments invested by such funds falls within the scope of s.50AA, then the gains shall be deemed to be short term capital gains and exemption u/s. 10(23FE) may be denied. This may be an unintended consequence of deemed STCG treatment of s.50AA
* **Recommendation**
	+ Hence, it may be clarified by providing an exception in s.50AA that the section shall not apply to specified person referred in s.10(23FE) in respect of investment which is otherwise eligible for exemption u/s. 10(23FE)
 |
|  | Holding period for “undertaking” in s.50B to be reduced to 24 months | * **Proposed amendment**
	+ While the holding period for all capital assets is reduced to 12 or 24 months to turn long term, it appears the holding period for a business “undertaking” as specified in proviso to s.50B(1) is unintentionally left out to be reduced from 36 months to 24 months
* **Issue**
	+ The non-reduction of holding period for “undertaking” in s.50B from 36 months to 24 months appears to inadvertently missed out considering the general scheme explained in Exp Memo to reduce holding period for all assets from 36 months to 24 months.
* **Recommendation**
	+ Hence, it is recommended to amend proviso to s.50B to reduce the holding period from 36 months to 24 months
 |
|  | Provide optional indexation benefit with high LTCG rate or alternatively, provide grandfathering for all capital assets acquired on or before 22 July 2024 | * **Proposed amendment**
	+ Under new capital gains regime, there is no indexation benefit for LTCG for any asset considering that LTCG tax rate has been reduced from 20% to 12.5%
* **Issue**
	+ As per FAQs released by Government on new capital gains regime, the reduction in the rate will benefit all category of assets. In most of the cases, the taxpayers will benefit substantially. But where the gain is limited vis-à-vis inflation, the benefit will also be limited or absent in a few cases (Refer FAQ 9).
	+ Therefore, the sudden transition to new capital gains regime without indexation benefit adversely impacts those taxpayers for whom property prices have not risen in tandem with inflation level. The property prices in major part of the country has stabilised and not risen proportionate to Cost Inflation Index in last 4-5 years. This is particularly true in non-metro cities and mofussil areas. Since the sudden transition to new capital gains regime impacts existing properties held by the taxpayers, the amendment has a retroactive impact for such taxpayers.
	+ Furthermore, due to withdrawal of indexation benefit, taxpayers who wish to avail capital gains rollover benefit u/s. 54 or 54EC will need to invest more as compared to old regime where capital gains was computed after indexation benefit.
	+ Furthermore, while enacting Finance Bill 2023, debt mutual funds acquired on or after 1 April 2023 were brought within scope of deemed STCG treatment u/s. 50AA. This provided “grandfathering” benefit to debt mutual funds acquired on or before 31 March 2023 by way of indexation benefit with 20% LTCG rate. Based on this assurance, many taxpayers invested in debt mutual funds before 31 March 2023 to avail indexation benefit. However, it is proposed to withdraw indexation benefit across the board including for “grandfathered” debt mutual fund investments made on or before 31 March 2023. The proposed amendment, therefore, has a retroactive adverse impact on past investments which were made under assurance of a particular tax treatment.
	+ As per tax policy diligently followed by the current Government, any drastic change in regime has been made in a gradual manner by providing option to the taxpayers to choose between old regime and new regime. For instance, domestic companies have option to choose between concessional tax rate u/s. 115BAA of 22% without incentives & deduction or normal tax rate of 30% . Similarly, individual taxpayers have option to choose between CTR u/s. 115BAC(1A) and normal slab rates.
* **Recommendation**
	+ Similarly, for the benefit of taxpayers where capital gain is limited vis-à-vis inflation, it is recommended that an option may be given of choosing between old regime and new regime.
	+ The choice would be between 20% LTCG rate with indexation benefit or 12.5% LTCG rate without indexation. Such option existed in s.112 since A.Y. 2000-01 for listed securities (other than units)
	+ Alternatively, it is recommended that, on lines of “grandfathering” of debt mutual funds acquired on or before 31 March 2023, it may be provided that capital assets acquired on or before 30 September 2024 (or alternatively 22 July 2024) shall be governed by old law.
 |
|  | Extend benefit of rebate u/s. 87A to LTCG u/s. 112 and STCG u/s. 111A | * **Proposed amendment**
	+ Under the current as also proposed new regime for capital gains, benefit of rebate u/s. 87A is available for LTCG from listed equity, equity oriented funds and units of business trust u/s. 112A by virtue of s.112A(6) which provides that where the total income of an assessee includes any LTCG u/s. 112A, the rebate u/s. 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.
	+ However, similar rebate is not proposed u/s. 112 or u/s. 111A. It is true that such provision does not exist even under current law.
* **Issue**
	+ An individual having other taxable income in the range of Rs. 2.5 lakhs to Rs. 7 lakhs is denied the benefit of rebate when there is capital gains u/s. 112 or 111A. With the increase in tax rates u/s. 112 (from 10% to 12.5%) and u/s. 111A (from 15% to 20%), the difficulty for such taxpayers is perpetuated. They are denied rebate benefit which they are otherwise entitled on the normal income merely because they earn capital gains which is generally a one-off transaction.
	+ In terms of parity, since s.112A provides benefit of rebate on other income, s.111A and s.112 also ought to be amended to provide benefit of rebate on other income which will relieve them from hardship of paying higher tax on normal income merely because they also earn capital gains income
* **Recommendation**
	+ Hence, it is recommended that s.111A and s.112 be amended to incorporate provisions on lines of s.112A(6) to allow rebate on other income for small taxpayers
 |
|  | Representations on Buyback related provisions | * **Proposed amendment**
	+ It is proposed to change taxation of buyback from buyback distribution tax (BBT) in the hands of company to dividend-cum-capital gains taxation in the hands of the shareholder.
	+ As per proposed amendment, the whole of the consideration for buyback shall be treated as dividend income u/s. 2(22)(f) in the hands of shareholder. Furthermore, the consideration for buyback shall be deemed to be NIL for the purposes of s.46A such that the cost of acquisition of the shares shall be allowed as capital loss to be set off against other capital gains income either in the current year or future years
* **Issue**
	+ From Explanatory Memorandum, it appears the above taxation regime is designed on the presumption that buyback always involves distribution of profits to the shareholders. It is submitted that such presumption is not correct.
	+ S.68 of Cos Act 2013 permits buyback out of (a) retained earnings or (b) share premium or (c) proceeds of issue of another type of shares or securities.
	+ Hence, where a buyback is actually made out of share premium or proceeds of issue of another type of shares/securities, the new regime will lead to artificial taxation of capital receipt as dividend income. Illustratively, if a loss making company utilises its share premium to buyback shares with face value/cost of Rs. 100 at Rs. 20 each, the shareholder will face dividend taxation on Rs. 20 despite there being no distribution of profits. It is hence submitted that the design of buyback taxation is faulty and leads to taxation of notional dividend income despite shareholder incurring losses.
	+ Internationally, buyback is treated as dividend only to the extent of distribution of profit and not for the capital component. For instance, in Australia and UK, the buyback is treated as dividend only to the extent of “income” component embedded in the buyback proceeds
	+ Since new s.2(22)(f) refers to buyback in accordance with s.68 of Companies Act 2013, it is clear that redemption of preference shares under s.55 of Companies Act is outside the scope of the new buyback tax regime. However, it would be better to clarify the tax treatment of redemption of preference shares through a Circular for better clarity and certainty to taxpayers. The Circular may cover redemption of preference shares issued for cash consideration as also those issued as bonus or in consideration of tax-neutral transactions like merger/demerger.
* **Recommendations**
	+ Considering the above, it is submitted the proposed treatment of buybacks as dividend-cum-capital loss should not be applied to buyback out of share premium or buyback out of proceeds of another issue of shares/security i.e where retained earnings/accumulated profits are not distributed to the shareholders.
	+ On the same principles, even in case of buyback out of retained earnings, the buyback consideration representing cost of shares should not be treated as dividend income. It is true that it would be difficult for the company to ascertain the cost of acquisition of shares in the hands of the shareholder – more particularly, in case of publicly listed shares. However, the mechanism presently provided in Rule 40BB to determine the “amount received” by the company to be reduced from buyback proceeds under BBT regime can be applied even under new regime.
	+ Without prejudice to the above, it may be clarified that once the buyback consideration is fictionally deemed to be NIL for the purposes of s.46A, the anti-abuse provisions of s.50CA or 50D are not applicable. Once the consideration is statutorily deemed to be NIL, any erroneous application of s.50CA or s.50D will lead to artificial taxation of notional consideration.
	+ Furthermore, to avoid any confusion or misinterpretation by the field authorities, the treatment of buyback under Double Tax Avoidance Agreements (DTAAs) should be explained by CBDT through a Circular, in the light of varying language of Dividend and Capital gains articles in different treaties. This will provide certainty to the Indian companies while discharging withholding tax obligation u/s. 195 while making payment towards buyback from non-resident shareholders
	+ Clarity may be provided on tax treatment of redemption of preference shares allotted under different circumstances such as cash consideration, bonus, in consideration of merger/demerger, etc.
 |
|  | Defer withdrawal of exemption u/s. 47(iii) to corporate gifts to gifts made on or after 23 July 2024 and also clarify that gifts made as part of charity or CSR obligation or ESOP purposes shall not be taxable  | * **Proposed amendment**
	+ Finance Bill (No.2), 2024 has proposed to amend S.47(iii) by restricting exemption by way of transfer of capital asset under a transaction of gift by individual and Hindu Undivided Family (HUF). The Explanatory Memorandum to FB (No.2) 2024 reasons that gift is given out of natural love and affection and hence, the exemption is available only to individuals or HUFs. The proposed amendment is applicable from 1 April 2025 (i.e AY 2025-26 covering the entire FY 2024-25)
* **Issue**
	+ In making the amendment effective from 1 April 2024, the withdrawal of exemption u/s. 45 to transaction of gift for persons other than individuals and HUFs has been given retrospective effect.
	+ The amendment impacts the transactions of gift, say, by a company, etc. which would have been accomplished prior to 23 July 2024. The transactions undertaken such time may have also factored in exemption u/s. 47(iii).
	+ It causes hardship to taxpayers which have adopted an interpretation that transaction of corporate gift undertaken prior to 23 July 2024 is exempt u/s. 47(iii).
	+ This also goes against the professed policy of the incumbent Government to not make retrospective amendments
	+ Furthermore, the withdrawal of exemption u/s. 47(iii) raises ambiguity on gifts given by taxpayers other than individual or HUFs as part of charity or Corporate Social Responsibility obligation. For example, as part of CSR obligation, a company may transfer land and/or building to be used for CSR purposes to a charity or society. Issues will arise whether it will trigger anti-abuse provisions like s.50C in the hands of donor company.
	+ Similarly, as one method of granting ESOP benefit, a parent company may settle shares held in a subsidiary to an ESOP Trust to grant ESOP benefits to the employees of the subsidiary. Issue will arise whether it will trigger s.50CA in the hands of the parent company if the subsidiary is an unlisted company.
* **Recommendation**
	+ It is recommended that a grandfathering provision should be introduced for transactions of gift by taxpayer other than individuals and HUF which is undertaken prior to 23 July 2024 (viz. amendment be made truly prospective by making it effective from 23 July 2024)
	+ Furthermore, it is also recommended that gifts given as part of charity or Corporate Social Responsibility obligationor for granting ESOP benefits to employees may be carved out of the anti-abuse provisions like s.50C, s.50CA, s.43CA, s.50D, etc
 |
| **TDS/TCS related amendments** |
|  | Rationalisation of entire Domestic TDS/TCS regime | * **Proposed amendment**
	+ While our Chamber’s representation was for rationalisation of entire domestic TDS/TCS regime, it is proposed to make a start in that direction by reducing the rates on payments on which TDS was required at 5% to 2%. Also, TDS rate on e-commerce transactions is proposed to be reduced from 1% to 0.1% at par with TDS/TCS on purchase and sale of goods.
	+ This is a welcome measure. It will provide additional cash flow for businesses and also save interest cost for the Government on refunds
* **Issue**
	+ While we understand that more exercise is required at Government’s end to arrive at a revenue balancing lower TDS rates for other payments, it would be good if the reduction in TDS rate from 5% to 2% is also accompanied by removal of TDS/TCS on purchase and sale of goods @ 0.1% u/s. 194Q/206C(1H) where both buyer and seller are registered under GST. This is for the reason that the CBDT has access to GST data and hence, TDS/TCS @ 0.1% merely results in duplication of such data with additional compliance burden for the industry. The object of widening and deepening of tax base will be better addressed if such TDS/TCS is restricted to purchase and sale of goods by or to non-GST registered entities. The removal of TDS/TCS @ 0.1% will not dent the revenues of the Government since the collections are very small on these sections.
	+ Furthermore, in absence of definition of “goods”, it is not clear whether the definition of “goods” needs to be interpreted as per the Sale of Goods Act or the CGST Act or some other legislation. For instance, whether the term “goods” includes shares, securities, money/ foreign currency, actionable claims etc. within its scope is not clear since there are different inclusions and exclusions within scope of ‘goods’ under various laws. Under GST law, items like share, securities, money, actionable claims are specifically excluded from definition of goods but under the Sale of Goods Act, goods include stock and shares
* **Recommendation**
	+ Hence, it is recommended that even while overhaul of entire TDS/TCS regime may wait till next Budget, TDS/TCS on purchase and sale of goods @ 0.1% may be withdrawn or restricted to transactions with non-GST registered entitles to facilitate ease of doing business
 |
|  | S.192(2B) – Facilitating TCS/other TDS claim in Salary TDS – remove restriction cast by proviso to s.192(2B) which is contrary to intent of amendment | * **Proposed amendment**
	+ It is proposed to permit employer to consider non-salary TDS and TCS suffered by employee for Salary TDS purposes to ease cash flow and compliance burden for the employee.
	+ This measure will consequently reduce the Salary TDS – although quantum of taxable Salary income will not change.
* **Issue**
	+ But the limitation cast by following proposed proviso appears to contradict the intended effect of the relief :-

*“Provided that this sub-section shall not in any case have the effect of reducing the tax deductible except where the loss under the head “Income from house property” has been taken into account, from income under the head “Salaries” below the amount that would be so deductible if the other income and the tax deducted in accordance with other provisions of Part B and collected in accordance with the provisions of Part BB, of this Chapter, had not been taken into account*”* + A simple illustration of employee getting foreign ESOPs may be considered. He is subjected to Salary TDS on perquisite of ESOP discount and TCS on LRS made for remitting the exercise price of such ESOPs. There is no other income reported by employee to employer. The Exp Memo clearly intends to provide relief in such situation by permitting the employer to consider TCS on LRS while deducting Salary TDS (including on ESOP perquisite). But a literal reading of the above proviso leads to interpretation that this is not possible. Refer, the following :-

*“Provided that this sub-section shall not in any case have the effect of reducing the tax deductible …, from income under the head “Salaries” below the amount that would be so deductible if ……the tax ….. collected in accordance with the provisions of Part BB, of this Chapter, had not been taken into account”* * **Recommendation**
	+ Hence, it is recommended that the above proviso be omitted or alternatively, be appropriately amended as per intent stated in Exp Memo
	+ Furthermore, in absence of enabling provisions, currently, employers are reluctant to grant credit of foreign tax credit on salary income. Indian employees when they are sent on overseas assignment for short periods face taxation on their salary income for employment exercised outside India but Indian employer faces difficulty to consider credit of such foreign taxes while doing Salary TDS resulting in cash flow issue for the employee who needs to seek refund by filing return. Hence, it is recommended that employers may be permitted to consider foreign tax credit on the salary income while doing Salary TDS
 |
|  | Withdraw proposed TDS on payment of interest and remuneration to partners by firm/LLP | * **Proposed amendment**
	+ W.e.f 1 April 2025, it is proposed to introduce TDS @ 10% on payment of salary, remuneration, commission, bonus or interest to partner of firm at the time of credit to the account of partner (including the capital account) or at the time of payment thereof, whichever is earlier. The threshold for non-applicability of TDS is very low at Rs. 20,000 during the financial year.
* **Issue**
	+ The compliance of such TDS will give rise to practical challenges as stated below :-
		1. The provision does not make distinction between interest and remuneration allowable as deduction u/s. 40(b) and not allowable u/s. 40(b). Excess TDS on non-deductible interest and remuneration will lead to mismatch between quantum of taxable income in the hands of partners u/s. 28(v) and amount subjected to TDS thereby creating practical difficulty for partners to claim TDS credit.
		2. If the amount liable to TDS is linked to amount allowable as deduction u/s. 40(b), it will become difficult for the firm to deduct tax thereon during the financial year itself since such amount is determined after the end of the year while preparing the financial statements and getting them tax audited, where applicable, for the purposes of filing return of income. S.40(b) caps the deductible remuneration to 60% of book profit over Rs. 3 lakhs (now proposed to be enhanced to Rs. 6 lakhs). Hence, the amount allowable as deduction cannot be determined before finalisation of accounts.
		3. The general practice for most firms/LLPs is to treat the withdrawals during the financial year as drawings and credit the interest & remuneration as per partnership deed after the end of the year while preparing the financial statements.
		4. Hence, it will be very difficult for most firms/LLPs to do timely compliance of TDS on interest & remuneration.
	+ All firms/LLPs report the particulars of name, address, PAN and % of profit/loss share of partners along with particulars of interest and remuneration paid to them, in the returns filed by firms/LLPs. Thus, the Tax Department has ready data of interest & remuneration paid to partners.
* **Recommendation**
	+ Hence, it is recommended to roll back the proposed TDS compliance on interest & remuneration to partners which will be very difficult to comply.
	+ If necessary, to widen the tax base, disallowance u/s. 40(b) may be provided for payment of interest and remuneration to partners who do not possess Aadhar-linked PAN.
 |
| **International taxation** |
|  | Clarify applicability of threshold of Rs. 2 Cr in view of withdrawal of E-Commerce Equalisation Levy @ 2% w.e.f 1 August 2024 | * **Proposed amendment**
	+ It is proposed to withdraw E-Commerce Equalisation Levy @ 2% on non-resident e-commerce operators w.e.f 1 August 2024. This is a welcome measure which will provide relief to non-residents and improve both cost and ease of doing business in India
* **Issue**
	+ While the withdrawal is welcome, there are certain issues arising as a consequence of withdrawal which require clarification to avoid any further controversy.
	+ S.165A(2)(iii) of the Finance Act 2016 provides for de minimis threshold of Rs. 2 Crores during the previous year for trigger of EL. While it is clear that EL shall not trigger for transactions undertaken on or after 1 August 2024, the manner in which the threshold shall be applied to transactions entered from 1 April 2024 to 31 July 2024 requires clarity. Whether it shall be applied on pro-rated manner for 4 months? Whether it shall be applied for whole of the previous year – such that if the value of such transactions exceeds Rs. 2 Cr in FY 2024-25, then EL shall be levied on transactions entered till 31 July 2024 although not exceeding Rs. 2 Cr till that date?
	+ S.10(50) provided exemption from levy of income tax to transactions which were subject to ESS EL.
	+ Explanation 2A to S.9(1)(i) provides that any transaction entered into by NR in respect of goods, services, property with a person in India creates business connection in India and hence profits attributable to such business connection are taxable in India. Further, it also covers transaction in respect of download of software in India. The provision is applicable where the aggregate revenue threshold exceeds Rs. 2 Cr as per Rule 11UD. (SEP provisions)
	+ Further, second proviso to Explanation 2A and Explanation 3A state that income attributable to transaction covered under SEP shall be deemed to accrue or arise in India. Under S. 295(2)(b)(iib), CBDT has been conferred with power to make rules for the manner in which and the procedure by which the income shall be arrived at in the case of transactions or activities of a NR. However, no such guidance has yet been notified by the CBDT.
	+ Currently, there are transactions which overlap between ESS EL provisions and SEP provisions. However, due to s. 10(50), the SEP provisions were not applicable and provisions of ESS EL applied in priority over SEP provisions.
	+ Large number of NR EOPs were covered under ESS EL and hence, issue of determining income attributable to SEP was academic for such taxpayers
	+ In view of withdrawal of EL, NR EOPs entering into transaction with person in India may now get covered under SEP business connection of Explanation 2A to S.9(1)(i)
	+ The current attribution rules of income allocation/ profit attribution in case of NRs can broadly fall under two categories: (1) formulary apportionment as contained in Rule 10; and (2) ALP as contained in Section 92 read with Rules 10A to 10D. These existing profit allocation principles are strongly rooted in physical presence requirements. The principal focus of these existing tax framework is to align allocation of income with the location of tangible or physical economic activities undertaken by the enterprise, including the significant people functions and infrastructure deployed on production / supply side of business
	+ The existing principles/ rules relating to profit attribution to business connection would need to be modified substantially before they can be applied in a meaningful manner to determine profits attributable to a SEP.
	+ CBDT has issued a Draft Report on rules for profit attribution to PE on 18 April 2019 (CBDT Report 2019). For NR having SEP, the committee proposed four-factor method to determine profits attributable to India based on equal weight accorded to sales, (representing demand), manpower and assets and users (representing supply). Formula for profit attributable to SEP was as under:
		1. Step 1: Determine profit derived from India i.e. higher of the following amounts: (i) The revenue derived from India x Global operational profit margin; (ii) 2% of revenue derived from India
		2. Step 2: Step 1 x [(30% x Indian revenue/Total revenue) + (12.5%x Indian employees/Total employees) +(12.5% x wage of Indian employee/Total wages) + (25%x Assets located in India/ Total assets) + 20%]
	+ The fractional apportionment method suggested in CBDT Report 2019 suffers from several limitations like, arm’s length principle for profit attribution based on FAR analysis is dispensed with, prescribed formula considers only manpower, assets and wages and does not consider risk associated with functions and assets, it attributes de-minimis 2% of revenue derived from India to be taxed irrespective of losses, etc.
	+ After the CBDT report on profit attribution was released for public consultation in 2019, the rules for profit attribution have not been finalised yet.
	+ Given the unique and complex business models emerging due to highly digitalised business, the current profit attribution method or profit attribution rules in draft CBDT report 2019 falls short for capturing the economic value of transaction.
	+ There is no clarity for NR businesses on methods to be adopted for attribution of income to business connection in form of SEP in India. The difficulty has moreover compounded due to withdrawal of ESS EL leading to NR EOPs being covered under SEP
* **Recommendations**
	+ The manner in which the de-minimis threshold of Rs. 2 Cr will be applied for e-commerce transactions entered till 31 July 2024 may be clarified
	+ Since the existing guidance on PE attribution is based on physical operation of NR in India and that the formula provided in draft CBDT Profit attribution has drawbacks, there could be challenges in applying the same while attributing profits to SEP. In absence of any profit attribution rule, determination of income under SEP shall lead to high rise litigation and dampen the spirit of Ease of Doing Business in India.
	+ It is recommended that CBDT should prescribe clear profit attribution rules for NR triggering business connection in India especially in form of SEP having regard to highly digitalised business models and meagre physical presence of such companies in India
 |
| **Assessment, appeals and other procedural provisions** |
|  | Roll back of amendment of s.245 for omission of requirement of AO’s opinion of grant of refund adversely affecting Revenue | * **Proposed amendment**
	+ The existing provisions of s.245 permitting AO to withhold refund for any assessment year if assessment or reassessment for any assessment year is pending requires fulfilment of two conditions viz. (a) AO is of the opinion that grant of refund is likely to adversely affect revenue and (b) AO records reasons in writing and obtains previous approval of PCIT/CIT
	+ It is proposed to omit the first requirement of AO being of the opinion of grant of refund being adversely affecting revenue. This is on the presumption that the second condition of recording of reasons subsumes such requirement of presence of opinion. It is also proposed to increase the period of withholding refund from date of assessment order to 60 days from the date of assessment order with consequential denial of higher interest u/s. 244A for such period
* **Issue**
	+ The requirement AO’s opinion that grant of refund is likely to adversely affect the revenue, has been a part of the Income-tax Act, 1961 since its inception and it provides a safeguard against any arbitrary withholding of refund by the AO. Courts have held that mere pendency of any other proceeding under the Act[[1]](#footnote-2) or mere pendency of assessment or anticipation of demand from assessment is not sufficient to withhold refund[[2]](#footnote-3). This condition requires AO to make objective assessment and apply mind judiciously after considering all relevant factors. For instance, the grounds for the issuance of notice under section 143(2); the amount of tax liability that the scrutiny assessment may eventually result in vis-a-vis the amount of tax refund due to the assessee; the creditworthiness or financial standing of the assessee, and all factors which address the concern of recovery of revenue in doubtful cases.
	+ The omission of the first condition will merely require the AO to record reasons and obtain prior approval before withholding the refund. There would be no legislative guidance on the factors to be considered by the AO. There would be litigation on the aspect whether the omission is clarificatory or substantive. Without legislative guidance, mere act of recording reasons may not be sufficient safeguard to protect taxpayer’s interests.
	+ It is apprehended that the amendment may be misused by the field authorities by withholding refunds on ipse dixit of the AO by providing any reasons and not necessarily those which reflect AO’s belief about adverse impact to Revenue.
	+ There is no provision in the existing provision or in proposed amendment for a taxpayer to be given an adequate opportunity of being heard before withholding of refunds and/or their adjustment against existing demands. Taxpayer will be merely given intimation of such action [along with the speaking order under s.245(2), as applicable].
	+ Even harsher is the amendment to deny higher interest to taxpayer when the refund becomes payable subsequently (-say, favourable outcome of litigation). The higher interest is for ensuring accountability on part of Tax Department to expeditiously pass order giving effect to appellate order. The denial of such interest would be for no fault on part of the taxpayer – rather it would be on account of erroneous decision of AO to withhold the refund.
* **Recommendation**
	+ Hence, it is strongly recommended to roll back the proposed amendment to avoid taxpayers being put to greater difficulty by denying them refund and higher interest for longer period. The amendment is contrary to the object of improving transparency and accountability on part of Tax Department and ease of doing business for taxpayers
 |
|  | Representations on new block assessment for search cases  | * **Background and Existing Provision:**
	+ Search proceedings are considered to be an important tool for unearthing black money. At the same time, they are considered to be extraordinary powers. Accordingly, any consequence of search proceedings is to make assessment only in respect of undisclosed income (UDI) which has nexus with incriminating material found during the course of search. The scope of assessments concluded pursuant to search has historically been held to be restrictive so as to bring to tax the undisclosed income (UDI) found during the course of or pursuant to the search or requisition. This is on the premise that jurisdiction in respect of such assessments is also assumed basis valid search u/s. 132 or requisition u/s. 132A of the Act.
	+ The scheme of search assessments has undergone a change over a period of last 3 decades. Briefly, different schemes were :

| **Scheme** | **Period** | **Basis of assessment[[3]](#footnote-4)** |
| --- | --- | --- |
| Phase I: Old Block Assessment System (Chapter XIV-B: S. 158B to S. 158BI) | 1 July 1995 to 31 May 2003 | Block assessment of UDI for 6 years and broken period[[4]](#footnote-5). Regular assessment were kept independent |
| Phase II: Special provisions of s. 153A to s. 153C  | 1 June 2003 to 31 March 2021 | Yearly assessment of UDI for 6 years (extendable to 10 years in high value UDI) plus regular assessment of abated years |
| Phase III: Part of New Reassessment regime [S. 147 to S. 153] | 1 April 2021 to 31 August 2024 |  Same as Phase II |
| Phase IV: Proposed New Block Assessment System (Chapter XIV-B: S. 158B to S. 158BI) | On or after 1 September 2024 | Assessment of total income including UDI under block assessment scheme |

* + Each of Phase I to III in past were consistent with the object and scheme of search provisions which targeted only UDI or the income which is unearthed pursuant to search. In none of the earlier schemes of search assessment, any regular income particularly those additions which may be made on account of genuine difference of legal opinion were subjected to tax treatment accorded to UDI. Also, concluded assessment/s[[5]](#footnote-6) with block period were not disturbed unless incriminating material is found.
* **Proposed Amendment:**
	+ In this regard, FB (No. 2) 2024 proposes to reintroduce the Block Assessment Scheme for Search Assessments with certain tweaks when compared to the Old Block Assessment Scheme under Phase I prevalent till 2003.
	+ As per the Explanatory Memorandum[[6]](#footnote-7), the proposed block assessment in lieu of the existing scheme of providing re-assessment is to achieve simplification and rationalization. This is because, under the existing reassessment regime, staggered reopening of cases on a year-to-year basis is leading to long-drawn and time-consuming process and raising litigation cost. Thus, to facilitate coordinated investigation, block assessment is sought to be reintroduced. The proposal is made with the object of achieving assessment in cost effective, efficient and meaningful manner by achieving early finalization, and reducing multiplicity of proceedings which would otherwise engage taxpayers and tax authorities in multiplicity of proceedings for 10 years.
	+ While the reintroduction of the proposed scheme of block assessment is welcome, certain amendments in line with our recommendations below may be required to ensure that the object of proposed new scheme remains well targeted and does not create additional litigation or harsh consequences for the taxpayers.
 |
|  | Revamp method of computation of Total Income to bring it in-line with legislative intent | * **Issue**
	+ Pursuant to block assessment, the total income for entire block period is proposed to be determined as comprising the aggregate of “total income”. from the following [S. 158BB(1)]:
1. Total income disclosed in return furnished pursuant to notice u/s 158BC;
2. Total income as assessed u/s 143(3), 144, 147, 153A or 153C prior to search/requisition action
3. Total income as declared in ROI [u/s 139, 142(1), 148] and not covered under the above clauses
4. Total income of previous year of search [broken period] as recorded in books of accounts prior to search/requisition.
5. Undisclosed income determined by AO based on incriminating material found.
6. Further, S. 158BB(5) requires reduction from the Total Income so computed the items at (II), (III) & (IV) above, for the purpose of determination of amount of UDI, on which the 60% tax rate will apply. Further, s. 158BFA(2) provides for penal consequences @ 50% of tax so leviable[[7]](#footnote-8). In other words, these items (II), (III) & (IV) which represent regular or disclosed income, need to be excluded to determine UDI and consequently excluded for punitive tax rate and levy of penalty.
	* The above approach has missed certain aspects. Unlike the Old Block Assessment Scheme in Phase I, no exclusion is provided in respect of the following disclosed/assessed income while determining UDI:
7. Where search is conducted prior to due date for filing of return of any completed previous year forming part of block period, total income based on transactions recorded in books of accounts.
8. Where in respect of any past year forming part of block period any order of settlement has been made u/s 245D(4), total income based on such settlement order.
9. Where an assessment of UDI has been made earlier under proposed clause (c) of s. 158BC(1)
	* The above can lead to overstatement of undisclosed income in bona fide cases which is surely unintended and not in line with legislative intent.
10. It is clear that the exclusions which existed in earlier schemes, particularly the Old Block Assessment Scheme under Phase I above, were fair, avoid discrimination and do not expand the scope of UDI to cover the income which forms part of regular transactions as are recorded in the books or are based on documents maintained in the regular course of business or, income which is already assessed in past.
11. In respect of completed previous year preceding the year of search, if ROI is not due, it is harsh and inconsistent to regard income of such period as UDI. To illustrate, if the search is conducted on 5 April 2025 on A Ltd. while search is conducted on B Ltd. on 31 December 2025, income for F.Y. 2023-24 is regarded as UDI for A while not UDI for B despite the fact that just like B, A also filed ROI on or before the S. 139(1) due date for FY 2024-25 of 31 October 2025. Such salutary and rationale provision which existed in the earlier Phase I block system needs to be replicated.
12. Likewise, exclusions with regard to income assessed as per settlement order and UDI assessed under proposed block regime earlier are fair and deserve to be considered even under the New Block Assessment Regime. While assessment of self-same income is otherwise also not permissible leading to duplicated assessment, a suitable clarification in law will only avoid unintended litigation and save efforts and energy of tax authorities and taxpayers which is the objective of the proposed scheme.
* **Recommendation**
	+ Consistent with Old Block Assessment Scheme in Phase I, items specified at sub-para (c) above may also be provided in computation of total income to be considered as cases involving disclosed income
 |
|  | Remove ambiguity to ensure that additions on legal issues are classified as disclosed income | * **Issue:**
	+ Under the proposed New Block Assessment Scheme, the assessment u/s. 158BA(1) for the block period is of the ‘total income’ unlike the Old Block Assessment Scheme under Phase I which was restricted only in respect of Undisclosed income. As a result, all the pending proceedings as at the date of search and relevant to block period for the assessment or reassessment are abated in the proposed New Block Assessment Regime.
	+ In respect of abated assessment/ reassessment falling during this period, AO may also be empowered to carry out additions in respect of disclosed income as part of assessment to ‘total income’. Such additions may involve legal issues or disallowance of bonafide claim of expenditure which could purely be on account of divergence of opinion. It could be also in respect of additions which may be continued to be made basis the past trend in the assessment and many of which may be pending in appeal for earlier years.
	+ Separately, additions may also be carried out in respect of Transfer Pricing Issues on a reference u/s 92CA.
	+ As per proposed s. 158BA read S. 158BB(1), once the total income is assessed u/s. 158BA(1) and if the exclusion is not possible in terms of s. 158BB(5), the income gets automatically classified as UDI and will be assessed as per S. 113 at the punitive rate of tax of 60%.
	+ To treat such income as UDI appears to be an unintended consequence. Infact, proposed s. 158BB in its existing form gives impression that it seeks to cover ambit of UDI alone. This is also discernible from computation mechanism provided in sub-section (1) read with sub section (2) as also denial of set off of loss pertaining to block period as also pre-block period under sub sections (6) & (7) of that section.
	+ Even in cases of Phase II search assessment procedure (s. 153A to s.153C) which provided determination of UDI and regular income under single assessment order, separate tax treatment is provided in respect of both types of income for applicability of tax rate, penalty, set off of losses, etc.
* **Recommendation:**
	+ If intent of proposed New Block Assessment Scheme is to combine assessment of UDI and regular income under single assessment order, there is a need to provide a separate provision in the New Block Assessment Scheme providing for powers to AO to carry out regular assessment (including transfer pricing issues) of abated and other years in accordance with other provisions of the Act [similar to S. 158BA(6)]. This will protect items of addition for any legal and bona fide claims emerging from returned income from being treated as UDI. This will also take care of set off of disclosed losses of Block or pre-Block period against regular income in accordance with other provisions of ITA.
	+ Alternatively, to avoid repeat of litigation and in order to provide clarity, it may be specifically provided in line with Old Block Assessment Scheme under Phase I, that the New Block Assessment Scheme of Chapter XIV-B will cover assessment of only UDI for the block period.
 |
|  | Need to restore definition of UDI as per Old Block Assessment Scheme of Phase I | * **Proposed Amendment**
	+ Definition of “undisclosed income’ in s. 158B(b) as proposed by FB (No. 2) 2024 reads as under:

*“158B. (b) “undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act* ***which is found to be******incorrect****, in respect of the block period.”** **Issue**
	+ The definition above is almost identical to definition provided u/s 158B(b) in Old Block Assessment Scheme of Phase I or S. 271AAA or S. 271AAB except that UDI as proposed includes expense deduction or allowance which is found to be ‘incorrect’ as compared to earlier requirement of such expense deduction or allowance being found as “false”.
	+ Explanatory Memorandum to FB does not throw any light in intent to substitute expression ‘false’ by ‘incorrect’. The expression ‘false’ is apt in the context of definition of Undisclosed income and is judicially tested. Scope of said expression is understood to cover any fraudulent claim- though recorded or disclosed in books of account of tax returns. Courts have applied test of falsity to unverified or unsustainable claims for expense, deduction or allowance, while determining undisclosed income. There is no reason therefore to substitute expression ‘false’ by ‘incorrect’ in the context of claim for expense, deduction or allowance in the context of determining UDI.
	+ Also, proposed expression ‘incorrect’ in the context of search action under s. 132 or requisition under s. 132A may indicate same meaning as that of false. This proposition is supported by State of Tamil Nadu v. India Silk Traders, Tax Case (Revision) No. 1008 of 1984 where, in the context of incorrect return furnished under s. 12 of Tamil Nadu General Sales Tax Act, it was held that incorrect has wide import but shall exclude bonafide cases. However, use of different expression in s. 158B(b) may be read erroneously by tax authority to give broad meaning to cover even bonafide or legal claims giving rise to unnecessary and avoidable litigation.
* **Recommendation:**
	+ In line with the Old Block Assessment Scheme, the definition of UDI even under the New Block Assessment Scheme is recommended to continue to cover “expense, deduction or allowance claimed under this Act which is found to be false” as against the proposed language which uses the phrase “found to be incorrect”.
 |
|  | Permit withdrawal of admitted applications from BAR | * **Proposed amendment**
	+ As proposed in the Finance Bill 2024, applications pending for admission under section 245R(2) of the Act before the Board of Advance Rulings may be withdrawn by 31 October 2024 and withdrawal orders to be passed on/ before 31 December 2024. This is a welcome measure
* **Issue**
	+ However, there is no amendment in respect of already admitted applications by erstwhile AAR.
	+ Many taxpayers whose cases were admitted by erstwhile AAR would also like to withdraw their applications and subject themselves to conventional appeal process considering the following factors :-
		1. Long passage of time with assessments getting blocked
		2. Change of forum from AAR which was headed by retired SC/HC judge to BAR which comprises of Departmental officers.
		3. With amendment in law, BAR’s ruling becoming non-binding on the Tax Department who can file appeal to the High Court thereby diluting the object of such alternative dispute resolution
		4. Evolution of judicial precedents covering the issues referred to AAR and hence, the issues are no more res integra/virgin issues
* **Recommendation**
	+ Hence, provision may be amended to permit such taxpayers also to withdraw their admitted applications
 |
| **Penalties and Prosecution** |
|  | Relief from TDS prosecution u/s. 276B to be extended to default in non-deduction of tax on payments in kind as also TCS defaults | * **Proposed amendment**
	+ It is proposed to provide relief from prosecution u/s. 276B for TDS default if the TDS deducted is deposited before due date of filing quarterly TDS return
* **Issue**
	+ However, this relief is restricted to cases covered by s.276B(a) and not cases covered by s.276B(b) which provides for prosecution for non-deduction of tax on payments in kind like lottery winnings u/s. 194B, online game winnings u/s. 194BA, virtual digital asset u/s. 194S and business perquisites u/s. 194R
	+ The rationale of keeping out above referred cases from prosecution relief if tax is deducted and paid before due date of filing quarterly TDS statement is not clear. In terms of gravity, such cases are lighter than cases of delay in tax which is already deducted. Non-deduction of tax could be for various reasons like oversight, inadvertence, debatable issues involved, etc. The rationale to consider such cases as not deserving the same relief which more serious default like not paying tax which is already deducted is not clear.
	+ Furthermore, similar relief is also not proposed to be provided for TCS default u/s. 276BB.
	+ Since the legislative intent is to maintain parity between TDS and TCS as evidenced by the amendments proposed in this Bill itself (eg. to enhance interest rate for delayed deposit from 1% to 1.5% per month, to give power to Central Government to notify persons to whom nil or lower TCS shall apply), it appears amendment to provide similar relief from prosecution from TCS default u/s. 276BB is missed out inadvertently.
* **Recommendation**
	+ Hence, it is recommended that the proposed relief from TDS prosecution be extended to (a) cases covered by s.276B(b) as also (b) TCS default u/s. 276BB
 |
|  | Relaxation from prosecution under Black Money Act on lines of relaxation from penalty | * **Proposed amendment**
	+ It is proposed to amend s.42 and s.43 of Black Money Act to relax levy of penalty for failure to furnish details of movable foreign assets in return of income if the value of movable foreign assets is less than Rs. 20 lakhs.
* **Issue**
	+ As per Exp Memo, this is in response to suggestions received from various stakeholders that the existing threshold limit of Rs. 5 lakhs for non-disclosure of foreign bank accounts is very low which results in many penalties where the asset value itself is less than the penalty amount
	+ However, there is no amendment proposed to s.49 and 50 of BMA which provides for prosecution for the same default. It is true that as per existing provision, there is no de minimis threshold limit exemption of foreign bank balance of Rs. 5 lakhs which is an anomaly. However, with the proposed amendment, the dichotomy will increase substantially since non-disclosure of movable assets upto Rs. 20 lakhs cannot be penalized but will expose the taxpayer to prosecution.
* **Recommendation**
	+ Hence, it is recommended that similar relaxation may also be provided from prosecution in s.49 and s.50 of Black Money Act for non-disclosure of foreign movable assets of value upto Rs. 20 lakhs. Since such non-disclosure is exempted from penalty on grounds of materiality threshold, same rationale exists for granting relief from prosecution as well.
 |
| **Vivaad Se Vishwas Scheme 2024** |
|  | Coverage of cases where assessment order/appeal order is passed but time limit for filing appeal has not expired | * + The previous Direct Tax Vivad Se Vishwas Act, 2020 (2020 Scheme) enabled settlement of cases where an assessment order is passed by the tax authority, or an appellate order is passed by the lower appellate authority, but the time limit for an appeal against such assessment or appellate order has not expired as on specified date. Such cases are not covered under proposed VSV 2024 Scheme. Apparently, there seems to be no reason to exclude such category of potential litigation from 2024 Scheme. It would be a welcome step if the proposed 2024 Scheme is also extended to such cases, to nip the potential litigation in the bud.
	+ Further, assuming the 2024 Scheme is extended to cover such cases, the 50% concession in second and third proviso to clause 90 is applicable only where appeal is filed before the appellate forum; such 50% concession is not available in cases where assessment or appellate order has been passed and no appeal is filed as of the specified date and time limit for filing such appeal has not expired
	+ On principles, such cases are not different from cases where disputes are pending as on 22 July 2024 and hence 2024 Scheme should be amended to explicitly cover such cases. Further, assuming the 2024 Scheme is extended to cover such cases, the 50% relief in disputed tax needs to be granted where assessment/appellate orders are passed as of 22 July 2024 but time for filing appeal has not expired
 |
|  | Marginal relief on payment of disputed tax | * + In the 2020 Scheme, in the table to s. 3, in Sl. No. (a), it was stated that the declarant was liable to pay 110% of the disputed tax, in case of payment made on or after 1 January 2021 but before a notified date. A proviso stated that where 10% of disputed tax exceeds the aggregate amount of interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax, the excess shall be ignored for the purpose of computation of amount payable to settle the dispute under the 2020 Scheme. There is no corresponding relieving provision in the 2024 Scheme.
	+ It is suggested to introduce marginal relief in the 2024 Scheme, along the same lines as the 2020 Scheme. This ensures that settlement of dispute under VSV does not cause the taxpayer to pay amounts greater than what he would have been liable to pay under conventional litigation route
 |
|  | Separate window for settlement of past Angel Tax additions without payment of tax | * + Furthermore, since Angel Tax u/s. 56(2)(viib) is proposed to be completely withdrawn w.e.f A.Y. 2025-26, it is necessary to address past cases pending in litigation.
	+ On principles, the Government has accepted the fact that the angel tax was acting as a hurdle for bonafide start ups to raise capital from investors. While it was inserted to address tax abuse of bringing in unaccounted monies through high share valuations, it was wrongly applied by field authorities to start ups by questioning their share valuations based on hind sight knowledge of post share issue developments at the time of making assessments.
	+ Continuing past litigation would be detrimental to the start ups who had raised share capital in the past. Also, considering that the angel tax has been fully withdrawn, it would be unfair to insist on any part payment of taxes for settlement of past disputes. Hence, it is recommended that a special window may be provided under VSV to settle past cases involving additions made u/s. 56(2)(viib) without the condition of payment of any taxes, interest or penalty. Any tax already collected through post assessment recovery may be refunded to the start ups
 |
| **Charity related representations** |
|  | Grant tax authority power to condone delays in filing application for registration / re-registration under s. 80G of ITA in line with S. 12A | * **Proposed Amendment:**
	+ It is proposed to introduce a specific proviso in the scheme of s. 12A(1)(ac) of ITA empowering Principal Commission of Income Tax or Commissioner of Income Tax to condone any delay in filing application for registration or re-registration under S. 11 regime beyond the prescribed time limit provided there is reasonable cause for delay in filing.
* **Issue:**
	+ There is no similar provision proposed for condonation of application beyond time in s. 80G.There could be cases where trusts are unable to adhere to the time lines provided for registration or re-registration under s. 80G of ITA. Even a single day delay may lead to non-satisfaction of conditions of s. 80G of ITA and thereby the donor may suffer disallowance of s. 80G deductions.
* **Recommendation:**
	+ Similar to the amendment proposed in s. 12A(1)(ac) of ITA, a proviso shall be inserted in the scheme of s. 80G registration authority empowering Principal Commission of Income Tax or Commissioner of Income Tax to condone the delay in filing the application for registration / re-registration where there is reasonable cause for such delay.
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| **Simplification of existing income tax law** |
|  | Recommendation to have a long term vision document and make the process of simplification of existing income tax law a consultative process with involvement of economists, industry experts and professionals in addition to tax administrators | * + We welcome the following announcement made by the Hon’ble Finance Minister in her Budget Speech

*“I am now announcing a comprehensive review of the Income-tax Act, 1961. The purpose is to make the Act concise, lucid, easy to read and understand. This will reduce disputes and litigation, thereby providing tax certainty to the tax payers. It will also bring down the demand embroiled in litigation. It is proposed to be completed in six months.**A beginning is being made in the Finance Bill by simplifying the tax regime for charities, TDS rate structure, provisions for reassessment and search provisions and capital gains taxation”** + On principles, there can be no two views on the need for simplification of the existing income tax law which is more than six decades old and has become quite complex and unwieldy due to repetitive multiple amendments on year on year basis.
	+ There have been number of attempts in the past to substitute the current income tax law with a new Act. However, the policy followed so far is to adopt the recommendations by incorporating them into the existing Act. We believe a better approach is to first have a long term policy document followed by the exercise of translating the policy recommendations into a simplified law by taking assistance of subject matter experts in the relevant field.
	+ In this regard, our recommendations on the process to be employed for simplification are as follows :-
		1. The committee to be appointed may be a broad based committee which not only includes representatives from tax administration but also the following :-
			- Chief Economic Adviser and/or representatives from his office
			- Economists from academia or industry
			- Tax experts from industry
			- Tax experts from profession
			- Representatives from Ministry of Law
		2. The terms of reference to such expert Committee would be to recommend a long term tax policy for the country in line with changing economic conditions of the country and geo political climate in the world. They may recommend the best international practices which may be adopted by India in keeping with the objectives of transparency and accountability, simplifying tax compliance through better use of technology, reducing litigation and widening of tax base. The policy may also factor in OECD Pillar 1 and 2 framework to substitute the existing provisions like Equalisation Levy on digital advertisement services and Significant Economic Presence.
		3. Once such long term policy is formulated and approved by the Government, the task of converting the policy to law may be entrusted to experts in drafting of law drawn not only from Tax Department but also from Ministry of Law and well recognized policy advocacy institutes.
		4. Furthermore, the policy document as well as the draft of the new law should be published for public consultation and inputs received from various stakeholders should be considered before introducing it in the Parliament. The legislative process may also require scrutiny of the bill by the Standing Committee before enacting into law.
	+ The Chamber would be happy to assist the Government in the entire process and offer its comments & suggestions on the draft policy and/or new law.
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| Miscellaneous |
|  | Provide for repeal of section 2 of Finance Act, 2019 | * **Proposed amendment**
	+ There is no provision in Finance (No.2) Bill 2024 for repeal of s.2 of Finance Act 2024
* **Issue**
	+ In every Finance Bill presented in July as part of regular Budget following the General Elections, there is provision for repeal of s.2 of earlier Finance Bill presented in February as part of interim Budget prior to General Elections
	+ This is because s.2 of interim Finance Act is a temporary provision which merely continues the rates of tax from earlier Finance Act till the enactment of the regular Finance Act.
	+ For instance, s.212 of the Finance (No.2) Act 2019 provided as follows :-

*"212. Section 2 of the Finance Act, 2019 (7 of 2019) is hereby repealed and shall be deemed never to have been enacted** + In absence of such repeal provision, there may be confusion over the rates of tax (including tax deduction at source during FY 2024-25) to be applied for A.Y. 2025-26 when two Acts provide for different rates of tax. It may be noted that Finance (No.2) Bill 2024 provides for change in capital gains tax rates which is relevant for deducting tax on payments to be made to non-residents for capital assets transferred on or after 23 July 2024.
* **Recommendation**
	+ Hence, it is recommended that a provision for repeal of s.2 of Finance Act, 2024 may be provided on lines of s.212 of Finance (No.2) Act 2019
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1. Suri Sons v. CIT (1988) 169 ITR 320 (P&H) [↑](#footnote-ref-2)
2. Oyo Hotels & Homes (P) Ltd v DCIT [2023] 148 taxmann.com 410 (Delhi HC); Myntra Designs (P.) Ltd. v NFAC, Delhi [2024] 158 taxmann.com 38 (Karnataka HC) [↑](#footnote-ref-3)
3. For UDI, scheme provided either punitive tax rate or punitive penalty. [↑](#footnote-ref-4)
4. From 1 April till date of search [↑](#footnote-ref-5)
5. Refer, for instance, SC decision in Abhisar Buildwell P. Ltd. & Others [TS-202-SC-2023] [↑](#footnote-ref-6)
6. Para 2 Page 20 [↑](#footnote-ref-7)
7. Relieved if undisclosed income is admitted in S. 158BC return and tax thereon is remitted. [↑](#footnote-ref-8)