**POST–BUDGET MEMORANDUM 2025-26: DIRECT TAXES**

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**POST–BUDGET MEMORANDUM 2025-26: DIRECT TAXES**

| **Sr. No.** | **Subject** | **Comments / Recommendations** |
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| **International Tax** |
|  | **Amendment of purchase exclusion under Significant Economic Presence is clarificatory in nature** | **Rationale and Issue**:* Explanation 2A to S.9(1) provides that in case of non-resident taxpayer, significant economic presence (SEP) shall constitute business connection in India. SEP is defined to mean:
	+ - Any transaction in respect of any goods, services or property carried out by an NR in India including provision of download of data or software in India if the aggregate of payments arising from such transaction or transactions during the previous year exceeds Rs. 2Cr; or
		- Systematic and continuous soliciting of business activities or engaging in interaction with 3 lakhs users in India through digital means.
* Explanation 1(b) to s.9(1)(i) provides that no income shall be deemed to accrue or arise in India through or from operations which are confined to the purchase of goods in India for the purpose of export. (purchase exclusion).
* While the above provision of purchase exclusion is applicable for traditional business connection, similar provision was absent for SEP. Further, the wordings of Explanation 2A to S.9(1) treat “transaction” of NR with a person in India as constituting an SEP. Hence, purchase transactions were also potentially covered within SEP.
* To align with Explanation 1(b) to S 9(1)(i), FB 2025 proposes to insert proviso to Explanation 2A to exclude transactions or activities which are confined to purchase of goods in India for the purpose of export from the ambit of SEP. The amendment is effective from 1 April 2026 i.e. AY 2026-27.
* The Explanatory Memorandum to FB 2025 and Q.4 of FAQ 1 issued by CBDT on 1 February 2025 state that purchase exclusion has been introduced for SEP to correct and clarify that transactions in relation to purchase of goods for export shall always be excluded from scope of SEP.
* Further, as provisions of Explanation 1(b) are applicable to entire S.9(1)(i), it could be argued that purchase exclusion may also be extended to SEP under Explanation 2A of S.9(1)(i).

**Recommendations:*** It is recommended that since the proviso is inserted to clarify the correct legal interpretation, it should be made applicable for earlier years since the inception of SEP from AY 2022-23 and not merely from previous year 2026-27.
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|  | **S. 44BBD – New Presumptive Taxation Scheme for NR providing services for electronics manufacturing facility [w.e.f. 1 April 2026 (viz. AY 2026-27)]** | * FB 2025 proposes to introduce a new presumptive taxation regime [S. 44BBD]. The presumptive tax regime applies to non-residents (NR) taxpayers engaged in business of providing services or technology to specified category of resident companies engaged in electronics manufacture in India.
* Broadly, 25% of the aggregate amount received/receivable and paid/payable to NR or another person on behalf of the NR for providing services or technology (i) for the purpose of setting an electronics manufacturing facility; or (ii) in connection with manufacture or production of electronics, is deemed to be business profits taxable at the specified rate applicable to foreign taxpayer (viz. 35% plus applicable surcharge & cess in case of foreign company).
1. **Clarify whether offshore services are covered within the ambit of S. 44BBD**:

**Rationale and issue:*** S.44BB(1) uses the phrase “in India” twice as follows:
	+ - * The provision requires the non-resident Taxpayer to be “engaged in the business of providing services or technology **in India**”; and
			* The provision requires the services or technology so provided to be for the purpose of setting up of an electronics manufacturing facility or in connection with manufacture or production of electronics products **in India**.
* In this regard, the above dual reference to “in India” can create ambiguity as to whether, apart from the setting up of the electronics manufacturing facility or the manufacture or production of electronics products being in India, whether even the provision of services or technology needs to take place in India. In other words, whether or not income from providing off-shore services will be eligible to avail the benefit of presumptive taxation?
* Such reference to “in India” appears to be inadvertent since the intention of the provision (to introduce certainty to non-residents providing services or technology for development of electronics industry in India) as reproduced in the Explanatory Memorandum to Finance Bill 2025 (EM) as well as the FAQs issued by the Government on the Direct Tax amendments (FAQ) nowhere indicates a restriction in scope only to on-shore services. The setting up of new manufacturing facility or operating an existing facility requires a combination of on-shore and off-shore services and if the presumptive scheme is restricted to on-shore services, litigation can arise on taxation of off-shore services. On the other hand, if the words “in India” after provision of services and technology is removed, it will clearly cover both on-shore and off-shore services and provide certainty to NR taxpayers also resident company for withholding tax purposes.
* The proposed Section 44BBD(1) and (2)(a) and (b) state ‘services or technology’.  Therefore, a view could be taken that Section is not applicable where services and technology both are provided becausethe word ‘or’ is used. Under the Act itself there are several sections where the term ‘or both’ is used (few examples are provided below).  Since the words ‘or both’ is absent here, one could interpret that it does not apply to cases where both services ‘and’ technology are provided.
* Examples:
	+ Section 9B states ‘*capital asset or stock in trade* ***or both****’*
	+ Section 45 states ‘*any money or capital asset* ***or both***’
	+ Section 194-O states ‘*gross amount of such sales or services* ***or both***’; *"electronic commerce" means the supply of goods or services* ***or both****, including digital products, over digital or electronic network*;

**Recommendations*** Considering the intent of S. 44BBD, viz. to provide certainty to taxpayers and avoid ambiguity, it is recommended that the phrase “in India” be removed from the first place in S. 44BB(1) to read as follows :-

*“Notwithstanding anything to the contrary contained in sections 28 to 43A, where an assessee, being a non-resident, engaged in the business of providing services or technology ~~in India~~, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India”** Also, to avoid any misinterpretation, it is recommended to insert “or both” after “technology” to make it clear that composite services of “services and technology” will also qualify for the presumptive regime.
1. **Exclude income covered by S. 44BBD from scope of S. 44DA and S. 115A**

**Rationale and Issue**:* + - * The phrase “providing services or technology” as used in S. 44BBD(1) is very wide and covers not only all services (technical or non-technical) but also certain provision of technology which may qualify as royalty under S. 9(1)(vi) of the Income Tax Act, 1961 (ITA).
			* Given this, there is a possibility of the wide-scope of S. 44BBD as described above overlapping with provisions of S. 44DA or S. 115A. There is no specific exclusion provided in S. 44DA and S. 115A for income falling within the ambit of S. 44BBD.
			* If no exclusion is provided from applicability of S. 44DA, NR covered u/s 44BBD providing specified services in the nature of royalty or fees for technical services (FTS) through a fixed place permanent establishment (PE) in India will be required to maintain books of account and get them tax audited which is contrary to intent of simplified presumptive taxation scheme.
			* Similarly, if no exclusion is provided from applicability of S. 115A, the services of nature of royalty/FTS which are not connected to fixed place PE in India will be taxed at 20% (plus applicable surcharge & cess) on gross amount despite being covered by S. 44BBD. This clearly goes against the intent of the presumptive taxation scheme, as indicated in the EM, which is to enhance the attractiveness of India’s electronics sector so as to provide an effective tax rate of less than 10% of gross income from the specified activities.

**Recommendations:*** To avoid litigation and provide certainty, it is recommended to amend S. 44DA and S. 115A to specifically exclude from its scope income covered under S. 44BBD.
1. **Exclude income covered by S. 44BBD from applicability of MAT provisions:**

**Rationale and Issue**:* + - * Unlike various other presumptive tax provisions applying to an NR under the ITA (such as S. 44B, 44BB, etc.), a taxpayer earning only income covered under S. 44BBD is not excluded from applicability of minimum alternate tax (MAT) provisions u/s. 115JB.
			* If no exclusion is provided from applicability of MAT provision under Explanation 4A to s.115JB(2) [as provided for various other presumptive provisions like s.44BB], it will create additional compliance burden on the NR taxpayer having PE in India who will become liable to calculate income under MAT provisions and pay MAT @ 15% (plus applicable surcharge & cess) on income. This is contrary to the intent of S. 44BBD which is brought in to introduce tax certainty and reduce burden of tax compliance by providing effective tax rate of less than 10%.

**Recommendations:*** It is recommended to amend Explanation 4A to s.115JB(2) to specifically exclude taxpayer covered by S. 44BBD from applicability of MAT provisions.
1. **Redress unintended double counting of NR’s income while determining presumptive income u/s 44BBD:**

**Rationale and Issue**:* S. 44BBD specifies that presumptive income is to be computed at 25% of the aggregate of the amounts specified in S. 44BBD(2). For this purpose, S. 44BBD(2) states as below:

*“(2) The amounts referred to in sub-section (1) shall be the following: ––* *(a) the amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology;* ***and****(b) the amount received or deemed to be received by the non-resident assessee or on behalf of non-resident assessee on account of providing services or technology.”** A bare perusal of the above suggests that what is to be aggregated is the amount paid or payable to the NR taxpayer for the specified services/ technology **and**the amount received by the NR taxpayer for the same. Evidently, any amount that is paid to the NR taxpayer will also be received by such NR. Thus, considering both amount paid or payable “and” amount received will result in double counting of the same amount (consequently resulting in effective taxation of around 20% in case of NR companies) – which does not appear to be the intent of the provision[[1]](#footnote-2). This is also reflected in the EM and the FAQs which clarify that the presumptive income would be 25% of the aggregate amount received/ receivable by “or“ paid/ payable to the NR.
* It appears s.44BBD is adapted from s.44BBC introduced by Finance (No.2) Act 2024 which provides for presumptive taxation scheme for operating cruise ships in India by NRs. Similar lacuna of “double counting” of same receipts exists even in s.44BBC

**Recommendations**:* It is recommended to replace the term “and” with “or” in both S. 44BBD(2)(a) and s.44BBC(2)(a) to avoid double counting of the same amounts and unintended consequent increase in effective tax rate.
1. **Give option to disclose lower profits u/s 44BBD by maintaining books of accounts:**

**Rationale and Issue:*** Various presumptive taxation provisions under the ITA, such as S. 44BB, S. 44BBB, provide taxpayers with an alternative option to declare income that is lower than the presumptive income, or to report losses, provided they maintain accurate books of account and subject them to audit.
* However, a similar provision is absent in section 44BBD making it mandatory for NR to offer income at 25% of gross receipts even if it actually incurs losses or earns lower income. This makes the section less attractive for taxpayers making lower profits or losses who will have to pay taxes on higher notional profits. This may prove counterproductive by discouraging NRs from conducting business with the Indian companies and hence going against the very intention with which the presumptive taxation scheme was introduced.
* It also does not seem to be the intent of the government as S. 44BBD was introduced to lower the tax burden for specified NR. In fact, mandatory taxation on presumptive basis also goes against the ratio of Supreme Court ruling in A. Sanyasi Rao [1996] 219 ITR 330 (SC), which (in the context of S. 44C) held that the ITA cannot discriminate against taxpayers who maintain books of account and compute their income based on actual income and expenditure to deny them benefit of set-off and carry forward of unabsorbed depreciation and business losses through computation of income on presumptive basis.
* The aforementioned anomaly is especially acute in cases where the taxpayer has a fixed place PE in India and is thus covered by S. 44DA because, even though S. 44DA mandatorily requires maintenance of books of accounts and conduct of tax audit, the benefit of lower taxes is not available to such NR.

**Recommendations:*** It is recommended to provide an option in S. 44BBD to declare income lower than the presumptive amount subject to maintenance of books of accounts and conduct of tax audit under S. 44AB. Consequently, the provisions of s.44BBD(3) which restricts set off of unabsorbed depreciation & brought forward loss against presumptive income computed u/s. 44BBD(1) should also be made not applicable if income is computed on net basis by maintaining books and getting them audited.
1. **Conditions to be prescribed**
* The proposed Section 44BBD also states that the resident company would need to satisfy conditions which are to be prescribed.
* Given the fact that the resident companies may need to undertake withholding on the payments to be made it would be helpful to provide clarity on the said conditions proposed to be prescribed at the earliest.
1. **Section 44BBD be effective from 1 April 2025 i.e. AY 2025-26 instead of 1 April 2026 i.e. AY 2026-27**
* This is because certain NR and resident company (as specified under Section 44BBD) would have already executed their agreement in year 2024-25.  Given the same, if the presumptive Section is effective from 1 April 2026 (i.e. AY 2026-27), the aforesaid NR would have to offer to tax certain income under the aforesaid agreement:
	+ In AY 2025-26: without applying Section 44BBD; and
	+ In AY 2026-27 and subsequent years: applying Section 44BBD
* Hence, it is recommended that s.44BBD may be made effective from AY 2025-26 instead from AY 2026-27
1. **Consequential amendment to bring NR providing such technology to the resident, outside the purview of Transfer Pricing (‘TP’) provisions**
* Section 92A(g) could be amended to clarify that that clause (g) shall not apply where two parties are not an associated enterprise at the time of entering into an agreement entered for the purpose of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India to a resident company which is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods
 |
| **Business Restructuring, Mergers & Acquisitions and Capital Gains** |
|  | Reduce period of holding of business undertaking from 3 years to 2 years and shares transferred via Offer for sale in IPO from 2 years to 1 year to turn long term | **Rationale and Issue:*** Finance (No.2) (FA) 2024 reformed the capital gains taxation regime by rationalisation of period of holding and LTCG/STCG tax rates for different types of capital assets.The holding period for all capital assets was rationalised to 1 year for listed securities and 2 years for other assets. However, there exists an anomaly (perhaps unintended) for period of holding for following two types of assets.
* Business undertaking referred in s.50B for taxation of slump sale of undertaking
* Shares sold in Offer for sale (OFS) in an IPO
* **Reduction of holding period of “undertaking” from 3 years to 2 years.**
* Section 50B provides the mechanism for computation of capital gains arising on slump sale. FA 2024 reduced the holding period for all capital assets to 12 or 24 months to turn into long term. However, it appears the holding period for a business “undertaking” as specified in proviso 7 to section 50B(1) of the Act appears to be unintentionally left out to be reduced from 36 months to 24 months. It is also missed out in the Finance Bill 2025
* Hence, it is recommended to reduce holding of undertaking from 3 years to 2 years.
* **Reduction of holding period of shares transferred in OFS in IPO from 2 years to 1 year**
* India’s IPO market has seen a significant growth, driven by strong demand from both retail and institutional investors
* The trend is fuelled by the positive economic outlook in India, the availability of private equity and venture capital funding, and the government's initiatives to simplify the IPO process
* In FY2023-24, around 247 companies raised about INR 64,126 crores through IPOs. The capital raised in current FY 2024-25 has already crossed INR 1 lakh crores.
* Reorganization of capital structure is one of the key considerations in making the company ready for IPO
* As per SEBI (ICDR), 2018 regulations
	+ minimum promoter holding shall be locked in for a period of 18 months from the date of allotment in the IPO
	+ promoter’s holding in excess of the above shall be locked in for a period of 6 months from the date of allotment in IPO

Based on the above, the promoters will have to wait at least 6 months before they can sell a portion of their shares on the stock exchange, unless they sell it in OFS. Accordingly, they may be compelled to sell a portion of their shares in OFS than wait for their lock in to complete before selling it on the stock exchange.* Also, from market perspective any sale by promoters immediately post listing may impact the market sentiment and negatively impact the price
* Further, SEBI mandates a minimum public shareholding of 25%. The company may not really need fresh infusion/capital for the business. Hence, there is a mix of both primary and OFS part in the IPO as promoters also wish to get some liquidity.
* Furthermore, agreements with private equity (PE) and venture capital (VC) investors often include clauses that require promoters to provide liquidity through an OFS during the IPO. These investors seek exits within specific timeframes, which can be facilitated more effectively through an OFS.
* Hence, the company generally structure their capital immediately pre-IPO
* As part of the capital restructuring, companies resort to methods like issuance of bonus and share splits
* This is primarily done to ensure that there is enough liquidity of shares in the market and the price per share is affordable for the retail investors
* As part of IPO, companies raise capital as well as promoters/investors get liquidity by selling some portion of their shares in the IPO (Offer for sale) (OFS)
* The taxability in the hands of Promoters/Investors depends upon the period of holding of shares
* Section 2(42A) of the Income-tax Act, 1961 (‘the Act’), a threshold of 12 months in the case of listed shares and 24 months in the case of unlisted shares has been provided for determining whether the shares qualify as a long term/ short term capital asset
* Accordingly, it is imperative to understand whether the shares sold through an OFS to be considered as listed or unlisted to determine the period of holding of such shares and classifying the gains as long term or short term
* As per section 97(13)(aa) of Securities Transaction Tax, ‘taxable securities transaction’ is defined to mean sale of unlisted equity shares by any holder of such shares under an offer for sale to the public included in an initial public offer and where such shares are subsequently listed on a recognised stock exchange

Based on above, it is inferred that the shared transferred in OFS are treated as ‘unlisted’ and hence the period of holding should be more than 24 months for the same to qualify as long-term capital asset. However, all other tax consequences of sale of shares in OFS are same as listed shares which are as follows :-* + LTCG rate is 12.5% u/s. 112A and STCG rate is 20% u/s. 111A
	+ Such transfer is liable to STT at higher rate of @ 0.2% as compared to listed shares (@ 0.1%)
	+ Such shares are also eligible for “grandfathering benefit” u/s. 55(2)(ac) of substituting FMV as on 31 Jan 2018 for cost of acquisition
* Section 111A and 112A of the Act which provides for special rates in case of short-term and long-term capital asset respectively does not provide a specific reference to the shares being listed on stock exchange. Instead, these sections apply to the shares on which Securities Transaction Tax (‘STT’) has been paid in accordance with relevant provisions.
* Consequently, based on the period of holding, gains arising on transfer of shares under an OFS is covered under the provisions of section 111A and 112A of the Act even though the shares subject to OFS are not listed on the date of transfer
* Further, any purchase or sale of any equity shares of a company entered into in a recognised stock exchange would require the payment of STT.
* For the period upto 2012, there was no STT paid on unlisted securities sold to the public under an OFS included in an IPO. However, in the year 2012, the Finance Minister in his Budget speech on Finance Bill, 2012 quoted the following:

*“…..To promote further depth of the capital markets through listing of companies, I propose to extend the benefit of tax exemption on long term capital gains to the sale of unlisted securities in an initial public offer. For this purpose, I propose to provide the levy of Securities Transaction Tax (STT) at the rate of 0.2 per cent on such sale of unlisted securities….”** It is imperative to note that this amendment was made in the STT in order to promote listing of companies and extend the benefit of section 10(38) of the Act to unlisted securities. This shows that the intention of the legislators was to treat the securities transferred through an OFS on par with listed securities.
* Moreover, a company which proposes to get listed through an IPO would have to obtain an in-principle approval from the recognised stock exchange in which the shares are proposed to get listed.
* Investors are then permitted to submit orders for OFS shares on a designated platform within a recognized stock exchange. After order placement, the stock exchange is responsible for the allocation of shares to investors.
* Since the procedure for an OFS through IPO involves offering of shares to the public in designated stock exchange, it would be appropriate to treat the shares offered in OFS as listed
* Accordingly, the period of holding for same should be 12 months to classify the same as long term capital asset:
	+ Eliminating multiple tax rates for unlisted securities sold off market or through OFS.
	+ Expedite the road map for an IPO by reducing the time by 12 months as companies may look to go public immediately after 12 months of capital restructuring
	+ Possibility of advancing the tax collections by a year as overall timelines for IPO get reduced by 12 months
	+ It would also ensure the overall objective and intent of the government to promote listing of Indian companies

**Recommendation:*** It is recommended to amend first proviso to s.2(42A) to include unlisted shares sold under an offer for sale to the public included in an initial public offer to reduce the holding period for such shares to turn long term from 24 months to 12 months. It is also recommended to amend first proviso to s.50B to substitute “thirty-six” months with “twenty-four” months to reduce the period of holding of business undertaking to turn long term. Since this anomaly is missed to be corrected in Finance Bill 2025, it is requested to kindly address it at enactment stage.
* Suggested text of amendment is provided below :-

*“(42A) "short-term capital asset" means a capital asset held by an assessee for not more than twenty-four months immediately preceding the date of its transfer :**Provided that in the case of a security  listed in a recognized stock exchange in India or equity shares not listed in a recognised stock exchange in India sold under an offer for sale to the public included in an initial public offer or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words twenty-four months", the words "twelve months" had been substituted:”* |
|  | **S. 72A/72AA – Rationalisation of provisions related to carry forward of losses in case of amalgamation** | **Rationale and Issue:*** Section 72A and 72AA provide that in case of speciﬁed amalgamation or business reorganization, the accumulated loss of the predecessor entity is deemed to be the loss of successor entity for the previous year in which amalgamation or business reorganization is effected or brought into force.
* The existing provision thus extends a fresh lease of 8-years for carry forward of business loss by amalgamated company or successor entity.
* In order to bring parity between section 72A/72AA and s.72, it is proposed that accumulated loss of the predecessor entity, which is deemed to be the loss of the successor entity, is not eligible to be c/f for more than 8 AYs. Such 8 years is to be considered from the time the loss was first computed by the original predecessor.
* Therefore, after amendment, the period of carry forward of loss shall be computed from the year of its ﬁrst occurrence in the hands of the ﬁrst predecessor entity in which such loss had occurred instead of the previous year in which business reorganization has been effected.
* It is pertinent to note that scope of s.72A is restricted to few sectors like manufacturing, telecom, hotel, etc. It is not available to service sector. There are strict conditions to be fulfilled both by amalgamating and amalgamated companies stretching cumulatively over 8 years. The intention is to incentivise and efficiently run profitable company to absorb, take over, and revive & revitalise an ailing company with large accumulated losses, thereby protecting jobs, improving efficiency, ensuring productive utilisation of resources & capital costs already incurred, minimising NPA’s for lenders/creditors and giving an impetus to consolidations which are generally value accretive to the economy.
* Having regard to the object and safeguards in existing provisions, the proposed amendment may well be counterproductive since it will reduce the incentive for such mergers to take place. Admittedly, there are currently multiple advantages offered under the law for such mergers to take place, including migration of the losses to the Amalgamated Company, and giving the Amalgamated company the opportunity to treat such losses as if the losses had been incurred by the Amalgamated company itself, in the year of amalgamation. It is pertinent to note however that the said benefits are made available only subject to fulfilment of strict conditions which are meant to ensure the continuation & revival of the business of the Amalgamating company by the Amalgamated Company. These conditions have to be fulfilled cumulatively over a period of 8 years by Amalgamating and Amalgamated companies put together.
* Even in case of business reorganisation by way of corporatisation of firm/proprietary concern into company covered by s.47(xiii)/47(xiv), the shareholding of erstwhile partners/proprietor in the successor company has to be maintained at or above 50% for 5 years following the date of corporatisation. Similarly, in case of conversion of private or unlisted company into LLP u/s. 47(xiiib), the erstwhile shareholders have to maintain 50% profit sharing ratio for a period of 5 years following the date of conversion. There are clawback provisions if any of the conditions of s.72A or corporatisation/conversion are breached.
* If there have been instances of abuse of the provisions through “evergreening of losses” resulting from successive amalgamations, it would be completely understandable to ensure additional conditions, checks & balances, are introduced to plug any such gaps and ensure that the intent is more fully achieved. Indeed, these may be in addition to the general anti-abuse provisions already present in the law which could also help deter any such cases attempting abuse of the law.

**Recommendations:*** The proposed amendment should be reconsidered / rolled back and if deemed necessary, stringent conditions may be put to deny carry forward in case of successive mergers. But bonafide mergers which do not involve any “evergreening” of losses should be granted the benefit of fresh lease of 8 years to ensure effective rehabilitation of the loss making amalgamating company.
* Without prejudice, when it comes to companies under the Insolvency and Bankruptcy Code (IBC), the main goal of acquiring them is to facilitate their revival and recovery. Reviving a company typically requires a considerable amount of time. Thus, there should be a special carve out for carry forward of losses specially for IBC companies.
 |
| **IFSC** |
|  | **Investments made by Category I/II AIF regulated under IFSC (Fund Management) Regulations, 2022** | **Rationale and Issue:*** Section 2(14) of the Income-tax Act, 1961 (ITA) defines 'capital asset' broadly, specifically excluding 'stock-in-trade'.
* Section 2(14)(b) creates a legal fiction by treating securities held by FIIs, investing in accordance with the SEBI Act or SEBI regulations, as capital assets. This fiction ensures that, irrespective of whether FIIs may commercially be regarded as holding securities as stock-in-trade, such securities are deemed capital assets under the ITA.
* Consequently, income from the transfer of such securities is always taxable under the head 'Capital Gains'
* Clause (a) of Explanation 1 to section 115UB of ITA provides definition of investment fund to mean
	+ - Fund established or incorporated in India in the form of trust or company or LLP or a body corporate
		- Such fund has obtained a certificate of registration under Cat I / II of AIF
		- Such fund is regulated under SEBI (AIF) Regulations, 2012 or IFSC (Fund Management) Regulations, 2022.
* Section 115UB(1) read with Section 115UB(3) provides a pass-through taxation mechanism, wherein income earned by an investment fund (excluding business income) is taxable in the hands of unit holders and not in the hands of the investment fund
* Section 10(23FBA) exempts investment funds from tax on all income except income chargeable under the head 'Profits and Gains from Business or Profession'. If any income of the investment fund is characterized as business income, it becomes taxable at the fund level as per Section 115UB(4)
* Section 10(23FBB) exempts unit holders from tax on income that is chargeable to tax in the hands of the investment fund under the head 'Profits and Gains from Business or Profession'.
* The Finance Bill, 2025 proposes an amendment to Section 2(14)(b) to extend the fiction of 'capital asset' to securities held by investment funds that invest in compliance with regulations framed under the SEBI Act, 1992.
* The amendment to Section 2(14)(b) explicitly covers investment funds investing in accordance with regulations under the SEBI Act, 1992.
* The definition of 'investment fund' under Section 115UB includes Category I / II AIFs registered under both (a) SEBI (AIF) Regulations, 2012; and (b) IFSC (Fund Management) Regulations, 2022.
* However, Category I / II AIFs registered in IFSCs operate under the IFSC (Fund Management) Regulations, 2022, which are framed under the IFSC Act, 2019, and not the SEBI Act, 1992.
* This raises a potential interpretational issue as to whether such IFSC-registered AIFs investing under IFSC (Fund Management) Regulations, 2022, would also qualify under the amended section 2(14)(b).
* This issue requires further legal analysis and possible clarification from the authorities to determine whether IFSC-registered Category I / II AIFs can avail the benefit of this deemed capital asset classification.

**Recommendations:*** It is recommended to provide clarity that for Cat I / II / III AIF set up in IFSC and registered with IFSCA making investment as per IFSC (Fund Management) Regulations, 2022 shall also qualify capital asset u/s. 2(14)(b) of ITA. The definition of ‘capital asset’ may be amended such that securities held by Cat I / II / III AIF in IFSC also become capital asset. This will ensure that such funds can claim capital gains exemption u/s. 10(4D) for transactions in securities made through recognised stock exchange located in IFSC without any uncertainty on characterisation as business income vs. capital gains.
 |
|  | **S. 10(4D) – Extension of timeline for units set up in IFSC** | **Rationale and Issue:*** Section 10(4D) of ITA exempts specified income earned by **specified fund** which is attributable units held by (a) non-resident and (b) investment division of Offshore Banking Unit (OBU) of non-resident located in IFSC and has commence its operations on or before 31 March 2025.
* The proposed amendment extends the sunset date for commencing operations of Investment division of OBU referred in clause (aa) but not in clause (ii) of Exp (c) which defines “specified fund”.
* The definition of specified fund under section 10(4D) covers (a) Cat III AIF which has been granted certificate of registration under SEBI (AIF) Regulations, 2014 or IFSC (Fund Management) Regulations, 2022 and (b) investment division of offshore banking unit which has been granted a certificate of registration as Cat I FPI under SEBI (FPI) Regulations, 2019 and has commenced operations on or before 31 March 2025.
* There is no amendment in definition of ‘specified fund’ and accordingly, exemption to specified fund being investment division of offshore banking unit is available only to those which has commenced operations on or before 31 March 2025.

**Recommendations:*** It is recommended to amend that part of definition of ‘specified fund’ which provides that investment division OBU is a specified fund eligible for exemption. It is recommended that the sunset date of commencing operations of investment division of OBU may be extended from 31 March 2025 to 31 March 2030. This will extend the benefit of exemption under section 10(4D) of ITA to investment division of OBU which will commence operations till 31 March 2030.
 |
|  | **Exemption on life insurance policy from IFSC Insurance offices** | **Rationale and Issue**:* Section 10(10D) of the Income-tax Act, 1961 (Act) provides exemption in respect of any sum received by a policyholder under a Life Insurance Policy (LIPs) or Unit Linked Insurance Plans (ULIPs). However, the said exemption is not available in following cases:
1. any sum received from life insurance company in connection with policy taken for maintenance of a dependent, being a person with disability; or
2. any sum received under a Keyman insurance policy; or
3. any sum received under an insurance policy of which premium payable for any of the years during the term of the policy exceeds 10% of the actual capital sum assured; or
4. any sum received under an high value insurance policy of which premium paid for any of the years during the term of the said policy or for more than one polices exceed INR 5,00,000 in case of LIPs or INR 2,50,000 in case of ULIPs, respectively.
* The Act does not provide any specific exemption to a non-resident policyholder in respect of any sum received under a life insurance policy issued by an IFSC Insurance Office (IIO) or other products such as annuities.
* The Finance Bill 2025 in order to provide parity to non-residents availing life insurance from IIO vis-à-vis in other jurisdictions, proposed that the premium limits of INR 5,00,000 in case of LIPs or INR 2,50,000 in case of ULIPs shall not apply in case of life insurance policy issued by IIO.
* Accordingly, it is proposed to substitute the existing eighth proviso of section 10(10D) of the Act as under:

*‘Provided also that the provisions of the fourth, fifth, sixth and seventh provisos shall not apply to any sum received––* *(a) on the death of a person; or* *(b) under a* *life insurance policy issued by the International Financial Services Centre insurance intermediary office, including the sum allocated by way of bonus on such policy.* *Explanation –For the purposes of this proviso, “International Financial Services Centre insurance intermediary office” shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation 3 of the International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021, made under the International Financial Services Centres Authority Act, 2019;’;** **Issue 1**:
* The proposed amendment in section 10(10D) of the Act allows exemption to policyholders with respect to high value LIPs and ULIPs (discussed above) issued from IFSC. However, there is no relaxation of the conditions that premium to sum assured ratio should not exceed 10% to claim exemption under section 10(10D) of the Act (as provided under clause (d) of the section10(10D) of the Act).
* IFSC being a non-rupee denominated zone, the policies issued by IIO are in foreign currency i.e. premium and sum assured are in foreign currency. Given this and the fact that premium threshold is required to be seen every year during the policy term, any exchange rate fluctuation in any of the years forming part of the policy term has the potential of converting an exemption-qualifying policy into a taxable policy even where the premium in foreign currency term shall not change during the term of the policy.
* There are no similar conditions prescribed in other foreign jurisdictions resulting in continuing disparity between IFSC and other foreign jurisdictions.

**Recommendation:**The conditions of premium to sum assure ratio should not exceed 10% to claim exemption under section 10(10D) of the Act should also be relaxed for life insurance policies issued by IFSC Insurance Office.* **Issue 2**:
* Secondly, the proviso proposed to be substituted in section 10(10D) of the Act makes reference to life insurance policies issued in IFSC. However, whether the exemption is applicable to both Resident and Non-Resident Individuals is not specifically clarified.
* While the Memorandum explaining the provisions to Finance Bill makes reference only to Non-Resident policyholders for claiming exemption under section 10(10D) of the Act, the proposed amendment in section 10(10D) of the Act is silent regarding the same.
* Recently, Reserve Bank of India (RBI) has *vide* circular dated 10 July 2024 expanded the scope of remittances under the Liberalised Remittance Scheme (LRS) to GIFT City. In terms of the said circular, Indian Resident Individuals are permitted to purchase Life Insurance policies by IFSC Insurance Office (IIOs) under the LRS route.
* Thus, in absence of specific clarification, there exist an ambiguity among insurance company regarding the applicability of the exemption to Resident Individuals.

**Recommendation:**Specific clarification needs to be provided on whether the exemption proposed in section 10(10D) of the Act is applicable to Resident individuals.* **Issue 3**:
* Further, the proposed amendment in section 10(10D) of the Act make reference to the life insurance policy issued by the International Financial Services Centre insurance intermediary office which are registered under the International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021.
* However, the IFSCA Regulations permits a IFSC Insurance Office to issue life insurance policy to policyholders under the International Financial Services Centres Authority (Registration of Insurance Business) Regulations, 2021.
* Thus, the reference to International Financial Services Centre insurance intermediary office and International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 in the proposed amendment is incorrect.

**Recommendation:**Reference to International Financial Services Centre insurance intermediary office and International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 needs to be corrected. |
|  | **Rationalisation of definition of ‘dividend’ for treasury centres in IFSC** | **Rationale and Issue:*** Sub-clause (e) of clause (22) of section 2 of the Act, inter alia, provides that dividend includes any sum by way of advance or loan to a shareholder paid by a company (not being a company in which the public are substantially interested), where shareholder is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.
* Sub-clause (ii) of clause (22) of section 2 excludes from the definition of dividend (may be referred to as deemed dividend) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company.
* The Finance Bill 2025 in order to promote corporate treasury centres in IFSC proposed to amend clause (22) of section 2 of the Act to provide that any advance or loan between two group entities, where one of the group entity is a “Finance company” or a “Finance unit” in IFSC set up as a global or regional corporate treasury centre for undertaking treasury activities or treasury services shall not be treated as ‘dividend. Accordingly, it is proposed to insert following exemption in Clause (22) of section 2 of the Act -

 *‘but "dividend" does not include—*1. *…..*
2. *……*

*(iia) any advance or loan between two group entities, where,––* *(A) one of the group entity is a “Finance company” or a “Finance unit”; and* *(B) the parent entity or principal entity of such group is listed on stock exchange in a country or territory outside India other than the country or territory outside India as may be specified by the Board in this behalf;’;** The proposed amendment provides a specific carve out for corporate treasury centres in IFSC from deemed dividend provisions, provided that the parent entity or principal entity of such group is listed on a stock exchange in a country or territory outside India. This will substantially reduce the target entities that would be able to set-up presence in IFSC.

**Recommendations:*** For the success of corporate treasury centres in IFSC, it is critical that the laws are simple. Limiting the deemed dividend issue to non-resident entities having parents or principal entity listed outside India will substantially limit the number of entities that can set-up a corporate treasury centre in IFSC. On account of limitations, Overseas unlisted groups or India listed group will not be able to set-up in IFSC as they will be subject to trigger of deemed dividend provisions which makes the entire treasury structure unviable attractive for various industry segments.
* Globally, corporate treasury centres do not operate with such limitations. Hence, it is being represented that a blanket exemption from deemed dividend should be provided to entities (India/overseas) when dealing with corporate treasury centres in IFSC.
* Accordingly, following amendment should be made in clause (22) of section 2 of the Act -

*‘but "dividend" does not include—*1. *…..*
2. *……*

*(iia) any advance or loan between two group entities, where, one of the group entity is a “Finance company” or a “Finance unit”;* |
|  | **Exemption of income earned by Specified Fund being Category-III AIF from OTC derivative with NR under section 10(4D) of the Act** | **Rationale and Issue:*** Section 10(4D) of the Act provides an exemption to specified fund in respect of income accruing as a result of –
* Transfer of capital asset referred to in section 47(viiiab) of the Act on IFSC stock exchange;
* Transfer of securities (other than shares in a company resident in India);
* Income from securities issued by a Non-Resident [not having a permanent Establishment) and where such income otherwise does not accrue or arise in India;
* Any income from a securitisation trust

to the extent such income is attributable to the units held by Non-Resident.* The term ‘OTC’ means a derivative contract that is not traded on an exchange but instead is privately negotiated between a purchaser and a seller.
* Under the present Regulation, income arising from OTC derivatives in the hands of Specified Fund being Category-III AIF is not specifically exempted under section 10(4D) of the Act.
* Accordingly, in the absence of any specific exemption for OTC derivatives, there is an ambiguity and uncertainty in the minds of investors (i.e. Specified Fund).

**Recommendations*** It is recommended to clarify that income earned by Specified Fund being Category-III AIF from OTC derivatives entered with Non-Resident should be exempt under section 10(4D) of the Act. This would help in on-shoring of the off-shore markets to India and further help in strengthening of the IFSC’s ecosystem.
* Proposed changes in the Act:

10*(4D) – “any income accrued or arisen to, or received by a specified fund as a result of transfer of capital asset referred to in clause (viiab) of section 47, on recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in convertible foreign exchange or as a result of transfer of securities (other than shares in a company resident in India) or any income from securities (****including over-the-counter derivative entered with)*** *issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India or ……….., to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) [or is attributable to the investment division of offshore banking unit, as the case may be,] computed in the prescribed manner”.* |
|  | **Simplified regime for fund managers based in IFSC** | **Rationale and Issue:*** Finance Act 2015 introduced section 9A into the Act to mitigate potential adverse tax consequences for an offshore fund that was managed by an Indian fund manager. The tax safe harbor under section 9A of the Act is subject to the conditions prescribed therein. One of the conditions mentioned under section 9A of the Act states that the direct or indirect participation by person resident in India in offshore fund should not exceed 5%. The relevant extract of section 9A(3)(c) of the Act, laying down such condition is iterated as under:

*“the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund”** Vide Finance Bill 2025, the provisions of section 9A(3)(c) of the Act are proposed to be amended as under:

*“the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund as on the first day of April and the first day of October of the previous year**Provided further that where the said aggregate participation or investment in the fund exceeds five per cent. on the first day of April or the first day of October of the previous year, the condition mentioned in this clause shall be deemed to be satisfied, if it is satisfied within four months of the first day of April or the first day of October of such previous year, as the case may be”** This proposed amendment shifts the requirement to track Indian participation in an offshore fund from an ongoing obligation to a biannual one.
* The proposal does not alleviate the fundamental issue of the condition's burdensome nature and falls short of providing meaningful relief. The crux of the problem lies not in the frequency of compliance but in the restrictive nature of the condition itself
* While a Fund is able to validate the participation of direct investors (being natural persons in the Fund), in the context of the global fund industry, a significant set of investors in such Funds includes institutional investors or reputed discretionary wealth managers who allocate a portion of the wealth managed by them on behalf of their clients to specified asset managers. In such cases, the eligible investment managers have no access to the investors in those funds or the clients of the wealth managers.
* In order to alleviate the above challenge, Rule 10V(2) of the Income-tax Rules, 1961 (Rules) was introduced to provide that, where the direct investor is the Government / Central bank / sovereign fund / appropriately regulated investor, the Fund should obtain a written declaration from the direct investor regarding the participation, if any, of Indian residents in that Fund.
* Additionally, where the direct investor in the fund is an unregulated fund, the Fund is required to undertake ‘appropriate due diligence’ to ascertain the indirect Indian participation and the extent thereof. There is currently no clarity on what would be deemed to be appropriate due diligence but in approval that have been granted by the Central Board of Direct Taxes (CBDT) to the Fund, it has been intimated that they ‘should be in a position to provide information of ultimate beneficial owners being Indian residents, when called for, in case their investment in the Applicant exceeds 5%’.
* Practically, obtaining such declarations from institutional investors is extremely difficult since:
	+ - * It is practically impossible to verify participation by Indian residents on an ongoing basis in cases where the eligible investment fund is an open-ended fund or listed on overseas stock exchanges.
			* Given the broad-based nature of offshore funds, obtaining declarations for each investor (solely to validate Indian tax residence) is not practically possible.
			* Despite several efforts by fund administrators, most sovereign investment funds and government / state pension funds have practically refused to provide such declarations on account of the amount of diligence that would need to be done to provide such a declaration. Furthermore, the India allocation of the corpus may also be a small portion of the global fund.
			* In many cases, the institutional investors may themselves have institutional investors and getting such declaration up the chain is impossible.
* We also wish to emphasize that Foreign Portfolio Investors (FPIs) and fund managers are registered with and regulated by Securities and Exchange Board of India (SEBI). SEBI, from time-to-time, issues guidelines on restrictions of investment by Indian residents in an FPI, as summarised below:
	+ - * As per the extant SEBI (Foreign Portfolio Investors) Regulations, 2019, the aggregate contribution of Non-Resident Indian (NRIs), Overseas Citizen of India (OCIs) and Indian tax residents shall be below 50% of the total contribution in the corpus of the FPI with a single resident shall be below 25% of the corpus. Further, SEBI has approved the aggregate participation by OCI/ resident Indians/ NRIs up to 100% in an FPI established in IFSC.
			* As per the Foreign Exchange Management (Overseas Investment) Directions, 2022, a person resident in India has also now been permitted to invest in a foreign entity that has invested or invests into India, directly or indirectly, up to two layers of subsidiaries, without Reserve Bank of India approval.
			* SEBI has released a circular (Circular ‘SEBI/ HO/ AFD/ AFD – PoD – 2/ CIR/ P/ 2023/ 148’ dated 24 August 2023), which outlines a framework for mandating additional granular disclosures for FPIs fulfilling certain criteria.
			* Given that SEBI already prescribes regulations/ guidelines which are well understood and followed by market participants, there should not be any additional requirement under section 9A of the Act with respect to the participation of Indian residents.
* In light of above difficulties, the industry consensus is that the existing framework under Section 9A of the Act does not adequately reflect the dynamic and global nature of fund management. The inflexibility of the current condition does not align with the realities of modern fund management, which often involves managing funds with diverse investor bases and investment strategies. Consequently, the proposed amendment does not effectively enhance the section's effectiveness and negates the benefits intended to promote fund management activities within India/ IFSC.

**Recommendations:*** + - The aforementioned condition has been a focal point of debate due to the stringent operational limitations it imposes on fund managers and is viewed as excessively onerous relative to the intended policy goals.
		- Therefore, it is imperative to revise the current condition to resolve the challenges faced by offshore funds and to cater to the requirements of the fund management industry, particularly within the ambit of the IFSC, which is designed to be a world-class financial services hub.
		- In this regard, we believe the specific condition should be reformed as follows:

*“the aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund as on the first day of April and the first day of October of the previous year* *Provided further that where the said aggregate participation or investment in the fund exceeds five per cent. on the first day of April or the first day of October of the previous year, the condition mentioned in this clause shall be deemed to be satisfied, if it is satisfied within four months of the first day of April or the first day of October of such previous year, as the case may be**Provided further that the said condition shall not apply in case of an investment fund established or incorporated or registered outside India managed by eligible fund manager, located in an International Financial Services Centre, as defined in clause (a) of the Explanation to section 80LA”** The proposed amendment is poised to significantly enhance the appeal of the IFSC as a premier global financial hub. The exemption for investment funds and their managers within the IFSC further underscores the commitment to creating a conducive environment for financial services, potentially leading to increased investment flows and bolstering the IFSC's position on the international stage.
* It may be noted that Singapore, Hong Kong and Australia, which have similar fund incentive schemes to promote domestic fund management, do not impose such onerous conditions and have seen their regimes flourish over the years. Consequently, for India's IFSC to carve out a prominent role in the international fund management landscape, it is essential that these recommendations are given careful consideration.
 |
|  | **Amendment to Section 9A of the Act related to Central Government’s power to provide relaxation to fund managers in IFSC** | **Rationale and Issue**:* The Central Government under section 9A(8A) of the Act has the power to relax any condition for an eligible investment fund and its eligible fund manager based in IFSC where the fund manager commenced operations on or before 31 March 2024. The relevant extract is iterated below:

*“The Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses (a) to (m) of sub-section (3) or clauses (a) to (d) of sub-section (4) shall not apply or shall apply with such modifications, as may be specified in such notification, in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an International Financial Services Centre, as defined in clause (a) of the Explanation to section 80LA, and has commenced its operations on or before the 31st day of March, 2024.”** Vide Finance bill 2025, the aforementioned provision has been proposed to be amended as under:

*“The Central Government may, by notification in the Official Gazette, specify that any one or more of the conditions specified in clauses (a) to (m) other than clause (c) of sub-section (3) or clauses (a) to (d) of sub-section (4) shall not apply or shall apply with such modifications, as may be specified in such notification, in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an International Financial Services Centre, as defined in clause (a) of the Explanation to* *section 80LA**, and has commenced its operations on or before the 31st day of March, 2030.”** The aforesaid amendment to section 9A(8A) of the Act appears to revoke the Central Government's authority to exempt eligible fund managers in IFSC from the conditions mentioned under 9A(3)(c) of the Act.
* The rationale behind this change is not apparent and seems counterproductive.
* The power granted to Central Government vide section 9A(8A) of the Act has been instrumental in granting the necessary flexibility to respond to the evolving needs of the fund management industry, especially in the context of IFSC, which is designed to be a world-class financial services hub. We fear that this amendment may inadvertently diminish the attractiveness of IFSC as a global financial hub.

**Recommendations:*** We respectfully request that this amendment, with respect to carving out section 9A(3)(c) of the Act, is undone to ensure that it aligns with the original objectives of fostering a conducive environment for fund management operations in IFSC. We believe that maintaining the Central Government's discretionary power to relax conditions, including condition for tracking participation of person resident in India, for fund managers based in IFSC is crucial for the sector's growth and IFSC’s competitiveness.
 |
|  | **Amendment of Definition of ‘Capital Asset’ for Category I & Category II funds** | **Rationale and Issue:*** Existing section 2(14) of the Act defines capital asset as follows:

*..(b)…any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);…** Clause (a) of explanation 1 to Section 115UB of the Act provides definition of Investment Fund to mean any:
1. Fund established or incorporated in India in the form of trust or a company or LLP or a body corporate
2. Such fund has obtained the certificate of registration under cat I/II of AIF
3. Such Fund is regulated under SEBI (Alternative Investment Fund) Regulations 2012 made under the Securities and Exchange Board of India Act, 1992, or IFSC (Fund Management) Regulations 2022 under the International Financial Services Centres Authority Act, 2019.
* The Finance Bill 2025 proposes an amendment to Section 2(14)(b) of the Act to provide that any security held by investment funds referred to in Section 115UB of the Act which has invested in such security in accordance with the regulations made under the SEBI Act, 1992 would be treated as capital asset only so that any income arising from transfer of such security would be in the nature of capital gain.
* The proposed amendment aims to provide certainty in characterizing such income as capital gains and achieve pass through assessment in respect of gains on transfer of securities as per section 115UB of the Act.
* Please see below extract from the Finance Bill:

*Section 2.* *(a) in clause (14), with effect from the 1st April, 2026,–* *(i) in sub-clause (b), after the words “Foreign Institutional Investor”, the words, brackets, letters and figures“or held by an investment fund specified in clause (a) of Explanation 1 to section 115UB” shall be inserted;** The definition of the Investment Fund under section 115UB of the Act includes both (1) category I/II AIF registered under both SEBI (AIF) Regulations, 2012 and (2) IFSC (Fund Management) Regulations 2022.
* However, section 2(14)(b) of the Act is worded in such a manner that it ends with the regulations made under the SEBI Act, 1992 which creates ambiguity on applicability of section 2(14)(b) of the Act for the Category I and II AIFs in IFSC which are regulated by IFSC (Fund Management) Regulations 2022 under the International Financial Services Centres Authority Act,2019.

**Recommendations:*** The proposed amendment in section 2(14)(b) shall also add ***“and International Financial Services Centres Authority Act, 2019 as the case may be”*** after the words *the Securities and Exchange Board of India Act, 1992.*
 |
|  | **Amendment of Definition of ‘Capital Asset’ for securities listed on the GIFT IFSC exchanges** | **Rationale and Issue**:* Existing section 2(14) of the Act defines capital asset as follows:

*(a)…**(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);…**(c)…*but does not include—(*i*) any stock-in-trade [other than the securities referred to in sub-clause (*b*)], consumable stores or raw materials held for the purposes of his business or profession;* Further, as per section 47 (viiab) of the Act any transfer of a capital asset, being—

(*a*) bond or Global Depository Receipt referred to in sub-section (1) of section 115AC of the Act; or(*b*) rupee denominated bond of an Indian company; or(*c*) derivative; or(*d*) such other securities as may be notified by the Central Government in this behalf,made by a non-resident **on a recognised stock exchange located in any International Financial Services Centre** and where the consideration for such transaction is paid or payable in foreign currency.* To remove this ambiguity, in the context of Non-Residents investing/trading in “Specified Capital Asset” on IFSC exchange, a specific clarification shall be provided.
* Section 2(14)(b) of the Act which defines ‘capital asset’ creates a fiction that any securities held by Foreign Institutional Investor (FII) which has invested in accordance with the regulations made under SEBI Act, 1992 shall be considered as ‘capital asset’.
* However, a similar clarification is missing in the context of Non-Resident Investors investing/ trading on IFSC exchanges. Such Non-Residents are not required to obtain/ register as FII/FPI for trading on IFSC exchanges.
* Lack of clarity on the characterisation of income for Non-resident trading on IFSC exchange is resulting in tax exemption/ exclusion losing its objective. This is impacting the growth of trading volumes on IFSC exchanges.

**Recommendations:*** The above intention can be attained by expanding the deeming fiction of section 2(14)(b) of the Act for such securities as under:

***Proposed Amendment to section 2(14) of the Act****“2(14) "capital asset" means—**(a) …..**(b) …..**(c) …..****(d) any security held by non-resident on a recognised stock exchange located in any IFSC”*** |
|  | **Payments in the nature of royalty or interest payable by a unit located in IFSC to a non- resident in respect of lease of ships** | **Rationale and Issue:*** Payments in the nature of royalty or interest payable by a unit located in an IFSC to a non- resident in respect of lease of shipsare exempt as per the provisions of Section 10(4F) of the Act provided there is commencement of operations by IFSC unit engaged in leasing of ships by 31 March 2025.
* It is proposed that the exemption under section 10(4F) of the Act shall be extended if the IFSC unit commences operations by 31 March 2030.
* Though payments in the nature of royalty or interest payable by a unit located in an IFSC to a non- resident in respect of lease of ships or ocean vessel are exempt from tax in the hands of the non-residents, however, payments in the nature of chartering of ship/vessel shall not qualify as royalty or interest income as provided in section 10(4F) of the Act.

**Recommendations:*** It is proposed that charter or hire charges paid by IFSC ship leasing entity to non-resident be exempted under section 10(4F) of the Act in order to cover all the payments made by IFSC units to non-resident with respect to charter or hire of the vessel by IFSC ship leasing entities.
* Draft amendment language is provided in the ensuing recommendation.
 |
|  | **Amendment in section 10(4F) of the Act to provide express clarity on the eligibility of this exemption for lease of aircraft carried out through various structures such as operating or finance leases, hire purchase arrangements or finance on the security of the aircraft/ ship by way of a lease and like arrangements** | **Rationale and Issue**:* Section 10(4F) of the Act provides that

*“any income of a non-resident by way of royalty or interest, on account of lease of an aircraft [or a ship] in a previous year, paid by a unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st day of March, 2025**Explanation.—For the purposes of this clause,—**(i) "aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof;**(ii) "ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof”** The above section provides exemption to the income of non-residents on account of leasing or financing business in respect of an aircraft or ship with an entity in GIFT City.
* It is proposed that the exemption under section 10(4F) of the Act shall be extended if the IFSC unit commences operations by 31 March 2030.
* Lease or financing of aircraft or ship could be in various formats including operating or finance leases, hire purchase arrangements or finance on the security of the aircraft/ ship by way of a lease and like arrangements.

**Recommendations:*** *“any income of a non-resident by way of royalty or interest or any charter payment, on account of lease or financing of an aircraft [or a ship] in a previous year, paid by a unit of an International Financial Services Centre as referred to in sub-section (1A) of section 80LA, if the unit has commenced its operations on or before the 31st day of March, 2025.*

*Explanation.—For the purposes of this clause,—**(i) "aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof;**(ii) "ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof;**(iii) "lease or financing of an aircraft or ship" shall include (a) lease of any kind, whether an operating lease or finance lease, including taking aircraft or ship on charter or hire under a hire purchase arrangement; and (b) financing the acquisition of aircraft or ship, whether by way of monies borrowed for the purpose, or by raising money by any other mode whatsoever* |
| **Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS)** |
|  | **Further rationalise domestic withholding tax provisions** | **Background*** There is a wide variety of TDS provisions applicable to payments to residents with different rates and different thresholds which gives rise to unwarranted characterisation disputes and complexities.
* Finance (No.2) Act 2024 took first step to rationalize TDS rate structure by reducing 5% TDS rate on many payments into 2% TDS rate. The Finance Bill 2025 continues the rationalization exercise by omitting TCS on sale of goods and requirement to deduct/collect higher TDS/TCS for non-filer cases from 1 April 2025. It also proposes to increase the thresholds under different TDS provisions.
* However, it is submitted that the Government should also look at further reducing the disparity in TDS rates
* The following aspects may be noted about the current TDS rate structure:

**Issues****Multiplicity of sections in the Income tax Act*** Currently, there are 32 sections dealing with different types of payments to residents where the TDS rates vary from 0.1% to 30%. Out of 32, 4 sections have multiple rates within them for different types of payments or different types of payees. Thus, there are 36 different provisions. A short summary is given below:

| **No. of provisions** | **Particulars** | **TDS rate (%)** |
| --- | --- | --- |
| 2 | 192 (Salary)/ 194P (Senior Citizens Pension) | Normal Slab Rate/ rate in force |
| 2 | 194O (E-commerce transactions)/194Q (Purchase of goods) | 0.1 |
| 3 | 194C (Contracts) / 194IA (Immovable property)/ 194S(Crypto transactions) | 1 |
| 10 | 194C (Contracts) / 194D (Insurance commission)/ 194DA(non-qualifying life insurance policy)/ 194G(Lottery commission)/ 194H (Commission/Brokerage)/ 194-I (Machinery rent)/ 194IB (Rent payment by individuals)/ 194J (Fees for technical services)/ 194M (Large payments by individuals)/ 194N (Cash withdrawals) | 2 |
| 1 | 194N (Cash withdrawals) | 5 |
| 15 | 192A (PF withdrawals)/ 193 (Interest on securities) / 194 (Dividends) / 194A (Interest other than on securities) / 194EE (NSS) / 194-I (Immovable property rent)/ 194IC (Joint Development Agreements)/ 194J (Fees for professional services)/ 194K (Mutual fund dividends)/ 194LA (Compulsory acquisition of immovable property)/ 194LBA (REIT/InVIT income)/ 194LBB (AIF income)/ 194LBC (Securitisation Trust income)/194R (Business perquisites)/ 194T (Interest/remuneration to partners) | 10 |
| 3 | 194B (Lottery winnings)/ 194BA (Online game winnings)/194BB (Horse race winnings | 30 |
| **36** | Total |  |

**Varying rates*** In some sections, there are varying rates of TDS depending upon status of payees / nature of payments. For example:
	+ TDS rate u/s. 194C for individuals is 1% and 2% for others
	+ TDS rate u/s. 194J for Fees for technical services is 2% and Fees for professional services is 10%.

**Different thresholds for different TDS provisions** * Even after enhancement of different thresholds by Finance Bill 2025, there are different thresholds for applicability of different TDS provisions which makes it very cumbersome to keep track and apply TDS. For instance, the TDS threshold for s.194C (Payments to contractors) is Rs. 30,000 for individual payment to a single person and Rs. 1 lakh in aggregate for entire financial year. On the other hand, in case of s.194J (Fees for professional and technical services), the threshold of Rs. 50,000 applies for the entire financial year. For dividend payment by companies and income from mutual funds, the threshold limit under s.194 and 194K is Rs. 10,000 in a financial year.

**Complexity gives rise to disputes*** The wide variety of TDS rates and thresholds creates complexity and confusion for the taxpayers, increases compliance burden and gives rise to characterisation disputes. For instance, there is ambiguity on bright line test to distinguish between Fees for technical services (2%) vs. Fees for professional services (10%).

**TDS on purchase of goods increases compliance*** The Government’s intent to widen and deepen the tax base is well appreciated. The omission of TCS on sale of goods from 1 April 2025 to ease compliance burden is a welcome amendment. However, the industry perceives compliance for TDS u/s 194Q on purchase of goods to be onerous.
* The entities with threshold limits of Rs. 10 crores turnover and/or Rs. 50 lakhs transaction value are already within GST regime and relevant information is populated in AIS/Form 26AS from GST returns pursuant to automatic information sharing arrangement between CBDT and CBIC.

**Working capital blockage for businesses*** The TDS rate at 10% and above results in blockage of working capital – more particularly, where the profitability is less than 20%.
* So, if gross revenue is Rs. 100 and net profit is Rs. 20, the tax liability at 25.17% is Rs. 5. Hence, if the gross revenue is subject to TDS rate of 10% and above, it results in blockage of working capital.
* The blockage of funds in TDS to be received back as refunds results in loss of business opportunities for the industry and increase in borrowing cost. Although the refund is received with 6% per annum interest, the blockage of funds with Government neither helps the Government (since it has to bear interest cost) nor helps the industry who can make better alternative use of the funds.

**Additional cost for the government*** There is also avoidable cost involved for the Government in terms of interest u/s. 244A of 6% p.a. The Parliamentary Standing Committee on Finance noted that for the year 2019-20, direct tax refunds of more than Rs. 1.7 lakh crores were given during the year and the amount of interest burden on the same was about Rs. 23,000 crores.
* As per CBDT’s Time Series Data, 27.87% of total direct tax collection is from tax deducted at source. For the financial year 2024-25, the total tax collection from corporate income tax and personal income tax was about Rs. 20.64 lakh crores[[2]](#footnote-3) out of which refunds were about Rs. 3.74 lakh crores. The refunds are 42.49% higher than refunds issued during the same period in the preceding year. The higher refunds are indicative of the higher interest burden for the government.

**Objective of collecting information is fulfilled*** All the TDS information is getting captured in Form 26AS/AIS of the deductees. Thus, it is easier for the Government to collect the balance taxes (after TDS) from the resident taxpayers. Further, TDS/TCS compliances comes with serious penal and prosecution measures which needs to be softened. While the payer suffers adverse consequences of recovery of TDS shortfall, like - interest, penalty, prosecution and disallowance of expense (with consequential impact of tax, interest and penalty) for default in TDS compliance, there is no incentive for payer who is compliant and diligently deducts/collects & pays TDS/TCS to the Government. The TDS/TCS provisions reduce the cost of collection of taxes for the Government and hence deserves a more benign approach towards the deductors.

**Recommendations*** **Given the above complexities that are also a fertile ground for litigation, the Government may consider reducing the disparity in TDS rates/ do away with some of the TDS provisions (where information about the transaction is available through Form 26AS/ AIS/ GST returns) and provide for a simple TDS framework for domestic transactions as follows.**
* Only two or three categories of TDS rates for clearly defined payments may be maintained, with a small “negative list” of payments which will not be liable to TDS. The negative list is for avoiding any ambiguity or litigation on whether or not they are liable to TDS.
* **Following categories of payments could be considered for TDS:**

|  |  |  |
| --- | --- | --- |
| **Sr No** | **Nature of payment** | **TDS rate** |
| 1 | Salary  | Normal slab rates |
| 2 | Lotteries, online game winnings and horse race winnings | 30% |
| 3.  | All existing TDS sections that provide for TDS rate of <2%  | Continue the existing rates (<2%) |
| 4 | All other payments | 2-4% |

* **Suggested “negative list” of payments** not liable to TDS can be as follows:
1. Existing categories of TDS exempt payments
	1. S.196 (Government, RBI, Statutory corporations exempt from tax, Mutual Fund)
	2. Entities exempted by issuing notifications u/s. 197A(1F) (AIFs, securitisation trusts, domestic software payments, banks, etc.)
	3. Payments which are exempt from TDS based on furnishing of Form 15G/H by individuals/HUFs
	4. Entities whose entire incomes are unconditionally exempt and they do not have ROI filing obligation. Refer Circular No. 18/2017 (Local authorities, IRDA, CERC, ESIC, APMC, NPS, etc.)
2. New categories of TDS exempt payments suggested by Chamber
3. Agriculturists in respect of agricultural incomes (including those earned by selling goods through e-commerce platforms)
4. SC/ST residing in North-Eastern States or residents of Ladakh, Leh, Sikkim, etc whose income sourced from such regions are exempt
5. Purchases or payments to GST registered entities on which GST is paid.
6. Payments to registered charities
7. Banks and financial institutions
8. Insurance companies
* **Apply TDS on purchase of goods only on non-GST registered cases**
* The TDS u/s 194Q on purchase of goods should be made applicable only to payees who are not registered with GST.
* Alternatively, instead of TDS, the purchasers may be required to file Annual Information Returns.
* We would like to emphasise that the above exercise would be revenue neutral if the TDS rates are recalibrated after extensive data analysis of the TDS provisions which result in maximum refunds. The above suggestions would also considerably ease the compliance burden for taxpayers and minimise litigation relating to TDS classification.
 |
| **Procedural Aspects (Return Filing, Assessments, Penalty and Prosecution** |
|  | **Extension of time frame for filing updated return with additional tax – (s.139(8A) and s.140B) (w.e.f. 1 April 2025 i.e. AY 2025-26 and onwards)** | **Rationale and Issue:*** Subject to exceptions, effective from 1 April 2022, as per s.139(8A) any person can furnish updated return within 24 months from end of relevant AY - regardless of whether original/revised/belated return was filed earlier. S.140B provides for additional tax liability – as a percentage of incremental tax and interest payable upon filing updated return (25% for first 12 months and 50% for next 12 months from end of AY).
* The intent of the scheme of nudging voluntary compliance by taxpayers is well appreciated. The Government’s outreach of putting trust on taxpayers has been well reciprocated by taxpayers as is evident from Budget Speech of Hon’ble Finance Minister which mentions that nearly 90 lakhs taxpayers voluntarily updated their incomes by paying additional tax.
* The proposed amendment takes this trust further. The proposed amendment increases time frame for filing updated return from 24 months to 48 months from the end of the relevant AY [s.139(8A)]. The additional tax payable is @ 60% of aggregate of incremental tax and interest, where updated return is filed after 24 months but before 36 months, and @ 70% of aggregate of incremental tax and interest, where updated return is filed after 36 months but before 48 months.
* While extending the scheme to two more years, it is requested to reconsider the quantum of additional tax payable to avail the benefit. The existing rate of additional tax payable at 25% (one year) / 50% (two years) and proposed rates of 60% (three years) / 70% (four years) of aggregate of tax and interest need softening to better encourage a voluntary compliance.
* Indeed, there should be additional tax payable for availing the scheme since it provides benefits to the taxpayers by way of regularising their defaults without the threat of penalty and prosecution. There are also sufficient safeguards in the scheme to avoid its misuse to regularise serious cases of tax evasion. The third and fourth provisos provide for a host of circumstances where updated return cannot be filed if tax evasion is already detected by the Tax Department generally leading to “misreporting of income”.
* Taxpayers will generally compare the delta of exposure to penalty/prosecution with the tax liability under voluntary compliance to decide to file updated return. For instance, consider income missed out to be reported is Rs. 100 and base tax rate is 30%. If such income is assessed in normal course in reassessment in fifth year, then total tax, interest & penalty payable is as under :-

|  |  |  |
| --- | --- | --- |
| **Particulars** | **Non-disclosure considered to be “underreporting”** | **Non-disclosure considered to be “misreporting”** |
| Tax | 30 | 30 |
| Interest for 4 years @ 48% | 14.4 | 14.4 |
| Penalty u/s. 270A @ 50% / 200% | 15 | 60 |
| Total  | 59.4 | 104.4 |

* For filing updated return, the taxpayer has to pay 70% additional tax + interest by which the total liability comes to Rs. 75.48 (170% of Rs. 44.40). The payment of 70% additional tax on account of UR is Rs. 31.08, and 60% additional tax on account of UR is Rs. 26.64. Both these amounts are higher than the penalty potentially leviable u/s. 270A for underreporting of income (Rs. 15). Thus, the additional tax quantum as presently proposed is very steep.
* For underreporting of income for bonafide defaults, it is also possible for taxpayer to claim immunity from penalty u/s. 270A and prosecution u/s. 276C / 276CC by paying up tax & interest, not file further appeal and make application u/s. 270AA in which case his total liability will be Rs. 44.4. Thus, in cases of underreporting, the delta of 31.08% between exposure for not filing updated return (44.4) and filing updated return (75.48) being very large, taxpayers may not be sufficiently incentivised to cover up bonafide underreporting of income.

**Recommendations:*** Since the intent is to allow opportunity to taxpayers to voluntarily own up incomes captured in their AIS/Form 26AS which gets dynamically updated by filing of correction statements by reporting entities, it is submitted that the additional tax rate should be moderated – say, 10%/ 20%/ 30%/40%.
 |
|  | **Power to impose penalty under s. 271C, s. 271CA, s. 271D, s. 271DA, s. 271DB and s. 271E is shifted from Joint Commissioner of Income Tax (JCIT) to Assessing Officer (AO)** | **Rationale and Issue**:* Under the existing provisions of s. 271C, s. 271CA, s. 271D, s. 271DA, s. 271DB and s. 271E, the power to impose penalty has been specifically assigned to JCIT in case of specific defaults arising under the respective sections.
* Though the assessment under these sections is generally made by AO, the penalty for specified defaults is to be imposed by JCIT.
* In order to rationalize this process, it is proposed to amend these sections so that the penalties under the respective sections on or after 1 April 2025 shall be levied by AO in place of JCIT.
* The language of proposed proviso creates ambiguity. It is not clear as what will be the fate of pending penalty proceedings already initiated by JCIT and are pending as on 1 April 2025.
* In other words, whether such pending penalty proceedings shall be taken over by AO or to be continued by JCIT?

**Recommendations:*** In view of the above, it may be specifically clarified in the amendment that the penalty proceedings pending as on 1 April 2025 shall be transferred to AO for further action.
 |
|  | **Rationalisation of time limit for passing penalty orders (New s. 275)** | **Rationale and Issue**:* The existing s. 275 of ITA provides for the bar of limitation for imposing penalties.
* As per the existing s. 275 there are various time limits to pass order imposing penalties depending upon whether the base assessment order is subject matter of appeal before the CIT(A)/ITAT/HC/SC or penalty notice was issued.
* Further, the time limit shall commence from the end of the “month” in which connected proceedings are completed.
* With a view to streamline and provide for uniform time limit, it is proposed to substitute S. 275.
* Amongst other things, as per the proposed provision, the time shall commence from the end of the “quarter” in which connected proceedings are completed or penalty notice was issued.
* The substituted provision links the time limit for levy of penalties to six months from the end of the ‘quarter’ in which the connected proceedings are completed.
* The term “quarter” is not defined. It is understood as three months comprising of April - June (Q1), July-September (Q2), October – December (Q3) and January – March (Q4). Further, in Rules 30, 31, etc. dealing within filing of TDS / TCS returns, the quarter is specifically identified with reference to 30th June, 30th September, 31st December and 31st March.

**Recommendations:*** To avoid any ambiguity and potential for litigation, the term “quarter” may be specifically defined or identified on lines of Rules 30/31 as quarters ending on 30th June, 30th September, 31st December and 31st March of the financial year.
 |
| **Personal Taxation** |
|  | **Modification of amendment to rebate under S.87A** | **Rationale and Issue:*** S. 87A provides for rebate (deduction) from income tax to resident individuals where net taxable income does not exceed Rs. 5 lakhs. The quantum of rebate is 100% of income tax or Rs. 12,500, whichever is lower. This rebate ensures that resident individuals do not have income tax liability for net taxable income up to Rs. 5 lakhs.
* For FY 2024-25, in case of taxpayers covered under new CTR regime u/s.115BAC(1A), rebate was enhanced to lower of 100% of income tax or Rs. 25,000 where net taxable income does not exceed Rs. 7 lakhs. It also provides marginal relief to resident individuals whose net taxable income exceeds Rs. 7 lakhs and incremental income tax liability is higher than incremental income above Rs. 7 lakhs.
* Basis literal reading of provision, many taxpayers claimed rebate u/s.87A for income tax arising on special incomes like capital gains taxable u/s. 111A and/or S.112. Further, the rebate is available on income tax on “total income”. The scope of “total income” includes not only income u/s. 115BAC(1A) but also capital gains income taxable at special rates. Unlike S.112A(6), there is no express provision u/s. 111A and S.112 which denies rebate on income tax computed at rates provided u/s. 111A and S.112. However, the tax department believed that the rebate u/s. 87A should be restricted to income tax computed u/s.115BAC(1A). The tax department also changed the ITR utility in this regard on 5 July 2024.
* When the matter travelled to HC, Bombay HC disposed PIL on 24 January 2025 in CTC vs. Director General of Income-tax [2025] (170 taxmann.com 707) (Bom.) stating that the issue of availability of rebate u/s.87A against tax on capital gains income is highly debatable. Whether rebate u/s. 87A is to be allowed only on the tax calculated in accordance with the provisions of s. 115BAC or also on taxes calculated under other provisions of Chapter XII would require interpretation of the interplay of s. 87A and s. 115BAC. However, CBDT should not preclude taxpayer to make such claim in ITR.
* FB 2025 proposes to introduce second proviso to S.87A which states that for taxpayer covered u/s. 115BAC(1A), the deduction of rebate is restricted to amount of tax computed as per S.115BAC(1A).
* The Budget Speech of Hon’ble Finance Minister, Explanatory Memorandum to FB 2025 and Q.20 of FAQ 1 issued by CBDT on 1 February 2025 clearly states the legislative intent that rebate u/s. 87A will not apply to capital gains income u/s. 111A or 112 or other special rate incomes like lottery winnings, etc.
* However, the language of second proviso proposed to be inserted in s.87A to carry out such intent is ambiguous and prone to further litigation. It reads as follows :-

*“Provided further that the deduction under the first proviso, shall not exceed the amount of income-tax payable* ***as per the rates provided in sub-section (1A) of section 115BAC****”** S.115BAC(1A) overrides provisions of ITA but is subject to provisions of Chapter XII which comprise of income taxed at special rates. Since, s.115BAC(1A) rates are subject to special rates under Chapter XII (which includes s.111A, 112, etc), question will still arise whether such rates are the rates provided in s.115BAC(1A) or they are not.
* Also, the language of proposed second proviso to S.87A states that amount of rebate shall not exceed “amount of income tax payable as per rates” provided in S.115BAC(1A). It does not state that the rebate is not available for income-tax determined as per special tax rates like S.111A, S.112, etc.
* Such ambiguity shall lead to prolonged litigation on availability of rebate u/s.87A.

**Recommendations:*** It is recommended that to provide certainty and to avoid any further litigation, amendment should be made in respective provisions on lines of s.112A(6) or in s.87A itself to clearly provide that rebate u/s. 87A shall not apply to such special incomes and that rebate u/s. 87A shall be allowed on other incomes.
 |
|  | **S. 194EE to be amended to carve out withdrawals exempted under S. 80CCA(2)(a)** | **Rationale and Issue:*** S.80CCA(1) provides deduction to an individual/HUF with respect to amount deposited under National Savings Scheme (NSS). However, w.e.f. 1 April 1992, such deduction was withdrawn. If amount so deposited is withdrawn during lifetime, same is taxable under S. 80CCA(2) along with interest. There is no tax on withdrawals made after demise of taxpayer.
* S.194EE provides that tax has to be deducted at the rate 10% on payment of any amount standing to the credit of the taxpayer (along with interest accretions) under the National Savings Scheme in respect of which deduction has already been allowed at the time of contribution under S.80CCA(1).
* FB 2025 proposes to amend S.80CCA to allow exemption to the withdrawals made by individuals from the deposits to NSS (along with accrued interest) for which deduction was allowed, on or after 29 August 2024.
* While withdrawals made on or after 29 August 2024 from deposits to NSS (along with accrued interest) are proposed to be exempt from tax, corresponding amendment has not been made to S.194EE providing for carve-out from withholding on such payments to taxpayers upon withdrawal. In the absence of such amendment to S.194EE, despite exemption proposed under S.80CCA, there will be withholding on exempt withdrawals which will create difficulty especially for senior citizens who will need to file ITR to claim such refunds.

**Recommendations:*** It is recommended that S.194EE is amended suitably to provide carve-out from tax deduction on the payment to taxpayers on withdrawal from NSS account.
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| **Charity** |
|  | **Extension of 10 years period for registration for small charitable trust to all category of inquiry-based registration** | **Rationale and Issue:*** ITA provides for specific time limits for making application for registration / renewal of registration for charitable trust under different categories.
* For instance, trusts which were registered under erstwhile regime as on 1 April 2021 (One-time migration into new regime), new trusts which were provisionally registered under new regime on its formation and comes up for conversion into final registration within specified time, etc.
* Largely, the registration granted under the new regime is final registration valid for 5 years period. This registration is inquiry based (except for cases of one-time migration into new regime).
* Provisional registration is granted for new trusts who commenced their operations on or after 1 April 2021. Such provisional registration is for 3 years period and is automatic and without any inquiry.
* It is now proposed that final registration period of charity shall be extended to 10 years (from existing 5 years) for small charitable trusts.
* Small charitable trusts are those charitable trusts whose total income (including corpus donation, other donation, other income, etc.) is not more than INR 5 cr. in last two preceding FYs to the FY in which application for registration / renewal of registration is made.
* The proposed amendment does not capture cases where a charitable trust who have commenced operations before 1 April 2021 but did not register u/s. 12A/12AA. Such trusts if makes an application for charity registration on or after 1 April 2021 are granted 5 years registration after due inquiry. The application by such trusts shall be made under Item B of s. 12A(1)(ac)(vi) of ITA.
* Since the proposed proviso refers only to applications made under sub-clauses (i) to (v) of s. 12A(1)(ac) of ITA, application made by aforesaid trust under Item B to s. 12A(1)(ac)(vi) of ITA is not eligible for 10 year benefit. This seems to unintentional omission.
* Further, benefit of 10 years extension is unintendedly left out to be extended for s. 80G registration.

**Recommendations:*** It is recommended that similar extension should also be granted to cases where registration application is made under Item B of s. 12A(1)(ac)(vi) of ITA.
* Also, similar extension of registration period may be made s. 80G registrations for same class of taxpayers.
 |

1. Here, it may be highlighted that S. 44BBD(2) is modelled on the provisions of S. 44BB(2) which also similarly requires aggregation. However, in the context of S. 44BB, it may be highlighted that such aggregation is of amounts paid or payable in respect of prospecting of mineral oils in India and amounts received in India in respect of prospecting of mineral oils outside India. Thus, S. 44BB inherently avoids double counting. [↑](#footnote-ref-2)
2. PIB (Ministry of Finance) Press Release dated 12 January 2025 - [Press Release (data upto 12..01.2025).xlsx](https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/694/Direct-Tax-Collections-for-FY-2024-25-as-on-12.01.2025.pdf) [↑](#footnote-ref-3)