

Union Budget 2021- Direct Tax Highlights

(As approved by Lok Sabha)

A. Income Tax Return Rationalisation Measures

Income Tax Return- Filing, Processing and Penalty

- **Filing of Return:** Time limit for filing belated or revised tax return has been **reduced by three months**, i.e. same should be filed within three months before the end of the relevant assessment year or completion of the assessment, whichever is earlier. The same is applicable to return filing for financial year 2020-21 onwards. **[approved vide amendment in Section 139(4) and Section 139(5)]**
- **Processing of Return:** Following adjustments while processing return have been proposed:
 - a) Increase in income short reported in tax return vis-à-vis audit report;
 - b) Disallowance of income linked deduction on failure to file return by due date;
 - c) Time limit for issuance of processing intimation reduced from one year to nine months from the end of the financial year in which the return was furnished.**[approved vide amendment in Section 143(1)]**
- **Penalty on default in filing return within time limit prescribed under Section 139(1):** Penalty of INR 5,000 in case of default in filing return within due date (INR 1,000 in case where total income does not exceed INR 5,00,000).
Erstwhile provision where penalty amounting to INR 10,000 was prescribed for returns filed beyond 31 December has been done away with (this is in line with the overall filing timeframe being reduced by 3 months)
[freshly introduced in Lok Sabha vide amendment in Section 234F]

B. Litigation Rationalisation Measures

Time limits for assessment proceedings

- **Selection of scrutiny cases:** Time limit reduced from six months to three months from the end of the financial year in which the return is furnished. **[approved vide amendment in Section 143(2)]**
- **Completion of Assessment:** Time limit reduced to 9 months (as against existing 12 months) from the end of the relevant assessment year in which income the income was first assessable (effective for tax year 2020-21 and onwards). **[approved vide insertion of Proviso to Section 153]**

Procedure for re-assessment and search assessment

- Re-assessment proceedings valid only where gathered information suggests income escaping assessment; **[approved vide substituted Section 148 (proviso 1) read with newly inserted Section 148]**
- Prescription of specific circumstances defining source of information with effect from 1 April 2021 viz (a) specified information / data from CBDT (b) objections from CAG on the assessment of taxpayer (c) Survey or search action (d) money, bullion, jewellery or other valuable article or thing, books of account or documents seized;
Further, in case of items listed in point (c) and (d) above, it shall be deemed that the information gathered by the AO pertains to three immediately preceding assessment years. **[approved vide substituted Section 148 (Explanation 1 and 2)]**
- Procedure for Re-assessment: Conduct enquiry with prior approval of specified authority, opportunity of being heard (7-30 days) along with results of enquiry, consider the reply and issue order with one month;
Above procedure not applicable for cases falling under point (c) and (d) above **[approved vide insertion of new Section 148A]**
- Time limit for conducting reassessment proceedings: 3 years from the end of relevant assessment year (10 years in case income escaping assessment more than INR 50 lacs). **[approved vide substituted Section 149]**
- Specified authority under re-assessment regime:
 - a. 3 years or less: Principal Commissioner/ Principal Director or Commissioner/ Director
 - b. More than 3 years and less than 10 years: Principal Chief Commissioner/ Director General or Chief Commissioner/ Director General**[approved vide substituted Section 151]**

Faceless proceedings before Income Tax Appellate Tribunal ('ITAT')

- Elimination/minimisation of interface between ITAT and litigants;
- Introducing a dynamic jurisdiction enabled appellate system
[approved vide amendment in Section 255]

Dispute Resolution Committee (DRC) for small taxpayers

- DRC to cover cases having income of upto INR 50 lacs and proposed variation of upto INR 10 lacs.

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- Provisions of reduction/waiver of penalty and immunity from prosecution.
- Certain persons shall be ineligible to take benefit of the regime such as those against whom orders/ proceedings of detention, prosecution etc. are being initiated.

[approved vide insertion of new Chapter XIX-AA]

Board of Advance Ruling (BAR) for early disposal of cases in place of Authority for Advance Ruling (AAR)

- The AAR mechanism to cease and its powers to vest in BAR (existing cases to be automatically transferred to BAR from effective date);
- Ruling of BAR appealable before High Court (within 60 + 30 days); **[approved vide insertion of New Section 245W]**
- Amendment effective from 1 April 2021
[approved vide amendment in Section 245N, Section 245O, New Section 245OB, Section 245P, Section 245Q, Section 245R, Section 245S, Section 245T, Section 245U, Section 245V]

Interim Board ('IB') to replace Income-Tax Settlement Commission (ITSC)

- All powers of ITSC shall vest in IBs;
- Option to withdraw the pending application within 3 months (in such case, matter shall revive before last adjudicating authority and materials gathered during ITSC not to be used);
- Amendment is effective 1 February 2021.
[approved vide amendment *inter-alia* in Section 245B, New Section 245AA, Section 245A, Section 245B, Section 245BC, Section 245BD, Section 234D, Section 245DD, Section 245F, Section 245G, Section 245H, Section 245L,]

C. Withholding Tax Rationalisation Measures

TDS on purchase of goods by buyer

- Buyer required to deduct TCS at the rate of 0.1% while making payment to resident for purchase of goods exceeding INR 50 lacs in any fiscal year.
- Applicable only in cases where buyer's turnover exceed INR 10 Crores in preceding financial year.

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- Where buyer fails to furnish PAN, rate of 5% would be applicable instead of 0.1% **[approved vide insertion of proviso to Section 206AA]**
- TDS not liable to be deducted in case the transaction is already subject to TDS/TCS under other provisions of Act. **[approved vide insertion of new Section 194Q]**

Penal TDS/TCS for tax return defaulters

- Penal TDS/TCS rates in case of taxpayers liable to TDS/TCS amounting to INR 50,000 or more in current year and having failed to file tax returns in both of immediately two preceding years. However, NR not having a PE in India is excluded from purview of this Section.
- Prescribed rate twice the rate of TCS or 5% (whichever is higher).
- Applicable on persons who failed to file tax return for preceding two years (excluding non-resident without any permanent establishment)

[approved vide insertion of new Section 206AB and Section 206ACCA]

Amendment in TDS on payments to Foreign Institutional Investors (FIIs)

- It is proposed that FPIs would now be eligible to claim treaty benefits, subject to the FPI furnishing a Tax Residency Certificate. **[approved vide insertion of proviso to Section 196D]**

D. Extension of Tax Benefits

Tax holiday to start-ups till 31 March 2022

- Current profit-linked deduction (100%) to eligible start-ups incorporated on or after 1 April 2016 and before 1 April 2021 and exemption of long-term capital gains from transfer of residential property on or before 31 March 2021 are extended up to 31 March 2022.

[approved vide amendment in Section 80-IAC]

Approved housing projects

- Current tax holiday for real estate companies engaged in approved housing projects between 1 June 2016 and 31 March 2021 extended up to 31 March 2022. **[approved vide amendment in Section 80IBA]**

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- Also, it is proposed to allow 100% tax holiday to notified affordable rental housing projects (as notified by Central Government) upto 31 March 2022. **[approved vide amendment in Section 80-IBA]**

Benefit of tax exemption extended to educational institutions and hospitals with annual receipts of INR 5 Crores

- Annual receipts threshold for educational institutions and hospitals for claiming exemption is increased from INR 1 Crores to INR 5 Crores. **[approved vide amendment in Section 10(23C)]**

Safe harbour variation tolerance limit increased from 10% to 20%

- Safe harbour pertaining to difference in stamp duty value and actual consideration is increased to 20% (from existing 10%) in case of transfer of residential properties taking place between 12 November 2020 and 30 June 2021 (consideration not to exceed INR 2 Crores). **[approved vide insertion of proviso to Section 43CA]**

E. Other Direct Tax Amendments

Goodwill not eligible for depreciation

- It is proposed that depreciation would not be claimable on goodwill (both purchased and acquired).
- Goodwill has also been excluded from definition of 'block of assets-intangibles'. **[approved vide amendment in Section 2(11) and Section 32 and Section 43]**
- Cost of acquisition of the goodwill in cases covered under Section 49(1), which was erstwhile considered to be the cost for which the previous owner had acquired the same, would be considered to be *nil*. **[approved vide amendment in Section 55(1)]**

Tax audit threshold increased from INR 5 Crores to INR 10 Crores

- Threshold for relief from tax audit increased from INR 5 Crores to INR 10 Crores provided cash transactions do not exceed 5%. **[approved vide amendment in Section 44AB]**

Attachment of property in case of falsifying books of accounts

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- Tax authority permitted to provisionally attach property in cases of falsification/ omission of entries in books of accounts, provided the amount of penalty imposable is likely to exceed INR 2 Crores. **[approved vide amendment in Section 281B]**

Exemption with respect to Charitable / Religious Purpose

- Voluntary Corpus donations shall be required to be kept in specified accounts as prescribed under sub-section 5 of Section 11.
- The aforesaid amounts shall not be deemed to be application of income for charitable purposes.

[approved vide amendment in Section 11]

Minimum Alternate Tax

- While calculation of book profits under Section 115JB for foreign company, dividend expenditure and income of such foreign company shall also be added back. **[approved vide amendment to Section 115JB]**
- While calculating book profits under Section 115JB, in case of inflation in book profits on account of adjustments related to advance pricing agreement, on specific request of the assessee, such book profits shall be recomputed under Section 154 **[approved vide amendment to Section 115JB]**

Tax Benefits to Specified Overseas Entities/ IFSCs

- Investment division of offshore banking unit (located in IFSC and commencing operations from 31 March 2024) shall be liable to tax in India only on such portion of Income that is attributable to Indian operations. **[approved vide amendment to Section 115AD]**
- Capital Gains on reconstitution of specified entity shall be calculated as per the provisions of Section 45(4). Further, while calculation of capital gains, impact of revaluation or self-generated assets not to be considered **[approved vide amendment to Section 45]**
- Any transfer by way of relocation of a capital asset by original fund (fund located overseas) to resulting fund (IFSC in India) would not be categorised as capital transfer under Section 45. **[approved vide insertion of sub-sections (viiac) and (viiad) along with explanations thereto to Section 47]**

Others

- Penalty amounting to INR 1,000 prescribed for not quoting of Aadhaar number under Section 139AA(2). **[freshly introduced in Lok Sabha vide newly inserted Section 234H]**
- Revisionary powers as laid down under Section 263, which were erstwhile conferred upon the Principal Commissioner or Commissioner have now been conferred upon Principal Chief Commissioner, Chief Commissioner and Principal Commissioner. **[freshly introduced in Lok Sabha vide amendment in Section 263]**
- Presumptive taxation provisions as provided under Section 44ADA would only be applicable to individuals, partnership firms and LLPs. **[approved vide amendment in Section 44ADA]**
- Amount received under Unit Linked Insurance Policy (including bonus) shall be taxed as capital gains. **[approved vide amendment in Section 45(1B)]**
- Exemption from withholding tax (WHT) to REIT and InvIT in whose hands dividend is exempt. **[approved vide amendment in Section 194]**
- In case of long term capital gain on slump sale, fair market value of asset shall be deemed to be full value of consideration; **[freshly introduced in Lok Sabha vide amendment in Section 50B]**
- Exemption from capital gains on transfer of residential property by eligible start-up has been extended to 31 March 2022. **[approved vide amendment in Section 54GB]**
- Tax neutrality provisions extended to conversion of urban co-operative banks into banking companies; **[approved vide amendment in Section 47]**
- Facilitating strategic disinvestment of public sector companies; **[approved vide amendment *inter-alia* in Section 2(19AA), Section 72A]**
- LTC Cash Scheme: Individuals eligible to claim INR 36,000 or 1/3 of eligible expenditure (under employment contract); **[approved vide amendment in Section 10(5)]**
- Deduction in respect of interest on loan taken for specified housing property of INR 150,000 continued till 31 March 2022; **[approved vide amendment in Section 8oEEA]**
- Senior Citizens above age of 75 years exempt from filing of tax return in case of pension and bank interest income (provided bank interest is received in same bank account in which pension is received). Further, bank shall be liable to deduct TDS on the entire income earned by such persons at rates in force; **[approved vide insertion of new Section 194P]**

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- Dividend income not subject to advance tax till time of receipt of dividend (not applicable on deemed dividend); **[approved vide amendment in Section 234C and proviso thereto]**
- Clarifications with respect to certain aspects of Equalisation Levy have been provided;
- It has been proposed to permanently disallow the delayed employee social security contribution with respect to PF, ESI etc. (beyond the respective due date); **[approved vide insertion of Explanation 2 to Section 36 and Explanation 5 to Section 43B]**
- Tax relief to income from retirement benefit account maintained in notified country outside India. **[approved vide insertion of new Section 89A]**

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